

Regional Strategy Meeting on Enhancing Traditional Justice In Traditional Justice Process In The Ecowas Region

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Policy Brief



Centre for Democracy & Development
Centre pour la démocratie et le développement



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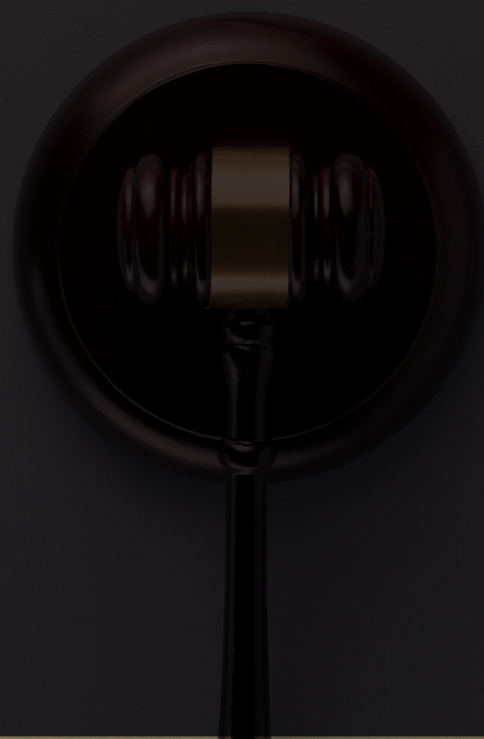
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Executive Summary

The Centre for Democracy and Development (CDD-West Africa), in collaboration with the Department of Political Affairs of the ECOWAS Commission, organised a regional strategic meeting on 'Enhancing Traditional Justice Mechanisms in Transitional Justice Process in the ECOWAS Region' from 27 to 28 January 2022 in Cotonou, Republic of Benin. The objective of the meeting was to enhance traditional justice measures in justice dispensation and foster reconciliation and peace in post-conflict societies in member states.

Drawing on the presentations, discussions and opinions of participants at the meeting, this policy brief summarises contextual expositions and country examples of existing mechanisms; highlights challenges that transitional mechanisms have encountered in integrating traditional justice systems into formal justice systems to enhance access to justice; and explores post-conflict justice dispensation in member states. In addition to outlining key takeaways, the brief highlights recommendations from the meeting that can enhance traditional justice in the implementation of transitional justice, as well as identifying standards and principles that should be core tenants of the proposed ECOWAS Policy Framework on Transitional Justice.

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Introduction

The experiences of violent conflict in most ECOWAS member states have predominantly been civil in nature. Conflicts in Nigeria, Liberia, Sierra Leone and Cote d’Ivoire had an enormous civilian cost as groups were often targeted by mass killings or subjected to other atrocities such as rape, forced displacement and the destruction of villages. These experiences have serious implications for peacebuilding as in many post-conflict societies in West Africa, victims and perpetrators continue to live in the same communities. This has meant that criminal prosecutions are often inadequate as they fail to consider the complexities of the conflict. Moreover, the aftermath of violent conflict is often characterised by weak formal justice mechanisms which are unable to process thousands of legal cases. In addition, a purely retributive approach to justice aligns poorly with other post-conflict priorities, such as economic recovery. To facilitate a transformation of communal relations from the state of negative peace to positive peace, holistic and locally relevant justice mechanisms are required.

Traditional and non-formal justice mechanisms provide a strong system of both governance and justice administration across the region, outside of the formal mechanisms to address accountability, reparation and social cohesion. The African Union Transitional Justice Policy (AUTJP) of 2019

recognises the importance of customary norms and traditional justice mechanisms in addressing legacies of violence on the African continent. AUTJP advocates for institutional and legal reforms that embrace alternative and indigenous conflict resolution practices that foster accountability, integration, and reconciliation. Additionally, the ECOWAS Conflict Prevention Framework Article 57 (1) gives credence to the importance of traditional justice systems in administering justice or settling disputes.

To understand how to deploy traditional justice mechanisms effectively to address justice gaps observed in peacebuilding and post-conflict reconstruction, and with the aim of integrating best practices in the proposed regional policy responsive to improving reparation measures in the ECOWAS region, the CDD-West Africa in collaboration with the ECOWAS Commission organised a regional strategic meeting on 'Enhancing Traditional Justice Mechanisms in Transitional Justice Process in the ECOWAS Region'.

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Existing Traditional Justice Mechanisms In The Region

Traditional justice mechanisms have been a tool for conflict resolution in Africa for centuries. However, with the domineering presence of formal justice systems and the advent of modern democracy, traditional or non-formal justice systems began to gradually lose their place. Differences in histories, needs, and priorities of societies coming out of conflict or authoritarian rule also affected the value of traditional justice systems. But they are increasingly being revived and play an important part in many transitional justice efforts in the sub-region.

Nigeria

Working collaboratively with the government at the community and state level, CDD-West Africa supports existing traditional mechanisms in addressing increasing distrust between repentant ex-Boko Haram members and the community that will accommodate, as well as promoting peace, forgiveness and social cohesion. Conducted at community levels, they promote a high sense of ownership and responsibility among community members. These include:

01



Sulhu Alheri

A community dialogue that cuts across the three conflict states. It establishes a peace network that enhances healing and reconciliation.

02



SADA

meaning 'coming together', is a cultural solidarity programme that unites victims and offenders, and also promotes interreligious marriage.

03



Zumunchi

Another trauma healing mechanism that involves town hall meetings and strengthening relations between military and civilians.

04



Kabara

An alternative dispute resolution majorly adopted in Adamawa state. It means 'commonwealth ground' and entails community dialogues and town hall meetings.

Togo

Basing his presentation on the traditional conflict resolution mechanisms used by three ethnic groups in Togo - the Tem, Kabiye and Ewe - the participant from Togo explored how colonisation changed the pre-existing balance of power in Togo, with the authority of traditional chiefs and the systems of conflict resolution that they provided, diminished. During the pre-colonial period, traditional systems of conflict resolution and governance were in place and depended, to a greater extent, on the support of the population to exert authority rather than force. However, judicial duality – the combination of modern law and tradition - relegated the traditional judicial system to the background, resulting in the marginalisation of a large part of the population by the modern justice system, who consequently fell back on traditional justice by entrusting themselves to the traditional chief even though his power was significantly diminished. He concluded that even if traditional systems do not have enough capacity to cope with current challenges, they can be a source of inspiration for modern conflict management approaches. Hence there is a need to integrate the traditional system with transitional justice. In Togo this has been achieved through the creation of 'houses of justice'. There are presently 17 'houses of justice' in Togo, where cohabitation of traditional conflict resolution mechanisms and the modern justice system is supported.

Benin

In Benin the traditional justice system has been used to enhance effective transitional justice. These efforts include:

- ✔ Working with the formal justice systems to ensure that cases beyond the capacity of the traditional mechanisms are handled by the formal mediums.
- ✔ Ensuring that cases brought before traditional rulers are resolved. This is to prevent citizens from undermining the ability of traditional mechanisms.
- ✔ Making proposals to the government on integrating traditional mechanisms into formal justice systems.

Liberia

A publication¹ by the African Societal Analysis notes that “each of Liberia’s 15 ethnic groups has its own customary justice mechanisms, which are largely undocumented/uncodified”. Often chiefs and elders try to resolve disputes at the point of origin, with the aim of preserving community peace and harmony, discouraging appellate options outside the family circle. The publication identifies three main mechanisms for conflict resolution as the Palava hut process convened by elders to settle a range of disputes, including gender-related matters such as extramarital affairs, divorce cases and land disputes; the sharing of the kola nut which is mostly employed in breaches of the

the civil law, including adultery, and which normally involves payment of a 'fine', known locally as 'damage'; and 'sassywood', a trial by ordeal based on supernatural beliefs. This is used to settle cases of theft of property, death or witchcraft/sorcery.²


“ In Sierra Leone, the most applied traditional justice practice is the **truth-telling process** of Kpaa Mende ethnic subgroup.



Sierra Leone

In Sierra Leone, the most applied traditional justice practice is the truth-telling process of the Kpaa Mende ethnic subgroup. Used to enhance restoration of fractured societal relations through restorative justice, the offender can be given some form of punishment with the expectancy of an apology and sincere remorse.

1. *African Societal Analysis* (2017, January). *Traditional Justice Mechanisms In Liberia*. <http://africansecuritynetwork.org/assn/wp-content/uploads/2017/01/Traditionnal-justice-mechanisms-in-Liberia.pdf>
2. *Ibid*



“ **Interference by political actors** can affect the independence of traditional justice mechanisms and processes.

Key Takeaways

From the presentations made the following key takeaways are observed

- 1 In most West African states traditional justice mechanisms operate side-by-side with the formal system. Both deal with issues related to security, religion, marriage, crimes, and other local disputes. However, except in local or rural communities, modern formal systems are preferred and there is a growing disregard for traditional justice practices.
- 2 The decision of the Truth and Reconciliation Commission in Sierra Leone to work with traditional elders in its truth-seeking and reconciliation activities enhanced local reconciliation and improved community outreach.
- 3 Interference by political actors can affect the independence of traditional justice mechanisms and processes.
- 4 In some countries, the possibility of the formal and traditional court systems working together is very slim, because of power struggles between the two. In Burkina Faso for instance, traditional rulers inflate tax on land making it difficult for the people to own lands and even though the traditional justice mechanism cannot address such matters, the intervention of conventional courts could further complicate issues. Even though it has jurisdiction to rule over such matters.
- 5 Religious and cultural differences, financial restrictions and illiteracy are just some of the challenges encountered in the implementation of traditional justice mechanisms.

Recommendations

Based on the various presentations and the discussions that followed the presentations, the following recommendations were made:

- 1 Mass literacy on the existence of traditional mechanisms is needed. Setting up information centres at local community levels, providing affordable legal assistance, disseminating justice documents, and reinforcing jurisdictional hearings at traditional levels to improve access to justice would go a long way in tackling some of the challenges highlighted.
- 2 Tradition has an important influence on the institution of justice and its organisation, as common rules of life in the society are generally transmitted by oral or written tradition. More efforts should be aimed at integrating traditional justice systems into the formal ones, as traditional leaders have always been auxiliaries of the public administration, if not of the government in power.
- 3 Communities must spearhead the mechanisms, initiatives, consultations, and activities aimed at delivering local justice in transitional justice processes.
- 4 Traditional courts and traditional justice mechanisms should be included in transitional justice processes and encouraged to operate independently and without political interference or interference from the formal justice systems.
- 5 Beyond the production of a regional policy framework on transitional justice implementation in the region, member states should be encouraged to domesticate relevant existing documents. The dispensation of justice and reconciliation will be most effective if the judicial systems are based on African customs and traditions.
- 6 Balanced and sustainable development in West Africa cannot be conceived by continuing to ignore the spiritual and endogenous realities, which are inseparable from the African way of thinking, seeing and understanding. Existing customs and traditions should be reformed to account for emerging contemporary issues like gender equality, and citizens should be encouraged to revalue these customs and traditions.
- 7 ECOWAS member states, civil society organisations and citizens should work to value and promote the role of traditional chiefs and leaders in society.

Conclusion

The advent of modern democracies has diminished cultural norms and traditional institutions upon which most legal frameworks were based in the pre-colonial African societies. Nonetheless, West African countries like Nigeria, Côte d'Ivoire, Sierra Leone and Liberia are finding an important place for traditional mechanisms and institutions particularly at the grassroots in transitional justice processes. Generally, the maintenance of traditional justice mechanisms in transitional justice processes can enhance the culture of peace, social cohesion and promotion of cultural norms.

That is not to overly romanticise traditional mechanisms for delivering justice. Participants highlighted the importance of the complementary coexistence of both formal and non-formal legal systems and how both can be effective dispensers of justice. However, the traditional justice mechanisms appear to have advantages in two main areas: cost and speed. The cost of seeking formal justice is very high compared to the non-formal systems whilst the dispensation of justice is more immediate in traditional systems unlike formal mechanisms that can take years to reach a verdict.

In summary, efforts should continue regionally, nationally and at the local level to enhance traditional justice mechanisms in transitional justice processes and these experiences and approaches must shape, and be reflected in, the Regional Policy Framework on Transitional Justice.



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