

# LEGAL PLURALISM IN CONTEMPORARY STATES: BETWEEN TRADITIONAL AND FORMAL JUSTICE MECHANISMS IN NIGERIA AND CÔTE D'IVOIRE

OLADAPO KAYODE OPASINA  
*Centre for Refugee Studies  
York University, Toronto  
kayode.opasina@gmail.com*

*Abstract:* It is generally assumed that African states have yet to explore the full potential of their traditional institutions and the specific role that society wants them to play in modern states. While focusing on Nigeria and Côte d'Ivoire, this empirical research seeks to explore legal pluralism in modern African democracy. The study specifically answers the research question: is the traditional justice system applicable to Nigerians and Ivorians in contemporary dispensation? The study finds out that a significant population at the grassroots rely on the traditional justice system, when compared with their counterparts in the cities. The rural population argues that the formal justice system is quite expensive and that the legal procedures are difficult to understand, coupled with the fact that court houses are mostly located in the cities. On the other hand, the gender-biased and male-dominated outlook of the traditional justice mechanism and its proneness to external influences, as well as the impact of modern religions, have continued to propel a considerable population (especially in urban areas) to patronize the formal justice system. Meanwhile, the adoption of western institutions of government by African states has forced traditional institutions to occupy the back seat. Hence, there is a mixed social environment wherein both formal and traditional justice systems are weak, and the states being weak themselves are significantly responsible for the weakness of traditional institutions. Consequently, flaws in both justice systems have compelled people to take the law into their own hands and to resort to jungle justice.

*Keywords:* traditional justice system, formal justice system, state, Nigeria, Côte d'Ivoire.

## INTRODUCTION

Traditional justice systems have been in existence since time immemorial in Africa. Different ethnic groups evolved their own specific informal justice system, based on their respective cultures. Usually, traditional courts were headed by the traditional head or leader of the community. However, the traditional justice system began to gradually occupy the back seat, with the advent of modern democracy. This has generated a lot of controversies among scholars. Some observers believe that states in Africa have adopted systems of government that are not socio-culturally oriented, cost-effective and sus-

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tainable. According to them, the post-colonial state is quick to emulate western institutions of governance, which are often at odds with African cultural values and the region's contemporary socio-economic realities (Economic Commission for Africa 2007: 1). On the other hand, the traditional institutions which are custodians of the people's culture and customs, are forced to occupy the back seat. From that perspective, "it will be misleading to expect the state to meet the expectations of the majority of Africans, because political independence was basically a matter of transferring the reins of power to chosen Africans who could protect the economic interests of the colonisers" (Omoweh and van den Boom 2005: 14). "Due to the distortion of African values, traditions and culture, particularly by the post-colonial political elite of Africa, it is imperative that any reliable consensus of values begins with the restitution of the purely African values, cultures and traditions" (Achu 2004: 17). In fragile and post-conflict states, hybrid justice mechanisms are quite common, the reason being that; in reality, the state cannot alone meet the ever-increasing demands of its growing population. It thus seems that the traditional justice system, when incorporated into the Alternative Dispute Resolution (ADR), can potentially address root causes of conflicts, which the formal justice mechanism may not be able to handle.

This paper seeks to answer the question of whether the traditional justice mechanism is still applicable in modern Nigeria and Côte d'Ivoire. It is imperative to note that, some African countries have continued to maintain their traditional institutions because of the need to promote peace, culture, social cohesion and security, and because large populations particularly at the grassroots have continued to adhere to traditional institutions (Opasina 2016: 43). These reasons suggest why legal pluralism has been adopted by many African countries since independence. The paper further investigates whether the traditional system effectively complements the formal justice mechanism in modern democracies.

## LEGAL PLURALISM IN AFRICA: TRADITIONAL AND FORMAL JUSTICE MECHANISMS

In pre-colonial Africa, the legal framework was solely based on the traditional justice system, which was informed by the culture and norms of society. Usually, the traditional head



presides over criminal cases and pronounces judgement based on the customary laws of the particular society. However, colonisation brought about legal pluralism. European colonial occupation greatly altered the political and socio-economic entities of African governance and institutional structures (Economic Commission for Africa 2007: 6). Immediately after independence, many states in Africa were quick to adopt their colonial masters' systems of governance. English Law for instance, was introduced to Nigeria because the country was colonised by the British. According to Ige (2015: 59), legal pluralism connotes "the existence of multiple legal systems within one geographical area", and it is often practiced in former colonies "where the law of a former colonial authority may exist alongside more traditional legal systems". Originally, legal pluralism was based on the idea that colonial law would be applicable to specific issues like commercial transactions, while traditional law and system would cater to societal and intimate issues like family and marriage (Ige 2015). In the words of Odinkalu:

A justice system is said to be plural when it draws the rules and institutions of its laws from two or more normative traditions. This is true of every African country. In Egypt, for instance, the major sources of law are as varied as the Napoleonic Codes and Islamic Sharia. In Nigeria and Sudan, a constitutional, statutory, and civic system of laws co-exists uneasily with both Islamic Sharia and indigenous African customary norms and institutions (Odinkalu 2005: 1).

While the formal justice mechanism takes its root from the legal traditions of the colonial powers (e.g. English common law), the traditional justice system emanates from the norms and values passed down from generation to generation as customary law (Geraghty, Stapleton et al. 2007: 4). The traditional justice mechanism, which operates side-by-side with the formal system in some African countries like Nigeria and Côte d'Ivoire, deals with a wide range of issues that include; security, religion, marriage, crimes and other local disputes. Bowd (2009: 2) argues that the traditional courts are often located in the grassroots because of their use of local languages and their informal nature. According to UNICEF (2009: 2), the informal justice system has been playing a significant role in conflict resolution in post-colonial countries such as Papua New Guinea, and more importantly, in post-conflict countries such as Rwanda and Liberia. For instance, after the 1994 Rwandan genocide, the national government resorted to the



use of traditional approach to reconciliation and justice by adapting the *Gacaca* system, which is a combination of both retributive and restorative justice. The *Gacaca* courts were set up in 2001 as a form of transitional justice, and they were charged with the responsibility of establishing the truth on circumstances surrounding the genocide, reconciling Rwandans, as well as promoting unity and communal healing, among other goals. The word “*Gacaca*” translates to “grass” in Kinyarwanda Language, and therefore, hearings were held in open and public places like empty markets and school yards in various Rwandan communities (Brehm, Uggem and Gasanabo 2014: 336). Elections were usually conducted within the communities to elect judges who presided over the hearings. According to Le Mon (2007: 1), the judges were made to undergo specific training in criminal law and were allowed to impose sentences up to 30 years’ imprisonment. More examples are found in Asia; as an estimated 60-70 per cent of all disputes are processed through customary *Salish* (UNDP 2005), and in sub-Saharan Africa; in the case of Sierra Leone, in which, approximately 85 per cent of the population falls under the jurisdiction of customary law, defined under the constitution as “the rules of law, which, by custom, are applicable to particular communities in Sierra Leone” (Chirayath, Sage and Woolcook 2005).

Access to justice has remained a critical issue, especially in post-colonial sub-Saharan Africa. McClelland argues that:

An effective justice system must be accessible in all its parts. Without this, the system risks losing its relevance to, and the respect of the community it serves. Accessibility is about more than ease of access to sandstone buildings or getting legal advice. It involves an appreciation and understanding of the needs of those who require the assistance of the legal system (McClelland 2009: 1).

People that are unlawfully deprived of their ancestral lands and means of livelihood, as well as vulnerable groups like grieving widows and orphans who are being disinherited by surviving family members/in-laws, often suffer from the lack of a functioning justice system. According to van de Meene and van Rooij (2008: 21), access to justice serves multiple goals, which include; poverty reduction, protection of individual rights, and security against crimes and abuse. Thus, what the traditional justice system does is to fill the gaps in formal justice mechanisms, especially for the benefit of rural dwellers that do not have access to formal courts, which are



usually located in urban areas. Over the years, the traditional justice system has undergone a series of changes and adjustments in order to align with modernity and uphold human rights. For instance, extreme matters like murder cases are referred to the Police. Kerrigan, Mckay, Kristiansen, Mundt et al. are of the opinion that:

Providing accessible justice is a state obligation under international human rights standards, but this obligation does not require that all justice be provided through formal justice systems. If done in ways to respect and uphold human rights, the provision of justice through informal justice systems is not against human rights standards and can be a mechanism to enhance the fulfillment of human rights obligations by delivering accessible justice to individuals and communities where the formal justice system does not have the capacity or geographical reach (Kerrigan, Mckay, Kristiansen, Mundt et al. 2012: 11).

Quite a few previous studies have advocated for the creation of hybrid justice mechanisms by incorporating both the state and non-state justice systems, particularly in countries where such do not exist. Clark and Stephens (2011: 2) suggest “the application of a ‘grounded approach’ (a term borrowed from the ‘grounded theory’) to designing programs oriented towards strengthening such hybrid structures, particularly when the approach is assumed to be attuned to local needs and opportunities, and focuses on reducing tangible instances of injustice in incremental steps rather than attempting to achieve an ideal form of justice”. Grounded legitimacy portrays the way of incorporating traditional authorities and practices within the formal state in order to provide the belief systems within which to enhance the capacity and effectiveness of new forms of statehood (OECD 2010: 43). On the adoption of the “grounded approach” to strengthening hybrid justice systems, five key steps were proposed by Clark and Stephens (2011) and these include: *a*) understanding the historical and contemporary political and policy context of formal and customary justice systems; *b*) analysing the strengths and weaknesses of formal and customary legal systems; *c*) identifying entry points for strengthening hybrid justice systems based on an analytical framework of institutional change; *d*) realistically assessing the opportunities for engagement on the entry points; and *e*) ensuring a flexible and long-term commitment to implementation.

## METHODOLOGY



For the study, an extensive field research was carried out from 2012 to 2014. Relevant questions were posed to representative samples that were selected in Nigeria and Côte d'Ivoire, and from their responses, inferences were drawn. In Nigeria, the research was conducted in the south-west geo-political zone. The zone comprises of six states: Oyo, Osun, Lagos, Ogun, Ondo and Ekiti. In Côte d'Ivoire, the study was conducted in the Lagunes region, which is demarcated into departments: Abidjan, Alépé, Dabou, Grand Lahou, Jacqueline and Tiassalé. The rationale for the choice of south-western Nigeria and Lagunes region in Côte d'Ivoire was because these areas do not only have huge populations, but the populations are mixed and consist of various ethnic groups who have migrated from other geo-political zones and regions, mainly on account of economic, inter-marriage, civil service and educational reasons. For instance, Lagos is considered the largest city in Nigeria with reference to population and being the former seat of power, it has remained the country's commercial centre. In the same vein, Abidjan is reputed to be the largest Ivorian city in terms of population. Abidjan is the economic and former official capital of Côte d'Ivoire as well. Therefore, the populations of the south-west geo-political zone of Nigeria and Lagunes region of Côte d'Ivoire are representative samples of the entire Nigerian and Ivorian populations respectively. A systematic sampling technique was used to select samples from a list of population obtained from the civil service and state institutions like the Ministry of Justice, Economic Planning Commission, Ministry of Local Government and Chieftaincy Matters, Ministry of Women's Affairs, National Army and the National Police. Participants were equally drawn from traditional institutions, the mass media, civil society groups, students, traders, men and women in business, peacebuilding experts, professionals, retirees and non-governmental organisations (NGOs). Systematic sampling is a type of random sampling method, "used when the population is very large and of no known characteristics, e.g. the population of a town" (Walliman 2011: 186). According to Walliman (2011), "the procedures involve the selection of units in a series (for example, on a list) according to a predetermined system".

Both quantitative and qualitative methods were adopted for the study. For the quantitative approach, semi-structured questionnaires were administered to 300 subjects (comprising

of 200 samples in Nigeria and 100 samples in Côte d'Ivoire). Respondents were given the option of either receiving and completing an online questionnaire via e-mail or accepting a hard-copy/printed version of the questionnaire. The complete and condensed self-administered questionnaires were designed so that, they would take less than 50 minutes and 30 minutes respectively to complete or respond to. The second data source included a total of 82 qualitative in-depth face-to-face interviews and 21 focus group discussions (FGDs), conducted in the study areas. Of these, 48 interviews were carried out in Nigeria, while 34 were carried out in Côte d'Ivoire. Interviewees were selected based on theoretical sampling. Theoretical sampling (a non-random sampling) is "a term used mainly in relation to grounded theory to refer to sampling carried out so that emerging theoretical considerations guide the selection of cases and/or research participants" (Bryman 2004: 544). Walliman (2011: 188) views theoretical sampling as "a useful method of getting information from a sample of the population that you think knows most about a subject". For the face-to-face interviews in Nigeria, participants selected were notified, out of which 48 of them accepted to be interviewed after the researcher had provided some explanations on the study and its importance. Thereafter, appointments (including time and location) were scheduled on an individual basis. The same protocol was applicable to participants in Côte d'Ivoire. Thirty four participants signified their intentions to participate in the in-depth interviews and subsequently, individual appointments were scheduled. Discussants for the focus group discussions in both countries were selected by purposive sampling. Purposive sampling is a type of non-random sampling "where the researcher selects what he/she thinks is a 'typical' sample" (Walliman 2011). Eleven Focus Group Discussion (FGD) sessions were conducted in Nigeria, while ten FGD sessions were conducted in Côte d'Ivoire. The ages of the participants ranged from 18 to 75 years. Gender equality was put into consideration as both male and female subjects were involved and encouraged to participate in the study, in order to avoid gender bias. Statistical Analysis System (SAS) software was used to analyse the data collected through the questionnaires, while responses obtained from the qualitative in-depth face-to-face interviews and FGDs in both countries were transcribed and thematically analysed accordingly.

## RESULTS





### *Analysis of Questionnaire Data*

Tab. 1. *Statistical Analysis: Nigeria (%)*

S/N	Questionnaire Items	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	No response
1.	Traditional justice system is quite relevant.	2.0	5.0	15.0	68.0	8.0	2.0
2.	A significant population in rural areas relies on the traditional justice system than the formal justice system.	–	1.5	5.0	77.0	15.0	1.5
3.	Few people can afford to use the formal justice system.	–	3.0	7.5	76.5	10.0	3.0
4.	The formal justice system is expensive.	–	5.0	7.5	71.5	13.5	2.5
5.	The legal procedures of the formal justice system are difficult to understand.	0.5	10.0	12.0	65.5	9.5	2.5
6.	Formal court houses are mostly located in cities.	–	11.0	6.5	67.0	11.0	4.5
7.	Traditional justice system is male-dominated, gender-biased and discriminatory.	2.0	12.0	15.0	57.5	11.0	2.5
8.	Traditional justice system can complement the formal justice system.	1.0	5.5	7.5	68.5	14.0	3.5

#### *Notes*

1) 68.0 per cent of the participants in Nigeria agree that traditional justice system is still relevant and applicable to Nigeria. This percentage is supported by 8.0 per cent of the participants, who strongly agree with the statement.

2) 77.0 per cent of the participants in Nigeria agree that a substantial population in Nigeria's rural areas depends more on the traditional justice system than the formal justice mechanism. This percentage is supported by 15.0 per cent of the participants, who strongly agree with the statement.

3) 76.5 per cent of the participants in Nigeria agree that only a few people can afford to use the formal justice system in Nigeria. This percentage is supported by 10.0 per cent of the participants, who strongly agree with the statement.

4) 71.5 per cent of the participants in Nigeria agree that the Nigerian population finds the formal justice system quite expensive to access. This percentage is supported by 13.5 per cent of the participants, who strongly agree with the statement.

5) 65.5 per cent of the participants in Nigeria agree that the Nigerian population, especially the uneducated people, finds the legal procedures in the formal justice system difficult to understand. This percentage is supported by 9.5 per cent of the participants, who strongly agree with the statement.





- 6) 67.0 per cent of the participants in Nigeria agree that court houses of the formal justice system in Nigeria are mostly concentrated in the cities. This percentage is supported by 11.0 per cent of the participants, who strongly agree with the statement.
- 7) 57.5 per cent of the participants in Nigeria agree that the traditional justice system in Nigeria is reckoned to be male-dominated, gender-based and discriminatory in its composition. This percentage is supported by 11.0 per cent of the participants, who strongly agree with the statement.
- 8) 68.5 per cent of the participants in Nigeria agree that the traditional justice system can effectively complement the formal justice system in Nigeria. This percentage is supported by 14.0 per cent of the participants, who strongly agree with the statement.

Tab. 2. *Statistical Analysis: Côte d'Ivoire (%)*

S/N	Questionnaire Items	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	No response
1.	Traditional justice system is quite relevant.	–	4.0	5.0	85.0	5.0	1.0
2.	A significant population in rural areas relies on the traditional justice system than the formal justice system.	–	–	2.0	92.0	6.0	–
3.	Few people can afford to use the formal justice system.	6.0	–	5.0	86.0	3.0	–
4.	The formal justice system is expensive.	1.0	5.0	7.0	84.0	2.0	1.0
5.	The legal procedures of the formal justice system are difficult to understand.	–	6.0	2.0	84.0	7.0	1.0
6.	Formal court houses are mostly located in cities.	5.0	–	3.0	73.0	18.0	1.0
7.	Traditional justice system is male-dominated, gender-biased and discriminatory.	–	1.0	3.0	91.0	4.0	1.0
8.	Traditional justice system can complement the formal justice system.	–	–	1.0	93.0	2.0	4.0

*Notes*

- 1) 85.0 per cent of the participants in Côte d'Ivoire agree that traditional justice system is still relevant and applicable to Côte d'Ivoire. This percentage is supported by 5.0 per cent of the participants, who strongly agree with the statement.
- 2) 92.0 per cent of the participants in Côte d'Ivoire agree that a substantial population in Côte d'Ivoire rural areas depends more on the traditional justice system than the formal



mechanism. This percentage is supported by 6.0 per cent of the participants, who strongly agree with the statement.

3) 86.0 per cent of the participants in Côte d'Ivoire agree that only a few people can afford to use the formal justice system in Côte d'Ivoire. This percentage is supported by 3.0 per cent of the participants, who strongly agree with the statement.

4) 84.0 per cent of the participants in Côte d'Ivoire agree that the Ivorian population finds the formal justice system quite expensive to access. This percentage is supported by 2.0 per cent of the participants, who strongly agree with the statement.

5) 84.0 per cent of the participants in Côte d'Ivoire agree that the Ivorian population, especially the uneducated people, finds the legal procedures in the formal justice system difficult to understand. This percentage is supported by 7.0 per cent of the participants, who strongly agree with the statement.

6) 73.0 per cent of the participants in Côte d'Ivoire agree that court houses of the formal justice system in Côte d'Ivoire are mostly concentrated in the cities. This percentage is supported by 18.0 per cent of the participants, who strongly agree with the statement.

7) 91.0 per cent of the participants in Côte d'Ivoire agree that the traditional justice system in Côte d'Ivoire is reckoned to be male-dominated, gender-based and discriminatory in its composition. This percentage is supported by 4.0 per cent of the participants, who strongly agree with the statement.

8) 93.0 per cent of the participants in Côte d'Ivoire agree that the traditional justice system can effectively complement the formal justice system in Côte d'Ivoire. This percentage is supported by 2.0 per cent of the participants, who strongly agree with the statement.

### *Analysis of Data obtained from the Interviews*

#### Question 1: Are traditional institutions still relevant in Nigeria/Côte d'Ivoire?

Tab. 3. *Relevance of Traditional Institutions (Nigeria)*

<i>Sex</i>	<i>No</i>	<i>Yes</i>	<i>Total</i>
Female	1	18	19
Male	1	28	29
TOTAL	2	46	48

*Note:* An overwhelming 46 (18 females and 28 males) out of a total of 48 participants interviewed in Nigeria, answered 'yes' to the above statement. This result suggests that traditional institutions have continued to be relevant in modern Nigeria.

Tab. 4. *Relevance of Traditional Institutions (Côte d'Ivoire)*

<i>Sex</i>	<i>No</i>	<i>Yes</i>	<i>Total</i>
Female	1	11	12
Male	2	20	22
TOTAL	3	31	34

*Note:* An overwhelming 31 (11 females and 20 males) out of a total of 34 participants interviewed in Côte d'Ivoire, answered "yes" to the above statement. This result suggests that traditional institutions have continued to be relevant in modern Côte d'Ivoire.

#### Question 2: Do you have confidence in the formal justice system of your community?

Tab. 5. *Measure of Confidence in the Formal Justice System (Nigeria)*

<i>Sex</i>	<i>No</i>	<i>To some extent</i>	<i>Yes</i>	<i>Total</i>
Female	4	10	5	19
Male	14	12	3	29
TOTAL	18	22	8	48

*Note:* Out of a total of 48 participants interviewed in Nigeria, 18 people said they do not have confidence in the formal justice system in their communities, 22 people said they have confidence in the formal justice system only to some extent, while 8 people said they have confidence in the system. This result shows a mixed reaction and suggests that the formal justice system in Nigeria is weak and calls for overhauling.

Tab. 6. *Measure of Confidence in the Formal Justice System (Côte d'Ivoire)*

<i>Sex</i>	<i>No</i>	<i>To some extent</i>	<i>Yes</i>	<i>Total</i>
Female	2	3	7	12
Male	5	3	14	22
TOTAL	7	6	21	34

*Note:* Out of a total of 34 participants interviewed in Côte d'Ivoire, 7 people said they do not have confidence in the formal justice system in their communities, 6 people said they have confidence in the formal justice system only to some extent, while 21 people said they have confidence in the system. This suggests that the formal justice system in Côte d'Ivoire shows some resilient features and is dependable to a reasonable extent.

## DISCUSSIONS

First of all, African traditional institutions have shown resilience in the face of modernity. Out of the 48 participants interviewed in Nigeria, an overwhelming 46 interviewees (comprising 18 females and 28 males) believe that traditional institutions are quite relevant in modern democracy (see Tab. 3 and Fig. A), while 31 interviewees (comprising 11 females and 20 males) out of the total 34 Ivorian population that were interviewed consider traditional institutions as relevant in contemporary Côte d'Ivoire (see Tab. 4 and Fig. B).



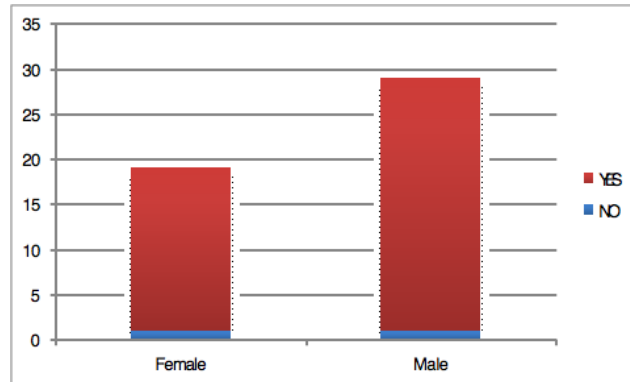


Fig. A. *Relevance of traditional institutions in Niger.*

Notes: The graph above indicates the responses of the Nigerian interviewees, on whether traditional institutions are still relevant in Nigeria. A total number of 48 Nigerians were interviewed. Also see Tab. 3.

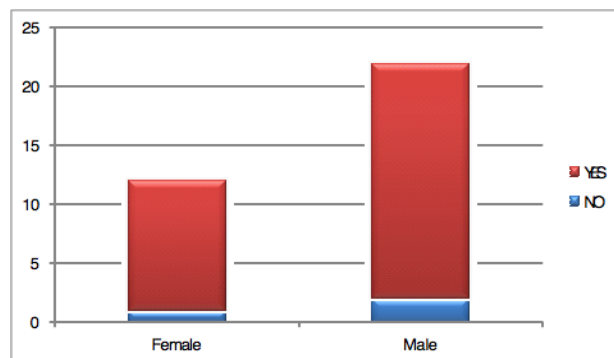


Fig. B. *Relevance of traditional institutions in Côte d'Ivoire.*

Notes: The graph above indicates the responses of the Ivorian interviewees, on whether traditional institutions are still relevant in Côte d'Ivoire. A total number of 34 Ivorians were interviewed. Also see Tab. 4.

These results corroborate previous findings of Lutz and Linder (2004: 2), which assume that despite modern structures, traditional systems have remained relevant, particularly in local or rural areas. The Search for Common Ground (2012) observes that, “while traditional leaders are often outside of the mainstream political life in Côte d’Ivoire, they play

an important role in the Ivorian society, commanding influence and respect across the country, particularly in some of the most divided communities". These findings however disagree with previous findings of Oladosu (2005: 9), which assume that traditional institutions have not conferred any significant benefits on African societies when compared to their corresponding institutions in Europe, and that the African indigenous institutions have been of absolute negative value to the continent.

In order to find out which justice system is most preferred by rural dwellers, a total of 77 per cent of Nigerian respondents agree that a significant population of rural dwellers rely more on the traditional justice system than on the formal justice system, while an additional 15 per cent of Nigerian respondents strongly agree to that (see Tab. 1). Likewise, an overwhelming 92 per cent of Ivorian respondents agree that a significant rural population in Côte d'Ivoire relies more on the traditional justice system, while an additional 6 per cent of Ivorian respondents strongly agree to that (see Tab. 2). Quite a few reasons were given for the preference (see Tab. 1 and 2). According to the Nigerian and Ivorian respondents from the survey, only a few people can afford to use the formal justice system. They further suggest that the formal justice system is not affordable and that the legal procedures are quite difficult to understand, particularly for rural dwellers. This is why, according to Bowd (2009: 2), "traditional courts are often favoured in rural areas because of; their relatively informal nature, their use of local languages and vernacular, and their close proximity to users". Out of a total of 48 participants interviewed in Nigeria, 18 people said they do not have confidence in the formal justice system in their communities, 22 people said they have confidence in the formal justice system only to some extent, while eight people said they have confidence in the system (see Tab. 5). This result shows a mixed reaction and suggests that the formal justice system in Nigeria is weak and calls for overhauling. On the other hand, out of a total of 34 participants interviewed in Côte d'Ivoire, seven people said they do not have confidence in the formal justice system in their communities, six people said they have confidence in the formal justice system only to some extent, while 21 people said they have confidence in the system (see Tab. 6). This suggests that the formal justice system in Côte d'Ivoire shows some resilient features and is dependable to a reasonable extent. Even though Nigerians and Ivorians residing in ur-



ban areas and cities mostly patronage the formal justice system, all the participants for the study spontaneously called for the overhauling and sanitisation of both the formal and traditional justice systems. According to the participants, both justice systems are subject to external influence, prone to corruption and the use of jungle justice. During the interviews and FGDs, participants argued that a child of the commoner is not likely to get fair justice in the traditional system and that justice is sometimes delivered on the basis of “the son of whom you are”. As mentioned earlier, traditional institutions have been relegated to the backseat, following the adoption of western institutions of governance (Economic Commission for Africa 2007). We can thus see a mixed social environment where the formal and traditional justice systems are weak, and the states in themselves being fragile; are substantially responsible for the weakness of traditional institutions. Consequently, participants particularly advocated for the creation of a virile and effective judiciary system, which can be achieved by first getting rid of corruption in both systems and building a synergy between the formal and traditional justice systems. According to them, the collaboration can potentially alleviate the complexity associated with the formal justice procedures and can guarantee more satisfactory verdicts based on cultural, sociological and psychological factors. These findings corroborate the recommendation of Clements (2008), advocating for the adoption of grounded legitimacy, a term he used in describing the ways of looking for positive means of connecting the formal system of governance with local realities, and of tapping into the resilience and problem-solving capacities of local communities (OECD 2010: 42-43).

When asked who will be their first, second, third and fourth points of contact in their order of preference during the FGDs, Nigerian and Ivorian participants residing in urban areas and cities, typically listed their order of preference as shown in Tab. 7. Participants’ opinions suggest that urban dwellers report cases involving robbery, murder, and rape and sexual assaults to the Police, while they patronise traditional authorities on issues relating to land disputes, maltreatments and physical assaults. This indicates that civilisation has not prevented the Nigerian and Ivorian populations from upholding their culture and traditions, although the influence of modernity is considered significant (Opasina 2016: 68).



Tab. 7. *Urban Inhabitants' Points of Contact in their Order of Preference*

<i>Cases</i>	<i>Point of Contact (in order of preference)</i>
I. Land dispute	1, 2, 3, 4
II. Family and marriage issues	3, 1, 2, 4
III. Robbery	2, 1, 3, 4
IV. Murder case	2, 1, 3, 4
V. Rape and sexual assaults	2, 1, 3, 4
VI. Workplace or business conflict	4, 2, 3, 1
VII. Maltreatment	1, 2, 3, 4
VIII. Physical assault	1, 2, 3, 4

*Legend:* 1) Traditional Ruler; 2) Police; 3) Religious Leader; 4) Boss.

Tab. 8. *Rural Inhabitants' Points of Contact in their Order of Preference*

<i>Cases</i>	<i>Point of Contact (in order of preference)</i>
I. Land dispute	1, 2, 3, 4
II. Family and marriage issues	1, 3, 2, 4
III. Robbery	1, 2, 3, 4
IV. Murder case	1, 2, 3, 4
V. Rape and sexual assaults	1, 2, 3, 4
VI. Workplace or business conflict	4, 1, 2, 3
VII. Maltreatment	1, 2, 3, 4
VIII. Physical assault	1, 2, 3, 4

*Legend:* 1) Traditional Ruler; 2) Police; 3) Religious Leader; 4) Boss.

However, when victims who often patronise the traditional justice system seem not to be contented with the processes of the informal system, they revert to the formal justice system, though they consider the latter to be a very slow process. Again, during one of the face-to-face interviews conducted for the purpose of this study, a female lawyer cum community development expert condemned in strong terms the ineffective and non-professional way in which Police often handle rape cases. She cited how a relative of hers was raped and decried the immature and non-professional way that the young Police officers on duty at the station handled the situation when the victim approached them to report the incident. That experience added to the psychological trauma of the victim, and therefore, the interviewee suggested that since traditional





institutions are composed mainly of elders and culturally-minded people with lots of experiences on social issues, they should be empowered and given the chance to work hand-in-hand with the formal security and justice system. Her argument is supported by the views of another interviewee, Mr. Diomande<sup>1</sup>. The Ivorian interviewee explains that the traditional justice system usually takes into account certain cultural, sociological and psychological factors that are often ignored in the formal justice system.

On the other hand, the typical responses obtained during the FGDs from the Nigerian and Ivorian participants residing in grassroot/rural areas, are shown in Tab. 8. Participants' opinions suggest that rural dwellers patronise the traditional justice system on virtually all cases listed above – land dispute, family and marriage issues, murder, rape and sexual assaults, maltreatments and physical assaults. The formal justice system is often considered the second alternative. This could be attributed to the fact that traditional authorities are very close to their populations in the grassroots and the system is relatively affordable.

In addition, participants argued that the traditional justice system is often male-dominated, gender-biased and sometimes discriminatory (see Tab. 1 and 2). The reasons for the gender imbalance and male-dominated outlook of traditional institutions could be traced to Africa's history, religion and culture, most of which dwell on the belief that "the husband (man) is the head of the wife (woman)". During a field trip to Ile-Ife in Osun State, Nigeria, a traditional court official at the palace of the *Ooni*<sup>2</sup> (King) of Ife, in one of the interviews conducted for this study, gave an example based on history on why it is a common practice to enthrone only male kings in most cases, especially within his Yoruba ethnic group. The traditional court official argued that during a certain period in Ile-Ife's history, a woman called Luwo was installed as the *Ooni* of Ife. According to him, she was a tyrannical king who ruled with an iron hand and acted very wickedly to the extent that the people of Ile-Ife vowed never to make a woman their king. Nonetheless, as part of their customs and cultural practices, few communities even among the Yoruba nation, usually install female regents to fill vacant royal stools, pending the appointment of male kings in those communities. Despite the patriarchal nature of the African traditional societies, practices and customs that are not in consonance with the Universal Declaration of Human Rights are fading away. This could be



attributed to the influence of modernity. Besides, a total of 68 per cent and 85 per cent of respondents in Nigeria and Côte d'Ivoire respectively agree that the traditional justice system is quite relevant (see Tab. 1 and 2). An additional 8 per cent and 5 per cent of respondents in Nigeria and Côte d'Ivoire respectively strongly agree to that notion (also see Tab. 1 and 2). These results corroborate the findings of Samuel and Joshua (2010: 13), which suggest that “the formal institutions of the state, i.e., rules regulating the structure of polity, property rights, and contracting, cannot be effective if they disregard or contradict the customary rules of traditional institutions, which govern the lives and livelihood of large segments of the population”.

The traditional justice system performs two key functions: *i*) dialogue and mediation, and *ii*) reconciliation. Respondents overwhelmingly concur with the fact that the traditional justice system possesses the following qualities: *a*) involvement of traditional elders who settle disputes, *b*) easy accessibility, *c*) affordability, *d*) no language barrier, *e*) advocate mediation rather than punishment, *f*) promote reconciliation and peace, and *g*) familiarity with the proceedings since it is based on culture. Traditional approach to post-reconciliation and justice has proven to be effective, as seen in the case of the traditional *Gacaca* system, set up by the Rwandan government, following the Rwandan genocide of 1994. The locally-established *Gacaca* tribunals or village courts in Rwanda were established in 2001 in order to achieve reconciliation and ensure social cohesion. Erstwhile findings of Belloni (2012: 26), which reveal that the Rwandan *Gacaca* system proved to be very useful and became enshrined in the country's constitution (article 153) in the aftermath of the Rwandan genocide. Likewise, since the end of its post-election crisis in 2011, the Ivorian government has begun to constructively and strategically engage their key traditional chiefs. To that effect, President Alassane Quattara set up the *La Commission Dialogue, Vérité et Réconciliation*<sup>3</sup> (CDVR), modeled after the South African Truth and Reconciliation Commission, and with a mandate of two years.

One key issue stands out from the views of urban and rural inhabitants. They both rely on the traditional justice system to resolve land disputes. This could be attributed to the fact that land is usually held sacred and usually passed from one generation to another. Hence, based on its historical nature, matters relating to land ownership and conflicts are best resolved or handled by traditional authorities. Land disputes, if



not managed properly, could bring devastating effects. There have been cases where land issues have caused communal tension and conflicts between individuals and families. For instance, according to the Human Rights Watch (2013: 14), most of the deadliest crimes during the Ivorian armed conflict occurred in the western region of Côte d'Ivoire, where tension and land conflicts between the 'native' and 'non-native' populations are particularly profound.

A good number of respondents in Nigeria and Côte d'Ivoire believe that the traditional justice system can work hand-in-hand with the formal justice system and complement each other (see Tab. 1 and 2). In addition, during the FGDs in Nigeria and Côte d'Ivoire, participants blamed the woes of the judiciary system on the widespread and systemic nature of corruption in their respective countries. The participants thereby suggested the thorough sanitisation of both formal and traditional justice systems, in order to ensure their accountability and transparency.

## CONCLUSION

Regardless of the winds of civilisation that have diffused into the African continent, large populations in Nigeria and Côte d'Ivoire's grassroots in particular, have continued to adhere to traditional institutions – the main reason the traditional justice system will continue to be relevant in the two African countries, and for the mere fact that there are cases that are best handled by traditional authorities e.g. land disputes. African society is a mixed one, in which the grassroots have continued to prefer the traditional justice system, while urban dwellers prefer the formal justice system. The traditional justice system, according to the findings of this study, is the most preferred option by those who are unable to access or afford the formal justice system. The system has been criticised to be male-biased and insensitive to women because of the patriarchal nature of African traditional societies. However, this negative characteristic of the traditional justice system is gradually becoming an issue of the past because of the influence of modernity. On the other hand, when state institutions like the formal security and justice systems are weak, the traditional justice system becomes weakened too. Often times, cases that cannot be handled by the traditional justice system are re-

ferred to the formal justice system and vice versa. Both justice systems thus complement each other.

A hybrid justice mechanism has been tried and tested in a few African countries, most especially post-conflict ones, and has been found to be effective. Employing traditional approaches to post-conflict mediation and reconciliation has proven to be working in Rwanda, as seen in the case of the traditional *Gacaca* system, set up by the Rwandan government, following the Rwandan genocide of 1994. The locally-established *Gacaca* tribunals or village courts in Rwanda were established in 2002 in order to achieve reconciliation and to ensure social cohesion. In Nigeria and Côte d'Ivoire's quest for peace and development, both their traditional and formal justice systems need constant overhauling and restructuring in order to be able to meet today's challenges and to bridge the gap pertaining to the lack of trust that society has for both justice systems.

#### NOTES

<sup>1</sup> Mr Diomande is a 37-year old Ivorian. He is originally from Touba; a city located in the north-west region of Côte d'Ivoire, and holds a Master's degree in Economics.

<sup>2</sup> Title of the traditional ruler (king) of Ile-Ife. Ile-Ife is a town in Osun State, Nigeria, and it is generally regarded as the cradle of Yoruba race. The Yoruba are one of the three main ethnic groups in Nigeria.

<sup>3</sup> In English language, it translates to "Dialogue, Truth and Reconciliation Commission".

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