EFFECTIVENESS OF THE TRADITIONAL COURT SYSTEM IN CONFLICT RESOLUTION IN CHIEF CHITIMUKULU CHIEFDOM AND MUNKONGE CHIEFDOM OF ZAMBIA'S NORTHERN PROVINCE

By

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DECLARATION

I, **Mwalula Michael**, do hereby declare that this dissertation is a product of my own effort, and that it has never been done before. The sources of all materials referred to in this report have been acknowledged. Any misrepresentation of information that would arise from this report is purely my responsibility.

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APPROVAL

This dissertation of **Mwalula Michael** is approved as partial fulfilment of the requirements for the award of the degree of Master of Science in Peace Leadership and Conflict Resolution (MSPL) of the University of Zambia and Zimbabwe Open University.

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DEDICATIONS

To my late father Michael Mwenya Mwalula, my late Mother Felistus Chanda who gave me life and for laying a foundation for my education. To my late grandfather and mother for imparting values in me. To Kamanisha Bridget my wife and our children Chengelo and Lishina whom I love so much and treasure their support during the period of my studies.

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ABSTRACT

The focus of this study was to investigate the effectiveness of traditional courts in conflict resolution in chief Chitimukulu and Munkonge Chiefdom of Zambia's Northern Province. The endeavoured to address the following objectives: To identify the people that preside over traditional court cases, to determine specific cases which are taken before the traditional court system, to determine the process involved in the adjudication of traditional court cases and to ascertain the effectiveness of traditional courts in resolving conflicts in Chief Chitimukulu Chiefdom and Munkonge Chiefdom in Zambia's Northern Province. A case study was used to gather data for this research. Data was gathered using structured interviews and focus group interviews/discussion. This research study was guided by the structural functionalism theory. Research participants included: Chief Chitimukulu, Chief Munkonge, four members of the royal establishment, 10 village heads and 20 Chiefdom subjects.

It was revealed that the cases brought before the court were presided over by a group of counsellors called "**Ba Shicilye**" appointed by the chief. The composition of the council of elders who presided over the cases is not fixed. The study also found that there were numerous categories of cases that come before the courts, the most prominent ones being, land disputes, witchcraft cases, marital disputes and theft. Cases of a criminal nature such as defilement, grievous bodily harm, murder and manslaughter are not tried in the traditional court but judicial courts. The justice process in a traditional setting starts with the case being reported to the chief through the chief returner who records of all the details and forwards the case to the council of elders (**Ba Nchenje or Ba Shicilye**) for consideration. The courts exist for the sole purpose of reconciliation and peace among or between the conflicting parties.

The study concluded that the traditional courts are effective in resolving conflicts. The larger number of the participants, chiefs inclusive. They narrated that the traditional courts were very effective in the sense that there had never been instances or situations when where they reached a stalemate. They promote reconciliation which leads to a just, fair and united society.

Arising from the findings and discussion, the study made the following recommendations; There is need to strengthen the operations of the traditional courts through a legal framework to legitimise and legalise their authority. It is also imperative that through the house of chiefs the government can come up with a tentative policy to guide the operations of the traditional courts. The government should also support the operations of the traditional courts in any

way possible to make them even more efficient, for instance the construction of shelters for the courts as most of them operate in make shift structures. There is a dire need to create a link between traditional courts and the local courts so that they can complement each other in resolving conflicts because they deal with similar issues. It would also be imperative to organise workshops, seminars and short trainings for the counsellors who preside over cases. That will equip them with basic skills on how to handle cases in the traditional set up and have a better understanding of customary law. The efficiency of the traditional courts can also be guaranteed if the dates or days for the sessions in a traditional court can be fixed so that there is no speculation about the sittings of the court. There is also need to reform some sentences that are meted against those found guilty of practising witchcraft. Forcefully asking those found guilty to leave the village does not help them to reform instead the problem is only transferred from one village to another.

Key words: Effectiveness, Traditional, Court, System, Conflict Resolution.

ACRONYMS AND ABBREVIATIONS

ADR	- Alternative Dispute Resolution
AIDS	- Acquired Immune Deficiency Syndrome
BSA	- British South African Company
FGDs	- Focus Group Discussions
HIV	- Human Immunodeficiency Syndrome
ICTR	- International Criminal Tribunal for Rwanda
LRA	- Lord Resistant Army
NGO	- Non Governmental Organisation
USD	- United States Dollar

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CHAPTER ONE

INTRODUCTION

1.0 Overview

The chapter presents the background to the study which is the preliminary information on the topic of study, it also highlights the problem which necessitated the study. It further looks at the theoretical framework which guided the study, the research objectives, the limitations of the study and the delimitations of the study which gave an outline of the scope of the study.

1.1 Background to the Study

From time immemorial the traditional court system has played a significant role in resolving conflicts in Africa particularly in Zambia. An understanding of the traditional courts system as it exists today is dependent, in large measure, upon an understanding of its history. It is worth noting that the operations of the courts especially local courts in Zambia largely reflects the processes in the traditional court system.

The concept of conflict resolution through the traditional court system or structures is not an altogether new phenomenon in our Zambian society. The system of traditional court justice in Zambia dates back to the pre-colonial days (before, 1925). Long before the coming of the Europeans, the traditional court structures were a preserve of our tradition and culture. Each and every traditional structure had a well-established court system that presided over a number of cases brought before it. The traditional court system was heavily relied upon and were effective at that time in resolving conflicts (Hover et al.,1990).

Conflict resolution or conflict settlement dates as far back as human kind and as such man had to use his initiative and tailor means of resolving conflicts.

During the colonial period, (1925-1963) the British government through its urgent, the British South African Company (BSAC) recognised the pivotal role that traditional courts played in the administration of justice and conflict resolution. There was no much interference in the operations of the traditional courts as they were allowed to operate and preside over cases that were bought before it. Hover et.al (1990) states that, “tribal chiefs continued to administer customary law, with only occasional interference from the BSA Company official”. This is the trend which has continued even up to the present day. The colonial

government went a step further by specifying how the administration of justice was to be done by way of traditional court system (Mutale, 2004). According to Hover et al. (1990),

> In the administration of justice to the said peoples or inhabitants, careful regard shall always be to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with regard to the holding, possession, transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriages, divorces, legitimacy, and other rights of property and personal rights, but subject to any British laws which may be in force in any of the territories aforesaid and applicable to the peoples or inhabitants thereof.

The indirect rule system of governance allowed for checks and balances in the establishment of traditional courts in chiefdoms Mutale (2004) aptly says, "where tribes were numerous and tribal ties strong, it was necessary to permit the chief of each tribe to establish a native court, thereby creating a superabundance of courts in some areas, to the dismay of administrative officials"

In Zambia, there has always existed conflict resolution processes which are employed by the traditional court system. Village chiefs, headmen and traditional counsellors all had and they still holding varying roles in the administration of justice and resolution of conflicts within a given and specified society. The essential function for both the chief and the village headmen even up to today remains the same. It is that of administering justice through presiding over various cases and conflicts that happen in the community (Silungwe, 1998).

Even in this modern times people live in closely knit societies especially in the two Chiefdoms of Chief Chititmukulu and Chief Munkonge respectively. As such the promotion and maintenance of societal harmony is of prime importance. Because of this kind of arrangement, the traditional court system proves to be indispensable in terms of resolving conflicts and disputes among the community members.

The traditional judicial system is characterised by simple and informal procedures, compensation, and other forms of punishment. It also follows the common law principles especially when it comes sentencing. The principle of natural justice is also adhered to, which means that for every judgement passed sentencing must be based on deterrence, retribution or reformation. Hover et.al (1990) states that, "the goal of a tribal court was to reach a decision which would satisfy not only the parties, but also the kinship group to which each party belonged"

Even today, such court systems are existent but not much is known in terms of their effectiveness at adjudicating cases grounded in conflict resolution brought before them in traditional settings. Hence, this study investigated the effectiveness of such court systems particularly in Chief Chitimukulu and Munkonge chiefdom.

1.2 Statement of the problem

Traditional court systems have been there in the Zambian context since the pre-colonial times (before 1925) and are still there in most Zambian chiefdoms today. Such traditional court systems can be said to have been effective in conflict resolution in the past but not much is known about their effectiveness in conflict resolution today or in contemporary times. As the saying goes, with the passage of time comes inevitable change. Not much has been done to verify their effectiveness in traditional contexts today. Therefore, this study pursues this matter by investigating the effectiveness of traditional court systems particularly in the Chitimukulu and Munkonge chiefdoms of Zambia's Northern Province.

1.3 Research Objectives

1.3.1 General Research Objective

To investigate the effectiveness of the traditional court system in conflict resolution in Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province.

1.3.2. Specific Research Objectives

1. To identify the people that preside over traditional court cases in Chief Chitimukulu chiefdom and Munkonge Chiefdom of Zambia's Northern Province.
2. To determine specific cases which are taken before the traditional court system in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province.
3. To determine the process involved in the adjudication of traditional court cases in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province.

4. To ascertain the effectiveness of traditional courts in resolving conflicts in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province.

1.4 Research Questions

1.4.1 General Research Question

How effective is the traditional court system in resolving conflicts in Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province?

1.4.2 Specific Research Questions

1. Who presides over cases in the traditional court system in Chief Chitimukulu chiefdom and Munkonge Chiefdom of Zambia's Northern Province?
2. Which specific cases are taken before the traditional court system in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province?
3. What is the adjudication process of cases in the traditional courts in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province?
4. How effective is the traditional court system in resolving conflicts in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province?

1.5 Significance of the Study

The purpose of this study was to investigate the effectiveness of traditional court system in conflict resolution in two chiefdoms: Chief Chitimukulu and Chief Munkonge of Zambia's Northern Province. In view of this, it is believed that this study will help institute and analyse the effectiveness of the traditional court system in conflict resolution. In doing so the study may contribute to the already existing scholarly and professional body of knowledge and would provide suggestions, guidance and recommendations to establish the effectiveness of the traditional court system in resolving conflicts in the two chiefdoms.

1.6 Theoretical Framework

The research was guided by the structural functionalism theory. This Theory sees society as a structure with interrelated parts designed to meet the biological and social needs of the individuals in that society. Structural Functionalism is a theory that developed, evolved and

grew out of the writings of English philosopher and biologist, Hebert Spencer (1820–1903), who saw similarities between society and the human body; he argued that just as the various organs of the body work together to keep the body functioning, the various parts of society work together to keep society functioning (Spencer, 1984).

The theory best suited the study because the traditional court system has substantial influence in chiefdoms because it plays a pivotal and crucial role in resolving conflicts administering of justice. Structural Functionalism theory that attempts to explain why society functions the way it does by focusing on the relationships between the various social institutions that make up society for instance, government, law, education and religion. Traditional courts are part of society and has distinct roles and functions that supplement the functions of other social institutions.

The Structural-functional approach is a perspective in sociology that sees society as a complex system whose parts work together to promote solidarity and stability. It asserts that our lives are guided by social structures, which are relatively stable patterns of social behaviour. Social structures give shape to our lives - for example, in families, the community, and through religious organizations. And certain rituals, such as a handshake or complex religious ceremonies, give structure to our everyday lives. Each social structure has social functions, or consequences for the operation of society as a whole. Education, for example, has several important functions in a society, such as socialization, learning and others.

It must be understood that one of the key ideas in Structural Functionalism is that society is made-up of groups or institutions, which are cohesive, share common norms, and have a definitive culture. Robert (2006:81) postulates that, "functionalism is about the more static or concrete aspects of society, institutions like government or religions". However, any group large enough to be a social institution is included in Structural Functionalist thinking, from religious denominations to sports clubs and everything in between. Structural Functionalism asserts that the way society is organized is the most natural and efficient way for it to be organized.

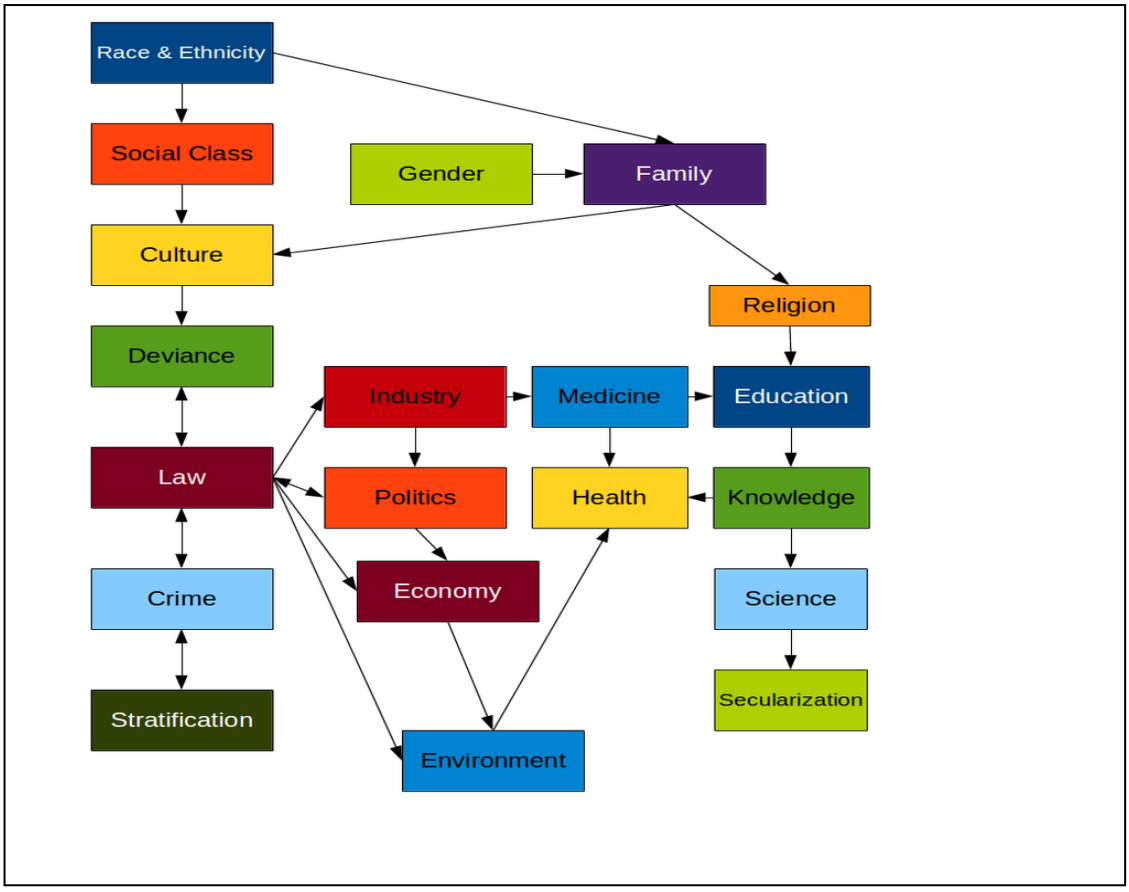
Another key characteristic of Structural Functionalism is that it views society as constantly striving to be at a state of equilibrium, which suggests there is an inherent drive within human societies to cohere or stick together. This is known as the cohesion issue. Societies strive toward equilibrium, not through dictatorial mandate by the leaders of society but rather because the social structure of societies encourages equilibrium (Hoffman, 2009).

One practical example that can be given is that of Jim Crow laws in the southern United States were a formalized version of informal structural advantages that empowered whites. Because of the history of slavery in the southern United States, whites had amassed more wealth than blacks. During slavery, whites controlled the government and all of the major institutions in the South. After slavery ended, whites continued to control many of these institutions, but because they were outnumbered in some areas by blacks, threatening their dominance, they instituted formal laws, Jim Crow laws, that allowed them to maintain their structural advantages. And whites were able to pass these laws because they already controlled many of the social institutions instrumental in the passage of laws, for example courts, govern, businesses and others. Thus, the advantages whites had prior to a change in society allowed them to maintain their advantages after the change through both informal and formal means because of the structure of society (Scot, 2006).

It is also worth noting that structural Functionalism does much to explain why certain aspects of society continue as they always have, despite some phenomena being clearly less beneficial for society as a whole. However, it must be understood that structural functionalism falls short in explaining opposition to social institutions and social structure by those being oppressed (ibid).

Émile Durkheim, another prominent proponent of structural functionalism who applied Spencer's theory to explain how societies change and survive over time. According to him, society is a complex system of interrelated and interdependent parts that work together to maintain stability (Hoffman, 2006), and that society is held together by shared values, languages, and symbols. He believed that to study society, a sociologist must look beyond individuals to social facts such as laws, morals, values, religious beliefs, customs, fashion, and rituals, which all serve to govern social life. Durkheim believed that individuals may make up society, but in order to study society, sociologists have to look beyond individuals to social facts. Social facts are the laws, morals, values, religious beliefs, customs, fashions, rituals, and all of the cultural rules that govern social life (Durkheim, 1895). Each of these social facts serves one or more functions within a society. For example, one function of a society's laws may be to protect society from violence, while another is to punish criminal behaviour, while another is to preserve public health (Giddens 2010). Figure 1.

Figure 1: General Structure of Structural Functionalism



1.7 Limitations of the Research

Limitations are influences that are beyond the researchers control in the study. They are the shortcomings, conditions or influences that are beyond the ability of the researcher and may place restriction on the conclusions of the study and their application to other situations. (Kombo, 2009). The researcher experienced constraints in the course of the research. During interviews, some participants were not able to disclose adequate information for fear of being victimised once they disclosed what they regarded as confidential information.

It is also expected that in order to communicate effectively and solicit information from the respondents, the interview schedules were translated into local language (Bemba) in order to make it easier for the respondents to have a clear understanding and insight of the research questions and for the purpose of making clarifications and dispel ambiguity. This had a negative bearing on the time allocated to complete the research.

It was also difficulty to get hold of the two chiefs, many times the appointments were aborted because of their busy schedules. This also affected time allocated for data collection.

1.8 Delimitation of the Study

Delimitations of the study are boundaries set by the research to restrict the scope of the study. Becket (2000:19), states that, "delimitations are choices made by the researcher which should be mentioned. They describe the boundaries one has set for the study" So delimitations explain the things that the researcher is not going to do. Delimitations are necessary because they narrow the scope of the study**.**

The research was confined to the research objectives because they were a guide to what was necessary to the research. The research questions were another delimitation of the study. The research questions helped to clarify the ambiguity that might have arisen when administering the questionnaire and carrying out focus group discussion. The research did not go beyond the population chosen and in that case the target population were two paramount chiefs, (Chief Chitimukulu chiefdom and Munkonge chiefdom of Zambia's Northern Province) selected members of the royal establishment, the village heads and subjects. These were chosen owing to the fact that they were easily accessible by road and the traditional courts were fully operational.

1.9 Definition of operational Terms

The terms listed below are defined within the context of this study.

Conflict Resolution: Conflict resolution is a way for two or more parties to find a peaceful solution to a disagreement among them. The disagreement may be personal, financial, political, or emotional.

Traditional Court: A court established as part of the traditional justice system, which functions in terms of customary law and custom; and is presided over by a king, queen, senior traditional leader, headman, headwoman or a member of a royal family who has been designated as a presiding officer of a traditional court and which includes a forum of community elders who meet to resolve any dispute which has arisen, referred to in the different languages.

Traditional justice system: means a system of law which is based on customary law and customs.

Traditional Leadership:

The traditional leadership is leadership style based on the belief that power is bestowed on the leader, in keeping with the traditions of the past. It is a style where power is given to the leader based on traditions of the past.

Traditional Leader: Is a person who, by virtue of his ancestry, occupies the throne or stool of an area and who has been appointed to it in accordance with the customs and tradition of the area and has traditional authority over the people of that area or any other persons appointed by instrument and order of the government to exercise traditional authority over an area or a tribe.

Chief: A leader or ruler of a people or clan, a tribal or ethnic group.

Chiefdom: An area or region governed by a chief. A society larger than a tribe but smaller or simpler than a state or Kingdom

Village Head. A community leader of a village

Gacaca: Is a form of community Justice System. In Kinyarwanda, the word 'Gacaca' refers to 'a bed of soft green grass' on which in ancient traditions, a community and its representatives, mainly elders, leaders and individuals known for their integrity and wisdom, gathered to discuss and resolve conflicts within or between families and inhabitants in a certain village

Customary Law: Traditional common rule or practice that has become an intrinsic part of the accepted and expected conduct in a community, profession, or trade and is treated as a legal requirement.

English law: The system of law that has developed in England from approximately 1066 to the present. The body of English law includes legislation, Common Law, and a host of other legal norms established by Parliament, the Crown, and the judiciary

Judiciary: The organ of the government responsible for interpreting the law

1.10 Summary

The chapter looked at background of the study, the statement of the problem, research objectives and research questions both specific and general. The theoretical framework was also presented under chapter one. The theoretical framework discussed and analysed the

theory governing the study (structural functionalism). The chapter also presented the limitations of the research, delimitation of the study and definition of operational terms.

CHAPTER TWO

LITERATURE REVIEW

2.0 Overview

In order to arrive at varied conclusion and prove the authenticity of the information that was collected through the case study on the effectiveness of traditional court systems in conflict resolution. The researcher made use of the available literature on the effectiveness of the traditional courts in conflict resolution. The chapter is structured in the following manner, the meaning of the traditional court system, the history of traditional courts in Africa (Nigeria, Kenya, Namibia, Malawi and Zambia), it further looked at the specific traditional court system in Africa (Gacaca, Igbo.), specific cases prescribed by traditional court system, review of the related studies in traditional court system in Africa. The last part of the chapter looks at the identified research gap.

2.1 What is The Traditional Court System?

Traditional courts which are also referred to as chiefs' courts or customary courts still form an important part of the administration of justice in much of rural Africa, including Zambia. Traditional court is known from time immemorial to be a reliable and indispensable institution in the administration of justice and conflict resolution. Traditional court system is a justice system that is established in line with the traditional norms and customs of a particular ethnic group. According to The South African Traditional courts Bill (2010),

> Traditional court means a court established as part of the traditional justice 'system, which functions in terms of customary law and custom; and is presided over by a king, queen, senior traditional leader, headman, headwoman or a member of a royal family who has been designated as a presiding officer of a traditional court and which includes a forum of community elders who meet to resolve any dispute which has arisen.

The nature of the traditional court system makes it deferent from the conventional judicial processes. Most traditional court systems are embedded in African customary laws and hence reflect traditional African norms and values. They are part of the social fabric in Africa explaining their resilience to date. Traditional Courts system are justice processes based on cooperation, communitarism, strong group coherence, social obligations, consensus-based decision-making, social conformity, and strong social sanctions. They involve the use of shared patterns of dispute resolution, conciliatory dialogue, the admission of guilt or wrongdoing,

and ‘compensatory concessions and a ritual commensality where food exchanges symbolise the end of animosities and the harmonious re-engagement of the flow of social life (Onadeko, 2008).

Traditional courts are mostly preferred especially by low class level. They can promote access to justice because they are: accessible by the rural poor and the illiterate people, flexible, voluntary, they foster relationships, proffer restorative justice and give some level of autonomy to the parties in the process. Most traditional court systems are concerned with the restoration of relationships as opposed to punishment, peace-building and parties’ interests and not the allocation of rights between disputants. In most of them, decisions are community-oriented with the victims, offenders and the entire community being involved and participating in the definition of harm and in the search for a solution acceptable to all stakeholders. For example, among the Gumuz, the Oromo and the Amhara living in the Metekkel region of Western Ethiopia have adopted a mechanism of Michu or friendship to resolve land disputes due to many immigrants in the area. The aim of traditional dispute resolution by elders in Western Ethiopia, a tribal milieu, is not to punish the wrongdoers but to restore social harmony seeing that different tribes live side by side. The types of conflicts in the area include: land boundary disputes, disputes over grazing area and cultural disputes especially due to intermarriages (Butera, 2005).

Another example that aids in explaining the nature of the traditional Court system is the Gacaca Traditional courts of Rwanda. Gacaca which is pronounced as ‘gachacha’ translated as “justice in the grass” in the Kinyarwanda language. It was originally designed to resolve property, inheritance and family law disputes. Only occasionally did it deal with minor criminal offenses. This traditional system, which operated before, during and after the colonial rule but which was practically obsolete by the end of the genocide, was traditionally presided over by “inyangamugayo”, the community elders only men, as women were not even permitted to speak. Gacaca traditionally imposed a variety of sanctions, which were however not individualized; family members were also held responsible. There was no imprisonment sanction. As a contribution towards reconciliation, the offending party had to pay reparations and to offer a calabash of banana beer to the community (Senior, 2003).

African traditional court systems may also refer to all those mechanisms that African peoples or communities have applied in managing disputes conflicts since time immemorial and which have been passed on from one generation to the other. Traditional Courts have also

been described using other tags such as community, traditional, non-formal, informal, customary, indigenous and non-state justice systems. All these tags have often been used interchangeably in existing literature to describe localized and culture-specific dispute resolution mechanisms amongst peoples. So Traditional court system means a system of law which is based on customary law and customs. It is the kind of justice system which does not follow strict rules of procedure and a complex judicial process, it is in most cases informal and presided over by traditional authorities. The procedures in the administration of justice are not universal hence each and every tribal follows a distinct process in presiding over cases (Kwaku et al., 2000).

2.2 History of The Traditional Court System in Africa

Traditional courts have existed from time immemorial and have presided over a number of issues and cases. In a number of countries in Africa had traditional court systems in place that served the people in resolving conflicts and administration of justice.

As we explore the history of traditional courts in Africa, it is of great importance to take a comparative approach. Looking at different nations in Africa and see how traditional courts have evolved.

Nigeria is one success story where traditional court system has thrived for a long time, long before the arrival of the colonial masters. The traditional courts were a common structure and practice among different ethnic groupings within Nigeria. Before the colonialists found their way into the land which was unified and amalgamated by Lord Fredrick and it was alter named Nigeria there had been mechanisms and systems for the administration of justice and resolution of conflicts. Onadeko (2008:61), "In particular, the Yoruba people had ways of settling their civil and criminal cases by means of an institution as old as the history of the Yoruba people themselves"

It is believed and documented that before the arrival of the colonialists, Yoruba land had a well-established governance system that can be equated and likened to the modern day systems of governance. Kariuki (2004:61) states that, "It was a highly developed three tier government structure made up of the executive, legislature and the judiciary branches." The structure comprised the oba (King) who was the super heard of the government and was also absolute ruler in theory. He was regarded as one who should not be questioned or challenged and his authority was not to be challenged by any of his subjects. He was considered the rep-

resentative of God Almighty. But in practice, the Oba ruled in conjunction with his Igbimo which may be understood as a (Council of Chiefs), without which there was no government, and no executives.

There were two types of chiefs: the palace chiefs and the town chiefs (Igbimo). Each Igbimo member represented a quarter/ward (Adugbo) in the town. Collectively, and in collaboration with the Oba, they developed laws when necessary. Strictly speaking, there was no need to prescribe formal laws as deterrents against asocial behaviour, because everybody accepted implicitly that any departure from the behaviour approved by the deities (Imale) and the ancestors (Osi) was punishable. Thus, when laws were promulgated by the king and his council chiefs, the laws were invari-ably given a divine sanction (Offing, 1991). However, the enforcement of laws did not rest solely on them. It was also the civic duty of the chiefs of various grades in specific towns and villages to enforce laws.

Before the advent of the Europeans, the various indigenous people of Nigeria had different methods of dispute resolution mechanism. Among the Yoruba and Ibo, the system resolved around their traditional institutions. It was fashionable among the Yoruba to refer contentious matters to the head of the family. If he could not settle the dispute, the matter was taken to the head of the compound until a solution could be found up to the Oba. Similarly, systems existed among the Ibo. In the North, there was a bit of formalization as founded on the Islamic legal system, the Sharia. There was an elaborate system of court systems, the hub of which was the Alkali system. The Emir was the ultimate appellate judge (Onadeko, 2008).

Ibid asserts that, "after 1842, the power to administer and dispense justice in Nigeria was mainly vested in native courts." These courts in dispensing justice, fashioned out systems of taxation, civil laws and procedure, penal law and sentencing policies including death sentence. It should be noted that these Native Courts are the forerunners of the present Customary Area and Sharia Courts.

Away from Nigeria, Malawi is another country whose legal system stems from the traditional hierarchies of justice. The traditional courts in Malawi just like any other African country has been in existence from time immemorial. In Malawi a system of the traditional Courts which are also referred to as Native Courts or Local Courts as they were referred to by colonial legislation. They have been used for much of the twentieth century to mediate civil disputes and to prosecute crimes, although for much of the colonial period, their criminal jurisdiction was limited. In the 1970s Regional Traditional Courts were created and given jurisdiction

over virtually all criminal trials involving Africans of Malawian descent, and any appeals were directed to a National Traditional Court of Appeal rather than the Malawi High Court and from there to the Supreme Court of Appeal, as had been the case with the Local Courts before 1970 (Wakonyo, 2013).

The operations of the traditional courts were distinct from the operations of the common law courts. The Traditional Courts were supposed to operate in accordance with African law and custom, although they applied an authoritarian, restrictive and punitive version of customary law, in line with the views of Hastings Banda, the first President of Malawi. According to Ubinki (2016):

> During the 1970s and 1980s, it was alleged that the courts gained a reputation for being used to prosecute Banda's political opponents and being corrupt. After the restoration of multi-party politics, the operation of the Regional Traditional Courts and the National Traditional Court of Appeal was suspended in 1993.

Traditional courts formed a basis for the establishment of Western courts. Many of the former lower-level Traditional Courts became magistrates' courts, able to apply customary law, but subject to appeal to the High Court. The Malawi Constitution of 1994 recognised customary law as an integral part of the legal system and provided for Traditional Courts with limited jurisdiction over civil and minor criminal cases, but no legislation to set up such courts was introduced until 2011. In February 2011, the Malawi Parliament approved legislation re-introducing local traditional courts handling most civil cases and some minor criminal cases, as a means of making justice more accessible to rural Malawians. This legislation had not been put into effect because of financial constraints as of May 2017 (Ubinki, 2016).

It is worth noting that shortly before independence, which took place in 1964, there was an amendment that was done. The Local Courts Ordinance in 1962 amended the 1933 Native Courts legislation, and this gave recognition to various levels of courts with distinct powers to hear disputes based on customary law and some criminal cases. After independence, this ordinance was renamed the Traditional Courts Act, 1962. The local courts set up were no longer solely the courts of traditional chiefs, as had been the case under the 1933 legislation, although many such chiefs were appointed to them. This law had provisions for guaranteeing of a fair trial, which included the likelihood of legal representation and the right to appeal to the High Court. The 1962 Act, provided that customary law should only apply if not

inconsistent with any written law in force, and its courts could only hear types of case they were specifically authorised to try, generally excluding the more serious criminal cases. The legislation made it clear that, in criminal cases, these courts were to apply the existing penal code and not customary criminal rules. The Local Courts Ordinance 1963 allowed legal representation of defendants, at the discretion of the court. Also in 1962, the judicial powers of the district commissioners were ended and they were replaced by legally trained magistrates (Kanyongolo, 2006).

From 1970, the Local Courts which was an Amendment Act, 1969 reformed the traditional courts system. In its set up it came up with three Regional Traditional Courts and a National Traditional Court of Appeal above the existing network of lower-level traditional courts set up under the 1962 Act, and gave them extended criminal jurisdiction which included all homicide and treason cases involving Africans, using customary rules of evidence and procedure. These lower courts consisted of two grades of local traditional courts, Traditional Appeal courts that heard determine appeals from these courts and District Traditional courts. In each case, the civil and criminal jurisdiction of the court was determined by the warrant that established it, as varied by any later ministerial orders. Although the criminal law set out in the Malawi Penal Code, which was based on the colonial code of 1930, remained unchanged and applied to both the High Court and the Traditional courts, cases were dealt with in different ways in the two sets of courts. Traditional courts only apply those such sections of the penal code that the Minister of Justice directed and had their own rules of procedure. They were not bound by the same rules of evidence as the High Court, but applied the customary law of their area, supplemented by ministerial directions. Defendants usually had no choice of which court would try them; if they were African, it would be a Traditional Court (Ubinki, 2016).

At the time, the then President of Malawi and the Chief Traditional Courts Commissioner gained extensive powers to oversee supervise these courts and do a review of cases, and defence lawyers were not allowed to plead for accused persons. Not only was there no right of appeal to the High Court, but appeals to the National Traditional Court of Appeal were at the discretion of the Minister of Justice, a post held by Banda himself. At this court defendant were not accorded an opportunity to call witnesses; it was at the discretion and a preserve of the judges as it was in the case of the Chirwas, it was refused, and they are not given a summary of the charges against them before the trial, so cannot prepare a defence. These

provisions removed some of the guarantees of a fair trial which the 1962 Act had given, and in particular incidences reverted to the rules that had applied under the 1933 Ordinance. From November 1971, the Traditional Courts Act, allowed the Minister of Justice to direct that some Traditional courts could hear cases where any or all of the parties were non-African. The Act also provided that no traditional court case could be declared void on appeal because of any defect in procedure, and that the Chief Traditional Courts Commissioner should decide any disputed matters on the basis of substantial justice without undue regard to legal technicalities. Although Traditional courts were supposed to apply the Malawi Penal Code, they were free to do so in accordance with customary procedures, which enabled them disregard precedents from earlier Malawi High Court cases, and to determine what customary procedures were. According to Nyimba (2011),

> Each traditional court consisted of a chairman, who was often a traditional chief, three other lay members also often chiefs known as assessors and one lawyer. Chairmen and assessors, who were supposed to be individuals who commanded respect and with a considerable knowledge of the customary law of the area served by the court, were appointed by the Minister of Justice, Banda, and could be dismissed by him.

Appointments were recommended by the Chief Traditional Courts Commissioner and regional Traditional Courts Commissioners, after consultation with the Regional Chairman of the Malawi Congress Party for the area. This system ensured that appointees would support government policy.

Although it was suggested that the 1969 legislation was prompted by widespread public criticism of the judicial system after government prosecutors failed to secure a conviction in the first trial in the Chilobwe murders case, the existing system was already under attack. Banda made extensive use of courts as part of his efforts to establish traditional systems in Malawi. The Traditional courts eventually became the primary means of law enforcement in Malawi. In these courts, prosecutors had much greater power than in the parallel High Court system. (ibid)

As we explore the history of Traditional courts in Africa Rwanda stands a beacon of admiration. Traditional courts in Rwanda have existed for a long time. The traditional courts have been used to resolve a variety of conflicts ranging from family disputes, community as well as national conflicts. The commonly and widely known courts are the Gacaca which are a form of community justice system. Radolphie (2009), says in Kinyarwanda, the word

‘Gacaca’ refers to ‘a bed of soft green grass’ on which in ancient traditions, a community and its representatives, mainly elders, leaders and individuals known for their integrity and wisdom, gathered to discuss and resolve conflicts within or between families and inhabitants in a certain village”

The Gacaca has been used from time immemorial as a useful tool and solution for resolution of conflicts. The Gacaca courts are a mechanism called upon the accused families or person to reconcile with complainant and vice versa. Among the solutions for resolution to conflicts, the Gacaca called upon the accused families or person to reconcile with the complainant, and vice-versa.

The existence of the Gacaca dates back to the 1400s and are widely recognised and accepted by general populous. Butera (2005) aptly says, “These conflict resolution system’s origins could be traced back to the 15th century when the kingdom of Rwanda became more socially and politically organized”

During the colonial period, a Western-style justice system was introduced in Rwanda, but the Gacaca courts tradition still remained the primary solution to resolving conflict amongst the locals. However, the persistence of the colonial administration lead to the regimes in power to appointed administrative officials to the Gacaca courts proceedings. This weakened the tradition and the trust in the traditional system. Over time, at the judicial level the ‘Western’ court system prevailed over the ‘traditional’. These changes caused the king and his chiefs to gradually lose their positions of authority and legitimacy in the justice system, as the Gacaca courts diminished: the traditional system was only used in small village for domestic conflicts and petty crimes, whereas the Western System was used for more serious offences in regards to politics, commerce, grand theft and homicidal crimes.

In the post-colonial period, up to the 1994 genocide against the Tutsi, the Gacaca courts’ standards were reset and the system was increasingly used again all over Rwanda. This time, the Gacaca courts were used an administration tool to determine the seriousness level of a case: if a case could not be solved by the traditional conflict resolution mechanism, it was then deemed a complex case and it was transferred to be arbitrated by the adapted western-system courts. The inyangamugayo (people of integrity), were introduced to evaluate cases. These men and women were local government officials who attended Gacaca court proceeding to analyse the cases levels of importance and process transfers. The Gacaca courts then

provided proximity and administration to relieve the pressure on the ordinary court system (Senior, 2003).

To further understand the history of traditional court system in Africa. Kenya contributes to the body of knowledge as it has relied on the operations of traditional courts for a long time. The traditional Court system has been in existence for thousands of years. Even before the colonisation process started, traditional court systems were already enshrined in the traditional justice structures. Kenya for many years has been running two parallel judicial systems; the Common Law and the traditional court system commonly called Community Justice Systems. The community justice is what may be referred to as traditional court system in other circles. This is more so in Northern Kenya where the community justice system is in direct conflict and/or competition with the Common Law System i.e. the Gada system of the Boran community.

Another nation that adds knowledge to the history of traditional courts is Namibia**.** The case of Namibia is not different from the story of the rest of African states in so far as Traditional court system is concerned. Namibia has always had traditional courts from way back even before the first Europeans arrived in this part of the continental. The natives who occupied the present day Namibia had developed their court system that was intended to administer justice and was used as a mechanism for resolving conflicts. According to Consumer Protection (2013),

> Namibia presents a particularly interesting situation in the SADC region. It, like several other African and other developing nations, has a rich history of customary law where communities continue to rely on traditional courts to resolve a variety of disputes (domestic disputes, land ownership issues, goat/cattle theft, and even accusations of witchcraft and claims of discrimination against community members based on HIV status).

A new Constitution and legislation were passed in the post-colonial period in Namibia, after independence from South Africa, both of which recognise the authority of traditional authorities to make laws for the people living within their territories, as well as to adjudicate issues of customary law when brought to the traditional and community courts. In recent years, traditional authorities have also been engaging in a process of 'ascertaining' what customary law actually is following a consultative process

Traditional authorities tend to be 'closer to the people' both in geographical terms, as well as in understanding the socio-economic, cultural norms and languages of the people they serve.

In fact, an estimated half of the Namibian population of 2.1 million reside in the Central North, where Oshiwambo speakers live and North East, where Rukavango and Silosi speakers live) rural areas of the country, which is the jurisdiction of the Owambo traditional author (Soli, 2013).

Recognised traditional authorities also receive an annual budget from the Ministry of Justice for traditional court operations. Ibid, "This amount is estimated to be 120, 00 NAD per year which is equivalent to +/- 15,000 USD and while modest considering the sum it must cover office space, salaries and supplies". In addition to being located far from rural areas, the f ormal judicial courts of the Namibian judiciary are also economically out of reach for the poor, who generally cannot afford court filing fees or a lawyer, which is often necessary in the adversarial system. Like many other traditional courts in Africa, Namibia's traditional courts generally do not charge a filing fee, and a lawyer is not necessary and could even be a hindrance as the system is inquisitorial versus adversarial in nature.

The case of Zambia gives us a glimpse of the existence of traditional courts. It is worth arguing that during the pre-colonial period, there was no universal form in the administration of justice. At that time various tribal or communities in Zambia dispensed justice under the auspices of the village administration. The key emphasis was on the tradition of those societies and justice was presided over by elders, village headmen, counsellors, chiefs and Kings. These acted as judges and the lowest court was convened by an elder and the highest was that of the king.

Traditional courts have played an important role in the administration of justice in Zambia. Long before the coming of the colonialist's kingdoms and chiefdoms existed and in their structures courts played a pivotal role in maintaining order and administration of justice. The current court system in Zambia is to a certain extent tailored in line with traditional court system. For instance, the local courts are a preserve of customary practices that's why local courts do not follow strict rules of procedure hence lawyers are not allowed to represent their clients. Hover (1990) aptly says,

> An understanding of the Zambian courts system as it exists today is dependent, in large measure, upon an understanding of its history. For perhaps even more than most institutions, Zambia's courts are a product of their history. Almost every feature of the system today can either be traced back to an historical origin a generation or more ago; or can be accounted for as a latter-day attempt to be rid of some offensive aspect of the colonial administration of the courts.

From the foregoing quotation, it is prudent to state that traditional courts existed even before the coming of the Europeans.

The British South African company which was an emissary of the British government started their colonisation activities in 1889. The coming of the BSA Company in the territory which in the present day is called Zambia, saw the introduction of the English law and for the first time and the indigenous Africans had a new experience When the British government occupied Northern Rhodesia, through the British South African Company (BSA). They did not do away with the traditional courts completely. The colonialists introduced indirect rule, as system in which the governance system incorporated traditional leaders in the administration of native affairs. This system strengthened the operations and the existence of the traditional courts. The traditional courts continued operating and presiding over cases. Ibid observes that,

> In actual practice, the BSA Company left the judicial administration of Africans to Africans. The British courts, composed of BSA Company officers, were undermanned and ill-equipped from the outset. Only those serious crimes brought to the attention of the administrators were likely to find their way into a British court docket.

The recognition of the already existing traditional structures like the Traditional courts by the colonialist had a lasting impact on the existence and operations of the courts. It contributed to the preservation of traditional court systems. The BSA charter was very explicit as regards the administration of justice involving the natives. The charter made provisions for the administration justice by courts under it and there was special attention that was given to the local customs which included adherence the traditional legal system. The rationale behind the recognition of customs, rules and practices was basically to avoid any likelihood of perpetrating injustice to the native litigant. Silavwe (1998) quoted article 14 of the charter and read as follows:

> In the administration of justice to the said people (tribes) or inhabitants, careful regard shall always be placed to the customs and laws of the class or tribe or nation to which the parties respectively belong …. but subject to British laws which maybe in force in any of the territories aforesaid and applicable to the people's inhabitants thereof.

However, it must be understood that the coming of the BSA Company and the introduction the English law to some extent had limiting consequences on the operations and role of the native courts as they were widely known. That came about because of there was so much emphasis and attention given the English law than the African customary law. It is worth noting that the provisions of the charter empowered the British South African company to set up courts of law

to be administered by persons trained in the British legal system. Simwatachela (2007) pointed that, "The order in council of Barotse, North Western Rhodesia 1889 and North Eastern Rhodesia 1900, also provided for the manner of appointment of judges" This was enshrined in clause 21 of the 1900 order in council.

Though there was emphasis on English common law the traditional courts were not completely liquidated they continued existing because of the indirect rule which was a governance system where traditional leadership had decentralised powers where they were mandated to certain perform judicial and economic functions.

Colonial rule in Zambia came to an end in 1964 and 24th October was declared as the day of independence. The end of colonial rule brought a lot of changes to the administration of justice system. One critical example was the 1964 annual report of the Judiciary and the magistracy revealed these changes and future plans. Some of the changes were that the Native Courts were integrated into judicial or the formal judicature. Other changes that were seen after or immediately independence were the abolition of the Ministry of Native Affairs which led to the new ministry of Justice. These changes brought with it some complexities and implications. Because of those changes the supervision of the native courts were transferred from the provincial administration to the new care of local courts officers and magistrates of the judiciary (Mponga, 2010).

From independence to date the, the traditional courts have continued existing and operating under the auspices of the Traditional authorities who are in most cases regarded as custodian of the customary laws. Customary law still applies in Zambia today. However, such customary law should not be repugnant to natural justice, equity or by necessary implication with any written law in force in Zambia.

2.3 Specific Traditional Court Systems in Africa

2.3.1 The Gacaca Traditional Courts of Rwanda

The Gacaca traditional Courts has been in existence for centuries in Rwanda. "Gacaca is a corruption of a word for a variety of grass common in Rwanda, called umucaca. Osei (2009), states that, "Long before the colonial period, the word signified both a meeting and a meeting place used by village elders for solving problems amicably or trying to mediate a conflict while sitting on Gacaca-covered ground." Before the coming of the colonialists to Rwanda, there were two ways of resolving conflicts. In the first, the king ordered people to forget or

avoid revenge between parties to a conflict, in order to preserve social unity. Revenge was sternly prohibited as it was deemed to perpetuate or encourage serious conflict and disharmony among social classes. The second means was through Gacaca, traditionally used at the local level to resolve disputes. In Gacaca proceedings, respected community figures served as judges during the dispute resolution process. Butera (2005) asserts that, "Typically, Gacaca considered disputes around inheritance, civil light, and conjugal matters." It was and still remain a common practice that all cases brought to be presided over had first to be taken to the council of elders before they could be forwarded to the attention of the king, whose role was only to intervene in order to resolve the most difficult issues.

Just like any other traditional system, the Gacaca, is similar in many aspects to nearly all systems of traditional law. It was and still remains a part of the Rwandan culture. It is under the principles morality and reverence for life that the Gacaca was established upon. Due to that fact it cannot be examined in isolation, but has to be placed in a wider context of the customs and organization of a society so as to understand its meaning within the context of practices and beliefs. As such Gacaca was a traditional system used to settle social or economic conflicts between one or more families usually within the same village. The system of family organization determined the composition of Gacaca and its modis operandi. The Gacaca was well structured and it basic structure included a council of elders, and adult members of the community.

According to the traditional norms which guided the Gacaca, all members of a family lineage were placed under one head of that family lineage. Being the most senior member in terms of numerical age, the head of the family lineage was designated by his father before the latter's death. The importance and powers of the head of family in relation to the latter were comparable to the king's role in relation to the nation. The head of family served as judge, lawyer, administrator, and conflict regulator of his group. The principle behind each judgment was the restoration of social order and harmony rather than the imposition of punitive measures. The council of elders in any community was composed of heads of families, who used their authority to resolve disputes by rendering justice to achieve the restoration of order, the reintegration of the offender, and the reconciliation of the affected parties. It is also worth noting that the prime function of judge was sacred. Whoever presided over cases acted in the name of his ancestors and of god. Moreover, these elders had coercive means in the unusual case where someone refused to obey the decision of Gacaca. Severe punishments included ban-

ning the criminal from the community. Gacaca implied two features: an active role assumed by the people to create legal norms, and a conciliatory dimension in the decision - making. Taking someone to Gacaca was the last resort in resolving conflict, since amicable resolutions were the preferred path (Radolphe, 2009).

2.3.2 Igbo African Traditional Court and Justice System in Nigeria

The Igbo people of Nigeria, since time immemorial, have evolved for themselves some mechanisms of checks and balances which regulate interpersonal relations and order society for progressive transformation. These mechanisms of checks and balances form the structure of what is regarded as Igbo law. The Igbo law forms a fundamental legal system that presides over cases and ensure a fair and legitimate justice system.

The Igbo people have a well-established legal system which is based on the indigenous native laws and customs. The Igbo people have well outlined laws which are part of the African customary law. Though they have a traditional court they are not so independent from the traditional structure of the Igbo customs. The legislative body at the same time performs the judicial functions. Onadeko (2008), "Worthy of note is that in the Igbo society, there is no standing legislative body as existing in the modern democracy. An example is the type brought by the westerners." Despite not having a law making body, the Igbo people have law making process which is called "iti iwu" which means to make laws. Sometimes it is spontaneous or deliberate but is all in a bid to control a mischief or wrong in the society. Every member of the Igbo society is involved in the law making venture by the virtue of their membership in one or more of the various legislative agencies in the Igbo African society.

There are various legislative agencies among the Igbo traditional society that are charged with the responsibility of making laws that are applied in the judicial process of the Igbo traditional court system. Ibid, "these legislative bodies include Umunna: The Umunna includes every person born into a family as well as those born into a number of interrelated ex-tended families who share common ancestry. The Umunna.is responsible for making rules and regulations about how to farm, allot the lands left by their ancestors, farming time, clearing of bush paths and so on. The other body is the age grade which is formed at the village level. It comprises of people who are born within a stated period of time. Writing on age grades, Okafor (1992: 9) opined that,

> Age grade serves as a social indicator which separates the seniors from the juniors, the age grades association is a means of allocating public duties, guarding public morality through the censorship of members' behaviour, and providing companionship and mutual insurance of members.

Other legislative bodies include the, umuada, umuokpu, umudibia, ndinze, Deitis, Oha and Mmanu. These Legislative bodies are mandated to come up with laws which are also applicable when they preside over cases. Each legislative body has specific types of laws it is mandated to make (Onadeko, 2008).

In discharging justice, the Igbo judicial system looks beyond an offender to all the social groups upon which he is attached. Thus, when a suspected criminal stands before the traditional Igbo seat of judgment; his family, his age grade, his kindred, and his entire community stands with him. As a result of this, it can be said that no one commits a civil or criminal wrong alone. Every civil or criminal offence or wrong has a social dimension. That is why; at the end of the Igbo legal judgment day more than the individual offenders or person are convicted and blamed for the offence or wrong he or she committed. Of course, in the Igbo African courts, the offender does not come alone. He or she comes with his or her people whether they are invited or not. When a guilty judgment is pronounced and atonement is required, all individual that are related to the of-fender must rally round to make sure that the offender meets the demands of punishment his crime attracts. Whenever an offender fails in making proper atonement for his misbehaviours the consequences, often deadly, does not discriminate between the offender and his relations.

It must be understood that, Igbo African law has no formal network for training of any kind. It does not require any form of training besides the fact that there is no provision for that. Experts in the Igbo African law learn the demands of the Igbo African law in an informal manner by being present in occasions where cases are adjudicated. This explains why, most often, again, the lawyers of the Igbo African law are the council of elders who by virtue of their age and wealth of experience can be said to have acquired a lot of training by virtue of their having been present in past occasions where judicial decisions were taken. With Igbo traditional law, there are as many laws as there.

The Igbo African rule of law is a rule of social and political control wherein bodies of unwritten codes of conduct, statutes of life and principles of existence naturally born out of the tra-

dition and a culture of organized and lived experience, are known and applied for the management and administration of justice.

From all these, it will be easily argued that the Igbo African judiciary is a college or council of judges or elders or lawyers where the oldest or at times some other person unanimously elected or appointed is the supreme judge; and the function of such a council or college is not necessarily the invention of laws for all possible offences and all foreseen and unforeseen criminals, but the communalistic and systematic discovery and application of the force of traditional and cultural laws for the control and rule of the life of Igbo African community.

As it has been pointed out earlier, Igbo law Judges rights and wrongs as they affect the community and not necessarily as they affect the individual. Igbo Traditional Court system is the body of unwritten codes of conduct, statutes of life and principles to which Igbo African people ought to conform their lives, and which the college or council of elders or judges or lawyers as the case may be, adjudicate and some action-groups enforce. Onadeko (2008) states that, "Igbo African law is meant for the systematic control of the whole life of individuals, but only as members of the community" So the philosophy of Igbo African law is the promotion of the common good, it is considered as one of the most important criteria for assessing the efficiency and goodness of any law and through it; people in the society are able to achieve their private individual goods.

2.3.3 Bashingantahe Community Justice System in Burundi.

Burundi has also a well-developed traditional court system which has been handy and useful in the administration of justice. The Bushangantahe is a community justice that has been used among the Hutu and Tutsi of Burundi for several years. Luc Huyse and Mark Salte (2000) says "In current usage, the term bashingantahe (singular umushingantahe) refers to men of integrity who are responsible for settling conflicts at all levels, from the top of the hill to the courts of kings" Ubushingantahe describes a set of personal virtues, including a sense of equity and justice, a concern for truth, a righteous self- esteem, a hard-working character all of which could perhaps be summed up in the word "integrity. Veronika (2000), "Rodgem in his Rundi French Dictionary of 1970 translates Umushingantahe as, "Magistrate, eminent personality, councillor, umpire, assessor, judge, the one invested with judicial powers"

The Bashingantahe existed before the onset of colonialism and continued throughout the period of colonialism. The origin of Bashinganatahe goes back to the late 17th century and its

origin is judicial. It is worth noting that the bashingantahe occupied fundamental nodes in the socio-political order of precolonial Burundi. They played an important role in conflict resolution at the local level, with the aim of guaranteeing peace, order and harmony. The bashingantahe were local notables with judicial, moral and political authority. It is found at all levels of traditional authority from family level up to the King (Ingelare and Kohlhgeny, 2012).

For one to be admitted to the Bashingantahe there are several stages one has to undergo. The Candidate has to go through an investiture ceremony consisting of several stages during which he is observed, monitored and guided by the mentor.

The Bashingantahe is made up of elders, people of irreproachable morality and has played an important role for many decades particularly during the era of the Monarch. It presided over judicial organisation of the country at all levels and played a role of checks and balances on power. To be selected one had to exemplify certain essential qualities such as experience and wisdom, a high regard and love for truth; a sense of honour and dignity; a love of work and ability to provide for the needs of others; a highly developed sense of justice and fairness; a sense of the common y; a love of work and ability to provide for the needs of others; a highly developed sense of justice and fairness; a sense of the common y; a love of work and ability to provide for the needs of others; a highly developed sense of justice and fairness; a sense of the common good and social responsibility and sobriety and balance in in speech, such as the discretion, a keen intelligence, self-respect and respect for others, a spirit of temperance, courage and dedication (Shonhiwa,2015). These qualities guarantee the moral integrity and authority of the Bashingantahe and are considered to be the basic guiding principles for their behaviour and the performance of their duties. And by tradition only men are admitted to this noble institution.

Various cases presided over includes: succession matters, sharing of property, family and social quarrels, neighbourhood and so on. The Basic principles and mission of the institution include mediation, arbitration and conciliation. The institution is believed to exercise and exhibit high levels of neutrality, impartiality. Transparency, collegiality and credibility.

2.3.4 Mato Oput of the Acholi people of Uganda.

The Mato Oput is a community justice system developed among the Acholi people of Uganda. It is a traditional court based on transitional and restorative justice. It is a rare process and

that is undertaken only in the case of intentional or accidental killing of an individual. The ceremony involves two clans bringing together the perpetrator and the victim in a quest for restoring social harmony. According to Baguma (2003), “Mato Oput, in the Acholi language literally means "to drink a bitter potion made from the leaves of the oput tree, is one of the mechanisms for forgiveness and reconciliation among the Acholi people in Northern Uganda” It must be understood that Mato oput is performed after a mediated process that has brought together two families and clans. The offender accepts responsibility, asks for forgiveness and must make reparation to the victims. The perpetrator and the victim's family then share the root drink from a calabash, to recall and bury the bitterness of the soured relations.

The ceremony of Mato oput begins by separating the affected clans, mediation to establish the ‘truth’ and payment of compensation according to by-laws. The final ritual characterised by drinking the bitter root is a day-long ceremony involving symbolic acts designed to reunite the clans.

The symbolic ceremony of the actual drinking of the bitter herb means that the two conflicting parties accept the bitterness of the past and promise never to taste such bitterness again. When that has been done what follows is the ceremony for payment of compensation. The victim or his/her family is compensated for the harm done, for example, in the form of cows or cash. It is believed by many Acholi that Mato Oput can bring true healing in a way that formal justice system cannot. It doesn't aim at establishing whether an individual is guilty or not, rather it seeks to restore marred social harmony in the affected community (Baguma, 2003).

Mato Oput is restorative justice system that focuses upon the end result, it is meant to foster harmonious community relations as it is characterised by community participation that involves both the victim and the perpetrator, with a view to restoring rights that have been abused.

Source: BBC Focus On Africa magazine

Picture 1: Some procedures performed during the Mato oput.

2.4 Specific Cases Presided Over by The Traditional Court Systems in Africa

Traditional courts in Africa, due to their accessibility and affordability have presided over a number of cases, some of which are criminal whilst others are civil in nature. Rwanda presents a practical example of how vibrant and effective traditional courts can be in facilitating

justice. In its pre-colonial era the Gacaca was used to moderate disputes concerning land use and rights, cattle and marriage, inheritance rights, loan, damage to properties caused by one of the parties or animals and petty theft.

After the 1994 genocide, the Gacaca courts were established countrywide and within a space of 12 months over 1 million cases were tried and disposed off. The specific cases tried were those to do with war planners, organisers, notorious murders, perpetrators, sexual torture and violence.

In Uganda the Mato oput has mediated in a conflict involving the rebel movement, Lord Resistance Army and the government. The traditional court system was allowed to mediate following the successful enacting of the 1995 which allowed for operation of traditional and cultural institutions in parts of the country. According to Baguma (2012:11),

> The unique contribution of the rwodi is through their mediation of the reconciliation process, mato oput, which many Acholi believe can bring true healing in a way that a formal justice system cannot. This ceremony of clan and family centered reconciliation incorporates the acknowledgement of wrongdoing, the offering of compensation by the offender and then culminates in the sharing of symbolic drink. Early in November 2001, a group mato oput ceremony was held in Pajule. This involved about 20 recently returned LRA combatants and included many others who had already settled in the community. The ceremony was supported by non-governmental organizations (NGOs), churches and by Acholi in the diaspora. Government officials, the amnesty commissioners, senior army commanders in the region and several representatives of NGOs attended the function, demonstrating the support of the wider Ugandan community. Another ceremony has taken place in Pabbo, in the Gulu district, and others are planned for different parts of Acholi.

It is worth noting that the Mato oput, individual cleansing rituals routinely take place whenever former LRA members return to the community. Most agencies that receive and reintegrate ex-combatants ensure that traditional rituals are integrated into the process. In a demonstration of the value attached to traditional approaches locally, in Kitgum the district earmarked some funds for elders to carry out atonement rituals. (ibid).

2.5 Effectiveness of the Traditional Court system

A lot has been said and written about the effectiveness of traditional court system. Some critics see them as conservative and unable to deliver justice in the modern social economic and political climate while others see them as prototypes of the kind of dispute resolution

mechanisms that are desirable in modern society. Traditional court system has played a pivotal role in the administration of justice and resolution of conflicts. The effectiveness of traditional courts in the administration of justice has been a subject open for discussion and review due to grey areas and a number of concerns patterning to the operation of the said institution.

There are several reasons why traditional courts or courts of traditional leaders should be retained in most of those modern democratic country like Zambia. Firstly, it is argued that customary law, as the law of the majority of African people and the traditional courts that administer justice according to this law, are part of the cultural heritage of African people. This argument has been made particularly by traditional leaders themselves as well as by some academics. It becomes more convenient and useful in resolving conflicts because the justice system is contextualised and indigenised.

It is also worth arguing that traditional courts are a useful and desirable mechanism for the speedy resolution of disputes given their nature as an easily accessible, inexpensive virtually free, simple system of justice. They are quiet convenient for the people living in local community who many not able to access legal representation.

Baguma (2003) observes that, "Initially, many Rwandans placed their hopes in the well-funded International Criminal Tribunal for Rwanda (ICTR) but it has been plagued by inefficiencies and delays. Although the Rwandan national courts have tried a significantly larger number of cases than the ICTR, they are also criticized as being too slow. Therefore, the government of Rwanda has proposed using the Gacaca traditional courts to accelerate post-genocide justice". The use of the Gacaca to try the cases concerning the genocide is a clear indication that traditional court system is an effective and prudent way of resolving conflicts.

It must also be bone in mind that the Gacaca helped to reconstruct the Rwandan society. The participation of individuals was designed to build and strengthen communities as well as to empower the population. The Gacaca system requires people within the communities to work as voters, witnesses, tribunal personnel, and jurors. Hence it creates a common experience in which everyone works together toward a common goal. This participatory process promotes national democratic and rule of law values, as well as it shifts from the central government to the people. Also, punishing the guilty, restoring the victims' rights, and ending the culture of

suspicion will promote morality, social cohesion and harmony that in turn will lay down a strong foundation for the reconstruction of Rwandan society.

Traditional court system has also proven to be a force to reckon with in so far as the resolution of conflicts is concerned. For example, the Ethiopian legal system has its roots in the traditional court system which has been in existence for a long time. Haile Selassie I, Emperor of Ethiopia "'No modern legislation which does not have its roots in the customs of those whom it governs can have a strong foundation" What the emperor was referring to was simply the effectiveness of traditional court system in addressing matters that affect the masses. Traditional or customary courts as they may be called in Ethiopia played and has continued to play a critical in fostering peace and harmony in a diverse society. As Fisher (2002) points out, "Ethiopia is a country which embraces a complex variety of ethnic elements representing a veritable mosaic of races, tribes, and linguistic groups. Joined together in the Empire with the dominant highland Christian groups are large Muslim and pagan groups of the most diverse socio-economic organization."

Despite having numerous positive strengths of traditional courts, it is argued that there are shortcomings in the Traditional court system. Among the limitations which complicates the effectiveness of traditional courts is lack of security, which does not allow the Courts to make a more direct and long last impact on the society where serious cases have taken place. The proceedings are conducted behind closed doors, so the population remains uninformed about its actions. This possess a challenge to the effectiveness of traditional courts hence many have lost faith in these important institutions.

2.6 Review of Related Studies Done On the Traditional Court System in Africa

This part of the study gives a review of similar research studies done in Africa on the effectiveness of traditional courts in Africa. The section will provide historical account providing a wide range of record of such studies. A historical categorization will be followed in the presentation of the studies within a specific cultural sector. There are a number of studies on or patterning to the operations of Traditional courts in Africa but for the purpose of credibility and coherence this research will concentrate only on those studies that have had a bearing and an impact to the body of knowledge on traditional courts and have opened up a platform for further debate.

2.6.1. The Traditional Court System in Kenya

Kolter (2005) in his research studies says, "traditional justice systems refer to all those mechanisms that African peoples or communities have applied in managing disputes conflicts since time immemorial and which have been passed on from one generation to the other" These traditional court systems can also be described using other tags such as community, traditional, non-formal, informal, customary, indigenous and non-state justice systems. It must be realised that all these tags have often been used interchangeably in existing literature to describe localized and culture-specific dispute resolution mechanisms amongst peoples.

Butera (2005) argues that though the traditional court system have a huge potential for enhancing access to justice (particularly amongst groups that have been excluded from the formal justice system) in Africa, strengthen the rule of law and bring about development among communities, numerous challenges arise in operationalizing them. However, it is worth noting that of late they have been recognized in law subject to some limitations making it difficult to describe them using some of the stated tags. Such recognition is borne out of the increasing acceptance of their validity and legitimacy as they are home-grown, culturally-appropriate, operate on minimal resources and are easily acceptable by the communities they serve. It must be realised that Formal justice systems such as litigation and arbitration, employ legal technicalities and complex procedures, are expensive, not expeditious and are located in major towns, and are therefore not easily accessible by a majority of the people particularly the poor.

This study is quiet relevant to the current research on the effectiveness on traditional courts in conflict resolution as it brings out important aspects that renders traditional courts in the administration of justice in the modern era. Baguma (2003), "They are legitimate and effective as they involve interactions, procedures and decisions that reflect people's culture". It must be noted as well that they can promote access to justice because they are: accessible by the rural poor and the illiterate people, flexible, voluntary, they foster relationships, proffer restorative justice and give some level of autonomy to the parties in the process. Most traditional courts systems are concerned with the restoration of relationships as opposed to punishment, peace-building and parties' interests and not the allocation of rights between disputants. In most of them, decisions are community-oriented with (Shonhiwa, 2015).

The community justice system is inquisitorial and restorative in nature while the Common Law system is adversarial and punitive justice. Community Justice is a peace building initia-

tive that creates community awareness and development in a given community. It is closely linked to culture in terms of thoughts, feelings, attitudes, materials, traits and behaviour of the group of people. These characteristics are manifested and shared by the group through symbols, communication, judicial, economic and social patterns. Where there is a dispute, restoration and community harmony is regarded to be of prime importance. However, each Community Justice System differs from one ethnic group to another due to their peculiar historical, social and economic experiences and the environment they live in.

It is due to the above cultural notions that Community Justice is premised on the principles of restorative justice which encompasses justice that seeks to correct historical or past wrongs committed against individuals with an impact on the community. Restorative justice implies that the existing wrong has disrupted or impaired the community relationships in the society between those directly implicated or affected by the wrong (that is the perpetrator and victim) and the entire community. It is fundamentally concerned with restoring social relationships and re-establishing equity based on its values. It therefore punishes the individual while reconciling the entire group or community concerned. The aim is to attain both equity and equality before the traditional law and offer remedies that are deterrent and progressive to all. This brings healing, action by self which may lead to individual punishment and also civil remedies like restitution.

The Community Justice Systems in Kenya has played a very significant role in addressing disputes and resolving the conflict. It has a similar role like the Common Law System which is to settle or solve disputes by protecting, defending, reconciling and preserving community culture, values and norms. Conflicts are resolved at various levels but do not have an administrative hierarchy and rarely an appeal system like in the Common Law system where you have the Lower, High, Appeal and now Supreme Courts. The role of adjudicators who preside over cases in the Community Justice System is that of mediators, conciliators; giving penalties and making decisions that has influence on the whole community as they are the community voice.

There are various stakeholders engaging with the Community Justice System and these differ from area to area. They include the village elders (women and men), elderly persons, Provincial Administration, religious leaders, civil society organizations (including national and community based organizations), National Police Service, youth, women, people living with disability, HIV and AIDS. It should be noted that the core team is usually led by the

village and elderly persons with administrative blessings from the Provincial Administration and this composition differs from community to community. In many instances, women only play a role when matters concerning children are in dispute, and as witnesses in a particular case.

This system traditional court systems deal with both civil and criminal matters which are interrelated and interchangeable. The nature of disputes varies from community to community due to their experiences, environment, access to and impact of the Common Law System. Some of the disputes include gender based violence (domestic, rape and defilement), land, inter-ethnic conflict, marriage, child abuse, succession and inheritance, theft, murder and family feuds among others.

However, there are various challenges where Community Justice Systems are practiced including lack of positive publicity among the intellectuals especially the legal academia and practitioners, limited deliberate linkage with the Common Law System, no financial state allocations even those that operate under the Provincial Administration known as the Wazee wa Chief, most of the elders have no legal or human rights knowledge; they discriminate against women, persons living with disability and children; no recording of proceedings except where the area Chief is pro-active and they handle serious criminal matters like murder, rape and defilement in contravention of the written law under the Penal Code and the Sexual Offences Act to the detriment of the female victims or survivors. Despite these challenges many people continue to use them due to their ease in procedure, minimal costs, language and accessibility.

2.6.2. The Traditional Court System Among the Akans People of Ghana

A comparative study undertaken by Kwaku Osei-Hwedie andMorena J. Rankopo under the auspices of University of Botswana on traditional courts gives significant highlights on the operations of the traditional court system among the Akan people of Ghana. The Akan have developed for themselves an effective traditional justice system which has stood the test of time. The Akans Traditional court system is part of the cultural heritage of the people. The institution of traditional court plays critical roles in promoting and sustaining social cohesion, peace and order in societies. Traditional institutions play two important roles: a proactive role to promote social cohesion, peace, harmony, co-existence; and a reactive role in resolving disputes which have already occurred (Department of Justice and Constitutional Development, 2008).

The comparative study conducted by Kwaku and Morena are of great significant in understanding the effectiveness of traditional courts in resolving conflict among the people living in rural communities. It is also forms a good basis for this study on the effectiveness of traditional courts as it has outlined quiet number of important points that are learning points. One such aspect is the well-established hierarchical structure of the court system.

The traditional among the Akans follows a well-established hierarchical structure which makes it to easier to understand the seniority of the adjudicators involved in presiding over the cases. The hierarchical structure represents a democratic and fair way of resolving conflicts. The traditional court, the main seat of authority, among the Akans, consists of the chief, his elders, the queen mother and the linguist. The elders represent all the people in the division. The Akans believe in democratic rule based on consultation, open discussion, consensus building and coalitions. The composition of the traditional authority also demonstrates the Akan notion of participatory democracy (Okrah, 2003).

Source: Kendie and Guri (2006)

Figure 2: The Hierarchy of the traditional Court System among the Akans of Ghana

The traditional court is an autonomous body among the Akans people which is very much respected and in most cases its decisions are final. Once a matter is presented to the courts the chiefs do not have authority to withdraw it to settle at their own courts. However, cases presented before the customary courts can be transferred to the magistrate's court if one party chooses.

It is also worth noting that Conflicts may be solved directly by the chief, his elders or actors selected by any of the parties. The process, according to Okrah (2003), may include, arbitration, mediation and conciliation. The common cases that are presided over by traditional authorities includes conflicts over land, and other property. All land cases are referred to the chief's court since the chief is the custodian of the land and its boundaries. All cases that are reported to the chief but not withdrawn for mediation go through the formal process of conflict resolution at the chief's court (Kwaku and Morena).

2.6.3. The Tradition Court System in Rwanda

The studies done on the Rwandan genocide also provide another learning point in this study. The Gacaca traditional courts came in to be handy in bringing the people of Rwanda together. The 1994 genocide was negative development that led to almost one million people to lose their lives. In his thesis Rwanda Gacaca traditional courts: an alternative solution for post-genocide justice and national reconciliation. Butera (2005) postulates that "After the Rwandan genocide, which occurred between April and July 1994, Rwanda was a totally destroyed country. The painful legacies of that tragedy are a million people dead, legions of traumatized survivors, shattered social structures, and thousands of suspects in prison."

The situation at that time posed tough challenges for the Government of Rwanda. Shonhiwa (2015) remarked that, "First, in order to bring peace, stability and harmony, justice must be done" Butera also lamented that unless there is law, and unless there is an impartial tribunal to administer the law, no man can be really free" However it was challenging and difficult because there was an acute shortage of legal staff either because they were killed, or because they were in prison or in exile.

In a traditional trial, there was no winner or loser. Everybody had to feel that he was not only gaining, but also losing. However, the family was always the winner because the decision would result in reconciliation. There was always an obligation to tell the truth, as illustrated by the Rwandan saying/principle: "*aho kuryamira ukuri waryamira ubugi bw'intorezo*"

meaning literally that, instead of hiding the truth, one would rather be beheaded. The constant focus on finding a conciliatory judgment required the traditional judges to favour socialization in lieu of punishment.

The literature on the Gacca Traditional courts suits well in this study because it gives us an insight of how traditional courts can be modernised to suit the current happenings like they were transformed in Rwanda to address the issue of the genocide. Baguma (2003), says that, The Rwandan Parliament passed the Organic Law 40/2000 in December, 2000, usually referred to as the Gacaca law. This law established nearly 11,000 Gacaca jurisdictions and empowered them to try genocide related suspects. Amended in 2004, the new Organic law, number 16/2004 of 19 June, 2004."

The Gacaca courts is believed to have been highly participatory, giving the survivors, the offenders and the community as a whole a real voice in finding a lasting solution. The fact that they implement sentences that did not necessarily require prison effectively reduces prison overcrowding and may allow prison budget allocations to be diverted towards social development purposes. This will allow the offender to continue to contribute to the economy and to pay compensation to the victims. It also prevents the economic and social dislocation of the family. The expenses of Rwanda's prisons cost the government more than USD $20 million per year. Finally, Gacaca courts revive traditional forms of dispensing justice based on Rwandan culture.

2.6.4. The Traditional Court System in Zambia

The literature by various scholars in Zambia provides a good learning point especially for this particular study. Traditional courts have existed from time immemorial and have presided over quiet a number of cases. Silungwe (1993), in her obligatory essay titled, "Court delays in the administration of justice: the need to maximise the use of alternative methods of dispute resolution. In her study there is a call for the introduction of alternative methods of conflict resolution which needs to be maximised so as to supplement the work or the convention court systems.

In Zambia there has been a backlog of cases hence there is enormous congestion in court which results in inordinate delays in the administration of justice. It is worth noting that traditional court system was so prominent and pronounced during the pre-colonial period. Silungwe (1993), states that, "during the pre-colonial various tribal or communities in Zambia

dispensed justice through apparatus of the village administration." The justice system at the time was the traditions of the substantive law was the traditions of those societies. Justice was administered by elders, village headmen, counsellors, chiefs and kings who acted as adjudicators, the lowest being convened by an elder and the highest king (Hover, 990).

It must be understood that the characteristics of indigenous judicial system have not changed much: in the pre-colonial era the justice system were simple and informal procedure. Kwaku (2000), "The main emphasis and focus was compensation rather than punishment, peleable, reconstitution, mediation and in some cases arbitration were the other feature." The major objective of a traditional court system was and is still the preservative of the relationship that existed hitherto.

The case of Zambia is not different from the experiences of other Africa countries in as far as traditional system is concerned. The colonisation of Africa in general and Zambia in particular ushered in new institution for dispute settlement. Silavwe (1993) postulates that, "In Zambia the British brought with them the Anglo Saxon common law system." Though there was an introduction of English common law the British allowed the indigenous judicial system to remain in place though the courts were renamed Native courts.

However, the native courts were inferior the newly introduced adversarial court system and native customs that were considered repugnant to natural justice and morality were outlawed. The change that came about meant dispute settlement mechanism continued to prosper within the indigenous judicial process. The chiefs continued performing certain administrative roots like presiding over minor offences. According to Chibomba (1993), "the chiefs were responsible for the apprehension of criminals and also assisted in the collection of taxes and great variety of duties."

The operations of the traditional courts which were commonly called Native Courts is somehow similar to the way they operate in the modern times. In 1929 the native courts ordinance stipulated the hierarchical structure of traditional courts. Hover (1990) quoting the 1929 native courts ordinance, "Native Shall consist of such chief, headmen, elder or council of elders in the are assigned to it as the governor may direct" The system did not elaborate on the jurisdiction of the courts and there was no established system of appeal from the native courts. This is almost what is obtaining in the modern era, there is no clear established.

2.7 Identified research Gap

From the various literatures consulted, a number of researchers generally researched on the traditional court system particularly the historical aspect of them and the different roles they play. However, there was not much information on the effectiveness of traditional courts in resolving conflicts, particularly in Chief Chitimukulu and Munkonge Chiefdom of Zambia's Northern Province.hence, the importance of the need to conduct the current research.

2.8 Summary

This chapter presented the literature review on the existence of the traditional courts in Africa. The chapter explicitly explored the meaning of traditional courts and highlighted a brief History of traditional court system around the continent of Africa. It further analysed the specific traditional court system which includes the Igbo of Nigeria and the Gacaca traditional court system of Rwanda. A discussion on specific cases that have been presided over by traditional courts was presented. The later part of the chapter presented the effectiveness of traditional court system and the review of related literature which specifically looked at Rwanda, Malawi, Kenya, Namibia and Zambia. The chapter concludes with an identification of the research gap to be filled by this study. The next chapter is a presentation of research Methodology of the study.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Overview

The last chapter was a review of the related literature to the current study. This chapter looks at the methodology adopted in the research. It describes the research design, target population, the sample size, the sampling procedures and the research instruments to be used. It goes further to describes the data collection procedures and how the data collected was processed and analysed in order to arrive at the overall goal of the study. Furthermore, it tackled the aspect of ethical considerations there were observed during the process of data collection.

3.1 Research Design

Research design is a plan on how the study was conducted or a detailed outline of how an investigation was undertaken. According to Gosh (2004:34), "a research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance with the research purpose, it is a conceptual structure within which research is conducted." It can also be explained as a plan of the proposed research work. Kothari (2004:52) defines a research design as, "the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose."

For the purpose of achieving the objectives of this study, the researcher chose to use qualitative research design. Qualitative research according to Ng'andu (2014:4), "aims to gather an in depth understating of human behaviour and the reasons that preside over such behaviour. It investigates the "why" and "how" of decision making, not merely the "what" "where" and when." A case study was utilised in this study. Kombo (2013:14), states that, "the term case study refers to both a method of analysis and a specific research design for examining a problem, both of which are used in most circumstances to generalize across populations." A case study focuses at providing an in-depth analysis of phenomena. In in this research a variety of people were engaged in the research to examine the effectiveness of the traditional court system in conflict resolution in chief Chitimukulu chiefdom and Munkonge chiefdom of Zambia's Northern Province. This type of design was used to get people's attitudes and opinions on the issues raised above. The case study approach has considerable advantage in generating the answers. The design is valuable since it is used to narrow down a broad field of research. This research design helped the researcher to construct questions that

helped to solicit for the desired information in carrying out the research and summarize the data in a way that provided the desired information.

3.2 Target Population

The target population were the Chiefs of the two chiefdoms, the subjects of the two chiefdoms, the headmen and members of the royal establishment.

3.3 Sample Size

The sample size was 36 whose composition was as follows: two chiefs from the two chiefdoms, 20 subjects, 10 from each chiefdom (5 males and 5 females), 10 village heads, five from each of the two chiefdoms and 4 members of the royal establishment, two from each of the two chiefdoms targeted.

Table 1: Details of the sample composition

Sample Segment	Size
Paramount Chief Chtitmukulu	1
Senior Chief Mwamba	1
Members of the Royal Establishment	4
Village Headmen	10
Male subjects	10
Female subjects	10
Total	36

3.4 Sampling Procedure

The respondents were the two royal highnesses: Chief Chitimukulu and Senior Chief Munkonge, 20 subjects, 10 from each chiefdom, 10 village heads, five from each of the two chiefdoms and 4 members of the royal establishment, two from each of the two Chiefdoms targeted. The researcher used purposive sampling. Purposive sampling method refers to a type of non-probability sampling in which the units to be observed are selected on the basis of the researcher's judgment about which ones will be the most useful or representative (De Vos,2005). The type of purposive sampling that was used was extreme which is a form purposive sampling which looks at the study of an outlier case of one that displays an extreme characteristic. Purposive sampling was best suited because the study it involved studying the entire population of some limited group or a subset of a population.

3.5 Research instruments

In this research Interviews and focus group discussions are the instruments which will be employed. The researcher will specifically use semi- structured interviews to collect data from the Chiefs, village heads, members of the royal establishment as well as the subjects. Focus group discussions will be conducted with the subjects of Chief Chitimukulu Chiefdom and Chief Munkonge Chiefdom. The semi-structured interviews are the most preferred by many researchers because questions can be prepared ahead of time. Sem-structured interviews involve a series of open ended questions. Open ended question helps the interviewer to probe the interviewee to elaborate on the original response or to follow a line of inquiry introduced introduce by the interviewee. Semi structured interviews also has another advantage over other forms of interviews as it is fairly informal which makes the interviewee feel as though they are just participating in a conversation or discussion rather than in a formal question and answer situation. The other strength of this method of collecting data is that the Interviews allows and accords informants the freedom to express their views in their own terms. Interviews can also provide reliable, comparable qualitative data. ((Mugenda and Mugenda, 1999).

3.6 Data Analysis

Data analysis is the process of systematically applying logical techniques to describe and illustrate, condense and recap, and evaluate data. It is a practice in which raw data is ordered and organised so that useful information can be extracted from it (Smith, 2003). This is an important and crucial stage in the field of research.

For this research, data was analysed qualitatively as the semi structured interviews and focus group discussions were used as data collection instruments. Qualitative thematic approach was used, in which data analysis started with the categorization of themes from the semi structured interviews. Processing of data required that each question was answered correctly and accurately, so that there would be uniformity in the manner in which data would interpreted. The information that was gathered was transformed into tables or figures and percentages as responses from respondents were numerical variables were needed.

In accordance with the academic research principles, the researcher had to read the interview manuscript as a measure to obtain a thorough understanding of the responses from the participants. According to White (2002:287), “qualitative research requires logical reasoning

and it makes considerable use of inductive reasoning, organising the data into categories and identifying patterns among such categories." In order to arrive at desired goals and achieve research objectives, the processing of data in this study will be done by developing the code book from the raw information, a table will be made to account for the number of people who will give certain peculiar responses like 'yes' and 'no' answers to the questions. The other responses will have to be developed in the graph form. Charts and graphs are important tools that are used to analyse data.

3.7 Ethical Considerations

Qualitative research has inherent difficulties which can only be alleviated by awareness of the pertinent ethical issues. Paying particular attention to well established ethical principles, specifically autonomy, beneficence and confidentiality, privacy, no harm and justice.

For this particular research, the researcher at all costs avoided putting pressure on the respondents who took part in the research. It was for this reason that permission and consents were sought from the respondents who took part in this research. The respondents participated in the research out of their own will and conviction. Consequently, there was order in soliciting for the information from the respondents in this research. However, they were at liberty to either agree to take part or decline.

In this research the principle of beneficence and confidentiality was observed. This principle implied doing good for others and preventing harm. It was also incumbent upon the researcher to ensure that there was no any form of harm (be it psychological or physical) experienced by the respondents due to their participation in the research. There was no harm that was experienced because the researcher ensured that no such thing happened in the research. It is also worth noting that the research topic was carefully selected because the researcher scrutinised and examined the research topic so that it did not pose any harm to the research respondents.

The researcher was also duty bound to ensure that the right to privacy was very much observed, preserved and respected. The researcher was fully conscious of the need to pay particular attention to the ethical rules of respecting the privacy of individuals taking part in the research. It is in this vain that all thoughts associated with the researcher were totally for private and not for public consumption. That simply meant that whatever data was collected is solely be for academic purposes. This is in a bid to ensure that there is respect for the

privacy of all individuals who will offer themselves to participate in the research. Their names, locations and positions have not been disclosed to anyone apart from the purpose to which it is intended, all the respondents of the research remain unidentified to the public as all their valuable views, opinions and perceptions were only known by the researcher for use only in the research and participant's identities will forever remain hidden to the public eye. The protection of participant's identities also applies to publications. The participants were told how results will be published.

It is also worth mentioning that the researcher ensured that the principle of justice was adhered to. The principle of justice refers to equal share and fairness. The researcher ensured that all forms of exploitation on and abuse of participants is avoided. If at all during the time of analysis of date there will be need for the contribution of a particular participant, the researcher will request for permission to use such a concept or at least discuss the issue with participant. The researcher was also receptive to listening to the voices of the minority and the disadvantaged individuals and groups as well as protecting those who were are most vulnerable such as the physically challenged, disabled and elderly.

3.8 Summary

This chapter presented the research design and methods that were employed in the study. The chapter made a clarification and justification for the research design and methods that were used to collect data in Chief Chitimukulu Chiefdom and Munkonge Chiefdom in Kasama district of Zambia's Northern Province. It also focused on the methods of data analysis and the aspect of ethical considerations.

CHAPTER FOUR

PRESENTATION OF FINDINGS

4.0. Overview

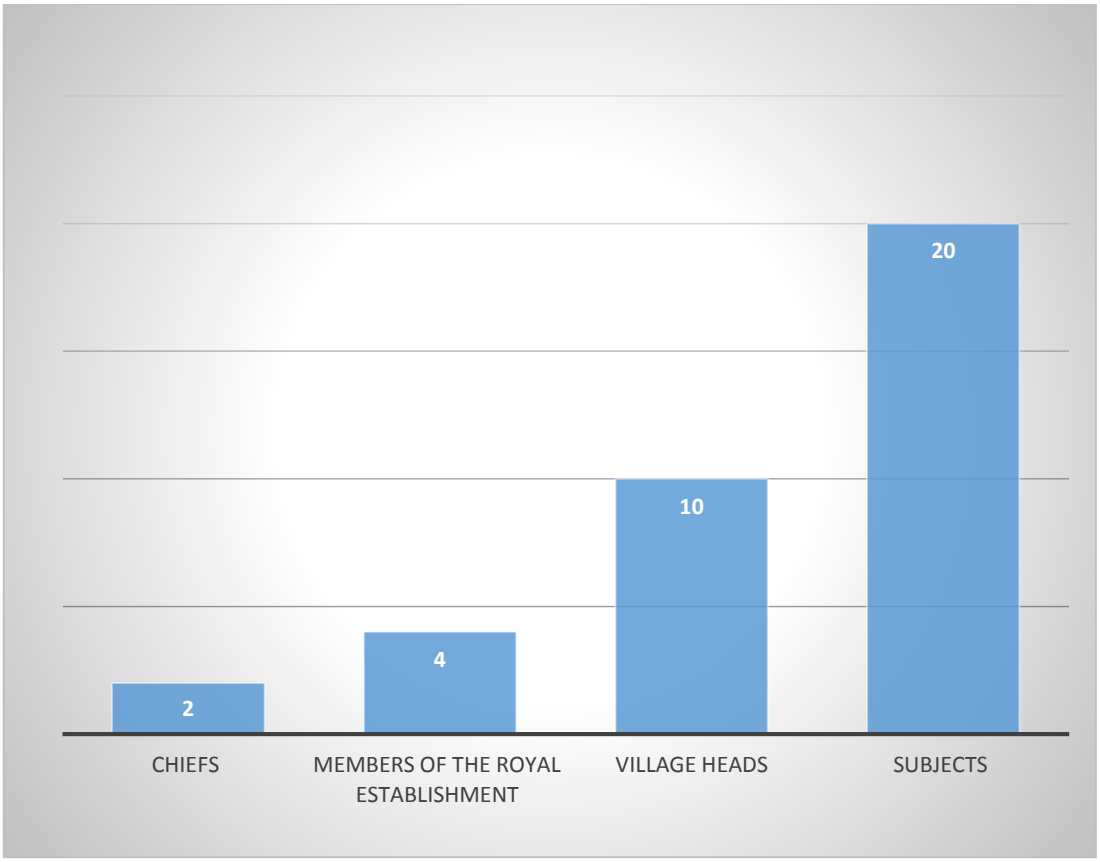
The preceding chapter was a presentation of the research methodology used in the study. This chapter presents the findings of the study based on the objectives. The overall focus of the study was to investigate the effectiveness of the traditional court system in Chief Chitimukulu and Munkonge Chiefdoms in conflict resolution.

4.1. Objectives of the Study

The research was guided by the following objectives. The first objective was to 'identify the people that preside over traditional court cases in Chief Chitimukulu chiefdom and Munkonge Chiefdom of Zambia's Northern Province'. The second one was to 'determine specific cases which are taken before the traditional court system in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province'. The third one was to 'determine the process involved in the adjudication of traditional court cases in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province'. The fourth one was to 'ascertain the effectiveness of traditional courts in resolving conflicts in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province'.

4.2. Demographic Profile of Research Participants

This section presents the demographic profile of the participant. Demography of participants denotes the statistics relating to the people who took part in the research which are commonly referred to as participants/respondents. It is a composition of all the background information of the research participants deemed necessary and relevant to the study by the researcher. A research participant, informant or respondent is someone who is well grounded in the social phenomenon being studied and who is willing to provide information on it. The demographic representation of the participants was as follows: two (2) or 6 percent (6%) of the research was represented by the chiefs, four (4) or Eleven percent (11%) were Members of the Royal Establishment. Ten (10) or (27%) represents the village headmen and (20) or (56%) of the respondents were the subjects (men and women).

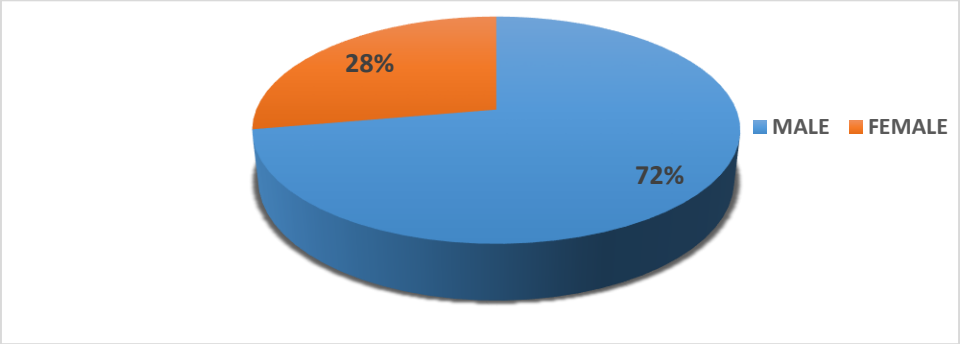


Source: Fieldwork (2018)

Figure 3: Showing research participants

4.2.1. Respondents by Gender

In order to get a fair an unbiased response from the participants the researcher made sure that the aspect of gender was considered. The number of males who participated in the research were 26 representing 72% of the respondents. Whereas the number of females who participated in the study was 10 representing 28 % of the total number of participants.

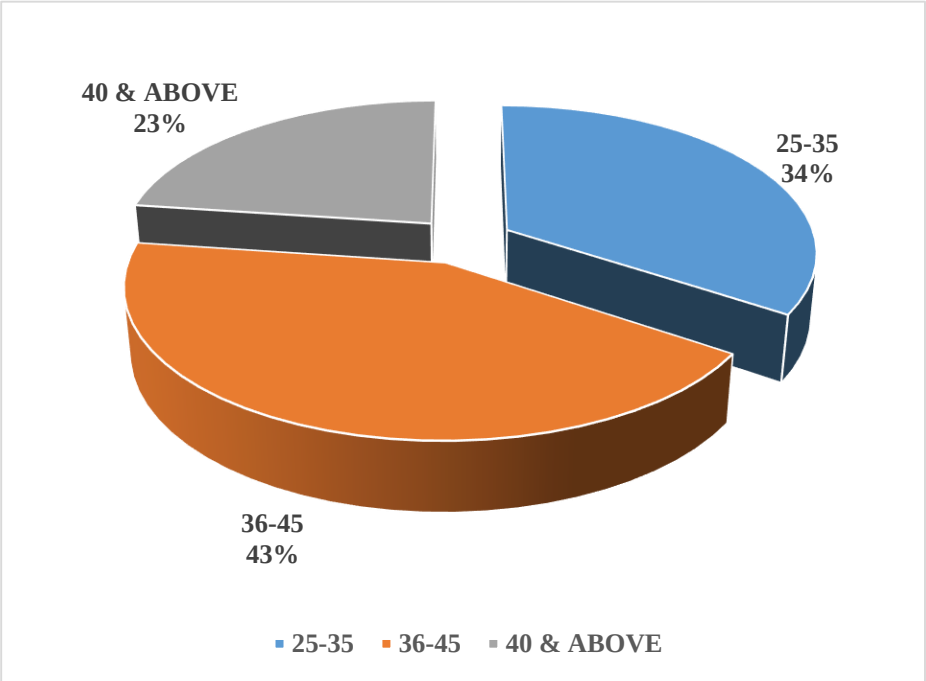


Source: Fieldwork (2018)

Figure 4: Showing Respondents by Gender

4.2.2. Respondents by Age

Thes study engaged 36 participants as shown in the figure 6.



Source: Fieldwork (2018)

Figure 5: Showing Respondents by Age

The study revealed that, among those who participated in the study, 12 or 34% of the respondents were between the ages of 25-35, 15 or 34% were between the ages of 36-45 and 8 or 34% were above the age of 40.

4.3 Findings from Semi- Structured Interviews

The semi- structured interviews with the Chiefs, Village headmen and members of the royal establishment of Chief Chitimukulu and Munkonge Chiefdoms were conducted in a conducive environment and the responses were given in accordance with the outlined themes that follow bellow:

4.3.1 The People Who Preside Over the Traditional Court Cases in Chief Chitimukulu and Munkonge Chiefdoms

The study needed to identify actors involved in the adjudication process of the traditional cases in the two chiefdoms. The study revealed that the traditional courts popularly known as Incenje in Bemba exist in the two chiefdoms and the people who preside over the court cases

is a group of counsellors locally known as “Bashi Cilye or Ba Nchenje.” In line with the findings Chief A stated that:

> *The traditional court system has been in existence from time immemorial. Those who preside over cases are appointed by the chief and there is no hierarchical seniority in the traditional court structure. They are all at the same level. I did that to avoid conflicts amongst them because some might just be interested in leadership positions”* (Chief A; Chiefdom 1; April, 2018).

In relation to the above Chief B pointed out that:

> *Though the counsellors presided over the cases brought before the court they were not the final authority in deciding the verdict. The chief endorsed or sealed the judgment* (Chief B; Chiefdom 2; April, 2018).

Source: Fieldwork (2018)

Picture 2: shows the traditional court sitting at Chiefdom ‘A’ during the adjudication process.

The study also as shown in picture 2 revealed that the composition of the council of elders who presided over the cases was not fixed. In chiefdom ‘B’ the composition was 20 and for Chiefdom A. the composition was 16. It was further revealed that the chief is the final authority in deciding the verdict of the case.

4.3.2 Specific Cases Taken Before Traditional Courts in Chief Chitimukulu and Munkonge Chiefdoms

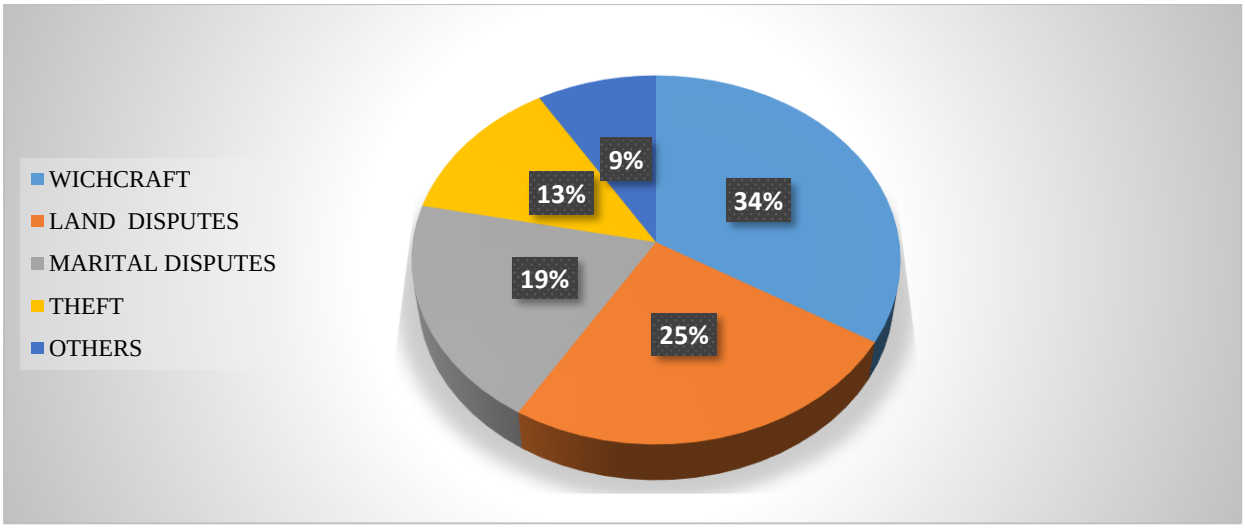
The study revealed that a variety of cases are handled by the traditional court system in Chief Chitimukulu and Munkonge chiefdoms. In line with this finding, these cases included: land disputes, witchcraft cases, marital disputes, theft and public nuisance cases. One Village headman said:

> *There are various cases brought before the courts the most common ones being land disputes, witchcraft cases, marital disputes, theft and public nuisance cases (vulgar language, insulting, fighting)* (Village headman 4; Chiefdom 2; April, 2018).

Still related to the finding above Chief A commented that:

> *Cases of a criminal nature like defilement, grievous bodily harm, murder, cultivation of drug crops may be reported to the chief but they are not tried in the traditional courts and in most instances they are reported to the police and the state judicial courts.* (Chief A; Chiefdom 1; April, 2018).

The data drawn from document analysis were in agreement with the data from interviews on the 'specific cases taken before traditional courts in Chief Chitimukulu and Munkonge Chiefdoms. However, a key concern of data from document analysis on the topic at hand is that it was able to provide the statistics of specific cases brought before the traditional courts in the two chiefdoms as indicated in figure 7 below.



Source: Fieldwork (2017)

Figure 6: **Showing Specific Cases Handled by the Traditional Courts in Chief Chitimukulu and Munkonge Chiefdoms (January - December 2017)**

It was also revealed by the study that not all cases were worth being heard or brought before the court, for instance cases based on petty thefts and marital disputes, and others of the same nature These were mostly dealt with by the village headmen. In line with this finding, Chief A stated that:

> *We have observed that not all the cases are worth the attention of the traditional court. Petty cases such as petty thefts and marital disputes are handled by the village headmen*

4.3.3. The Adjudication Process of the Tradition Court System in Chief Chitimukulu and Munkonge Chiefdoms

The research sought to ascertain the adjudication process of the tradition court system in Chief Chitimukulu and Munkonge Chiefdoms. The study revealed that the cases were reported to the chief through the chief returner who takes records of all the details and forwards the case to the council of elders (Ba Nchenje or Ba Shicilye) for adjudication. In relation to this finding Chief A asserted that:

> *The cases we handle are reported by the residents of the chiefdom. When something happens they come to report to the chief through the chief returner. The chief returner represents the chief and when the case is reported he records the details of the case and reports to the chief. The chief in turn forwards the case to the counsellors for adjudication. The appointed counsellors preside over the case before them after a lengthy deliberation. The verdict passed by the counsellors is subject to approval by the chief. The Counsellors preside over cases and forwards the judgment to the Chief for approval and judgement endorsement* (Chief A; Chiefdom 1; April, 2018).

Also related to research findings above, Chief B said that:

> *There are no established or codified standards of sentencing the offender or the wrong doer because the purpose is to bring about reconciliation and peace among or between the conflicting parties. However, those found peddling conflicts in the villages maybe given some form of punishment which the counsellors may deem fit depending on the magnitude of the cases. Those found guilty of such offences like insulting, theft they are given to do manual work which may include cleaning the chief's palace for a specified period of time. Whilst others are given to plough a portion of the chief's farm and the practice is commonly known as "Kumulima Cipuba" translated as field for fools"* (Chief "B"; Chiefdom 2; May, 2018).

Linked to the research finding above Village headman 3 affirmed that:

> *In rare cases some people are chased from their villages and that only happens in some chiefdoms and not in all chiefdoms* (Village headman 3; Chiefdom 1; April, 2018).

4.3.4 Effectiveness of the Traditional Court system in Conflict Resolution in Chief Chitimukulu and Munkonge Chiefdoms

On the effectiveness of the traditional courts in resolving conflicts, the study revealed that the traditional courts were very effective in fulfilling that mandate. It was revealed that there were no instances where they reached a dead end and failed to handle any case.

Relating to this research finding Chief A affirmed that:

> *We live with the people and understand them because we know their behaviour so we can't fail to a judge any case* (Chief A; Chiefdom 1; April, 2018).

In support of the findings above one Village Headman said that:

> *If the counsellors fail to handle the case because of the complexities involved in resolving the matter, they usually adjourn to wait for the presence of the Chief. This is in a bid to ensure that justice prevails* (Village headman 7; Chiefdom 1; April, 2018).

The Study further revealed that the traditional courts were more effective in resolving conflicts because the aim of resolving the conflicts was for reconciliatory purposes and restorative justice. In stressing this aspect Chief, A stated that:

> *The traditional courts do not impose fines on the people but cases end in reconciling the conflicting parties*: *Our courts are able to dispose off cases well because our major emphasis is on reconciliation each and every time when there is an interpersonal conflict. When you ask the wrong doer to pay the complainant or to the court that person will remain harbouring hurt and resentment and that will not address the issue. The charging of fines is a preserve of state judicial courts, because we are not assessors and we do not have a standardised forms of instituting fines* (Chief A; Chiefdom 1; April, 2018).

4.4. Findings from the Focus Group Discussions

The focus group discussions with male, female subjects of the Chief Chitimukulu and Munkonge Chiefdoms were conducted in a conducive environment and the responses were given in response to the outlined themes that follow bellow:

4.4.1. The people who preside over the traditional court cases in Chief Chitimukulu and Munkonge Chiefdoms

The study revealed that the traditional courts popularly known as 'Incenje' in local language (Bemba) were in existence and fully operational in Chief Chitimukulu and Munkonge Chiefdoms. The people who preside over the court cases is a group of counsellors appointed by the chief. One subject said:

> *The traditional court system is in existence. Those who preside over cases are appointed by the chief* (Participant 4; FGD 2; April, 2018).

4.4.2. Specific Cases taken before the traditional Courts in Chief Chitimukulu and Munkonge Chiefdoms

The study revealed that a variety of cases are presided over by the traditional court system in Chief Chitimukulu and Munkonge chiefdoms. In line with this finding The major cases included: land disputes, witchcraft cases, marital disputes, theft and public nuisance cases One subject stated that:

> *Many types of cases are brought before the courts, the most common ones are land disputes, witchcraft cases, marital disputes, theft and public nuisance cases (vulgar language, insulting, fighting)* (Participant 3 FGD 2; April, 2018).

4.4.3. The Adjudication process of the traditional Court system in Chief Chitimukulu and Munkonge Chiefdoms

The study revealed that are presided over by the traditional courts were reported to the chief through the chief returner who has been charged with the responsibility of taking records of all the details and forwards the case to the council of elders for adjudication. In relation to this finding One subject said that:

> *Whoever is aggrieved reports the matter to the chief through the chief returner who takes records off all the necessary details. The chief returner is the representative of the chief. When the case reaches the counsellors we are summoned to the palace. The Counsellors preside over cases and forwards the judgment to the Chief for approval and judgement endorsement* (Participant 9; FGD 2; April, 2018).

4.4.4. Effectiveness of the Traditional Court System in Chief Chitimukulu and Munkonge Chiefdoms

The study revealed that the traditional courts were very effective in fulfilling in conflict resolution. In emphasising the effectiveness of the traditional court system in conflict resolution one participant said:

> *All the cases that come before the court are recorded in a book for future reference and for the purpose of transparency* (Participant 4; FGD 2; May, 2018).

During focus group discussion, it was revealed that in instances where the court failed to handle the case an appeal was made to the chief who in turn scrutinised the case and made further adjustment to the verdict. Sometimes the chief recommends that the case be taken to the local court especially cases that involve fines and awards.

In relation to this study revelations one woman said:

> *Sometimes they refer us to the local court or magistrate court for redress depending on the magnitude of the case* (Participant 10; FGD 1; April, 2018).

In line with the finding above, one man said:

> *The Traditional courts were very important because they promote peace and emphasises reconciliation"* (Participant 13; FGD 2; May, 2018).

The Study further revealed that though some participants had never taken a case they had witnessed a number of sessions where people appeared before the court and the cases were handled amicably. In support of the research findings one participant said:

> *I have never taken a case to the traditional court nor appearing there but what I know is that the court is very fair and effective in resolving the conflicts in the chiefdom.* (Participant 6; FGD 1; April, 2018).

In support of the above findings one participant stressed the effectiveness of the traditional in resolving conflicts:

> *We are satisfied with the judgement most of the time because our problems are solved*. (Participant 8; FGD 1; April, 2018).

It was further revealed during the study that just like any other system the traditional court system was not devoid of weaknesses which at times affects and compromises the

effectiveness of traditional courts in resolving conflicts. This was especially cases to do with witchcraft. One participant stated that:

> *Sometimes witchcraft cases are not proven beyond reasonable doubt and someone is ordered to leave the village and yet it is just out of hatred and malice that they are reported to the court.* (Participant 19; FGD2; April, 2018).

4.5 Summary

In brief the chapter presented the data collected during the research which was in line with the objectives of the study. The first research objective was on people who preside over cases in the traditional courts. The second objective was on the types of court cases that come before the courts whereas the third objective was on the process involved in the adjudication of cases and the fourth and last objective was on ascertaining the effectiveness of traditional court in conflict resolution. The data was presented thematically in line with the research objectives. The next chapter will discuss the findings of the research

CHAPTER FIVE

DISCUSSION OF FINDINGS

5.0. Overview

The Chapter discusses the research findings with special reference to the set objectives in Chapter one of this document. The findings discussed in this chapter are guided by the specific objectives as itemised in chapter one. The order is as follows: To identify the people that preside over traditional court cases, to determine specific cases which are taken before the traditional court system, to determine the process involved in the adjudication of traditional court cases, and last but not the least to ascertain the effectiveness of traditional courts in resolving conflicts in Chief Chitimukulu Chiefdom and Munkonge Chiefdom of Zambia's Northern Province. The chapter will close with a summary.

5.1 The People Who Preside Over the Traditional Court Cases in Chief Chitimukulu and Munkonge Chiefdoms

It is worth noting that the traditional court system has existed from time immemorial in the two chiefdoms and are still in existence. The two chiefdoms understudy Chief Chitimukulu and Chief Munkonge chiefdoms, the traditional courts commonly known as "Incenje" are fully operational. The courts are in existence despite the introduction of state judicial courts in the area because of the distinct and pivotal role they play in strengthening cultural norms and resolving conflicts in a traditional set up.

The study revealed that the courts are presided over by a group of counsellors and elders locally known as "Ba Nchenje" or "Ba Shicilye". This group of counsellors and elders is appointed by the chief. The appointment of the counsellor is strictly a preserve of the chief and that role cannot be delegated to anyone. The aspect of experience is one standard measure that is used in appointing the people to serve as counsellor. In the case of chief Munkonge, the current court was appointed by the grandfather who served as Senior Chief Munkonge before him. He only appointed two counsellors to replace those that had died. Both Paramount Chief Chitimukulu and senior Chief Mwamba remarked that there was no standardised composition for the counsellors that's why there were disparities between the two chiefdoms. This is similar to the study carried in Rwanda about the Gacaca were only elders are appointed to serve as adjudicators in the traditional court. Butera (2005) states that:

> In relation to the Gacaca system in Rwanda, it is reported that the initial conflict and problem resolvers were the headmen of the lineages or the eldest male or patriarchs of families who resolved conflicts by sitting on the grass together to settle disputes through restoration of social harmony, seeking truth, punishing perpetrators and compensating victims through gifts

In Munkonge Chiefdom the number of counsellors were 16 whist in Chief Chitimukulu the number was 20. Chief Munkonge disclosed that there was no prescribed term of office for the counsellors and there was no hierarchy in terms of seniority among the counsellors. Those who preside over cases are appointed by the chief and there is no hierarchical seniority in the traditional court structure. They are all at the same level. That is done to avoid conflicts amongst them because some might just be interested in leadership positions.

It is worth noting that having no prescribed term of office and no hierarchy of seniority was a deliberate effort to cement and ensure their impartiality in dispensing cases brought before the court. As the chief remarked when positions are created amongst them that in itself is a recipe for malpractice and conflict. They serve on an equal platform and they all report to the chief hence avoiding unnecessary red tape. As long as that was maintained and practiced, effectiveness of traditional courts system will always be guaranteed.

There was also a justification for maintaining a large group to serve as adjudicators because sometimes they are required to try cases in surrounding areas. Time and again the chief assigns them to resolve conflicts in various parts of the chiefdom. This decentralised system of presiding over cases in the chiefdoms has helped to handle cases quickly and speedily because the group can be divided and sent to different places depending on the magnitude and the urgency of the matter at hand.

Having a distinct group to preside over cases at the traditional court who are chosen among the general populous justifies the theoretical perspective of the study. Structural functionalist theory emphasises social inequality. Social inequality refers to a scenario in which individuals in a society do not have equal status. Robert (2006) states that:

> "Functionalism as a theory assumes, since inequality exists, there need to be a certain level of inequality in order for a society to operate. One possible function is to motivate people, as people are motivated to carry out work through reward system. Rewards may include income, status, prestige or power".

The people who are appointed to preside over case in a traditional setup feel honoured hence they consider that as a reward and are able to work though there may not be any emoluments for what they do.

5.2 Specific Case Taken Before Traditional Courts in Chief Chitimukulu and Munkonge Chiefdoms

Traditional courts are part of the structure of the traditions and culture of people even the cases that are taken before it has a cultural inclination. The study revealed that there were numerous cases that were tried, among the notable ones included: witchcraft, land disputes, marital issues, theft and other cases like insulting and fighting constituted a smaller percentage. Witchcraft constituted a larger fraction of cases heard at the traditional courts because they cannot be proven beyond reasonable doubt when taken to the conventional courts. Chief Munkonge had even entered into an agreement with the police and the local court in the area that such cases should start with the traditional court at the palace before they can be taken anywhere for redress. There are several instances when cases of witchcraft were reported to the police then the police would call me when they failed to resolve the conflicts. On several occasions the chief has been on record why should you want handle cases that you can't prove beyond reasonable doubt it means you are also not wise. The handling of witchcraft cases by the traditional courts to some degree helps to reconcile the conflicting parties. Usually the balance of probability is employed in trying such cases and statistics shows such cases have always been resolved amicably with the aggrieved parties coming to terms and reconciling without any further problems.

The research also revealed that cases of a criminal nature such as murder, manslaughter, defilements and rape were not tried in the traditional court. This was because those are cases that are committed against the state and fall in category of felonies (very serious offences). These findings are at variance with the operations of the traditional courts system in other communities were similar studies have been carried out. For instance, the Gacaca Traditional court system in Rwanda had no exceptions when it came to hearing of cases. Whether criminal or civil in nature all cases were handled. According to Kariuki (2014), "After the Rwanda Genocide, the Rwandan Government institutionalized Gacaca courts as a means to obtain justice and deal with a majority of the genocide cases that the formal Courts and International Criminal Tribunal for Rwanda (ICTR) could not handle"

However, the chiefs and the members of the royal establishment revealed that not all cases were worth being heard or brought before the court for instance marital disputes, petty thefts. These were mostly dealt with by the village heads the reason being that the village heads were better placed to handle the matters because they were closer to the people than the counsellors and the chiefs. Only in instances where they failed to handle the matter that's when they would refer it to the traditional court.

Different cases are handled by traditional courts because such wrong doings are considered to be a danger to the wellbeing of society. Structural functionalism which the theoretical guide of this study emphasises the aspect of equilibrium which in social context, is the internal and external balance in a society (Hoffman, 2009). Disturbances in a society may upset the equilibrium of society hence the need for the traditional courts to address a variety of cases that may come before it so as to maintain harmony in society.

5.3 Adjudication Process of Tradition Court System in Chief Chitimukulu and Munkonge Chiefdoms

The purpose of this study was to find out the effectiveness of traditional courts in resolving conflicts hence it was imperative to look at the adjudication process in order to ascertain the efficiency of the courts. The participants who took part in the study revealed that the cases are reported to the "Inchenje" (court) through the chief returner who takes records of all the details and forwards the case to the council of elders (Ba Nchenje or Ba shicilye). During the adjudication process the chief is not among the team of councillors who presides over cases but he sits at the palace waiting to receive reports from the elders. In short the Counsellors preside over cases and forwards the judgment to the Chief for approval and judgement endorsement. The adjudication process is similar to the one instituted by the Acholi people of Uganda. According to Baguma (2012):

> When a conflict arises between neighbours or when a dispute cannot be solved within a family, people usually seek advice immediately from one of the invested Bashingantahe on their hill. Depending on the urgency of the case, this Mushingantahe will convene a meeting of the council on a specified day and time at an outdo or public place.

The study also revealed that there were no established and codified standards of sentencing the offender or the wrong doer because the purpose was to bring about reconciliation and peace among or between the conflicting parties. This system of putting emphasis on the

aspect of reconciliation is what renders the traditional courts indispensable in resolving conflicts in a traditional setting.

However, the chiefs revealed that those found peddling conflicts in the villages sometimes were given some form of punishment which the counsellors deemed fit depending on the magnitude of the cases. Those found guilty of such offences like insulting, theft was given to do manual work which may include cleaning the chief's palace for a specified period of time. Whilst others are given to plough a portion of the chief's farm and the practice is commonly known as "Ku mulima Cipuba '*translated as farm for fools*'. In rare cases some people are forced to leave the village and that only happens in Chief Munkonge's chiefdom and not in Chief Chtimukulu's Chiefdom.

The institution of light punishment to the offenders is very much adhered to because all those found on the wrong side of the norms of society are able to abide and work as instructed. By doing so law and order is kept in the villages because people are afraid of being humiliated publicly hence peace is maintained in the chiefdom.

In certain instances, some cases are referred to the local courts for redress. This practice is also common in Burundi under the Bushingantahe community justice system. Bernard (2013) asserts that, "In many situations we observed during our fieldwork, conflicts could not be contained effectively by the invested notables and their decisions were contested before the local courts" This practice ensures that people who appear before the courts are accorded a fair trial and creates a link between the state judicial courts and the traditional courts.

The adjudication process in a traditional court system involves various stages and personalities who deal with the perceived wrongful acts in society. This process depicts how society responds to deviances as articulated by the structural functionalist theory. Giddens (2010:435) states that, "a deviant individual commits an act that is deemed by the rest of society as criminal, because it leads to public outrage and punishments". The process in a traditional court system shows the importance of social cohesion. The higher the level of integration between intermediate groups, the more cohesive society will be as a whole. The absence of social cohesion can result in greater violence toward others and oneself.

5.4 Effectiveness of The Traditional Courts in Conflict Resolution in Chief Chitimukulu and Munkonge Chiefdoms

The study revealed that the traditional courts were effective in resolving conflicts. The larger number of the participants, chiefs inclusive narrated that the traditional courts were very effective in the sense that there had never been instances or situations when and where they reached a stalemate. It was also revealed that the traditional court system had never failed to handle any cases, as the people who preside over cases live with the people and understand them because they know their behaviour. What the study revealed confirms the effectiveness of traditional courts as the case maybe in other countries. This makes the traditional courts an indispensable structure in making society completed. This resonates well with the theory of structural functionalism which stresses attempts to explain why society functions the way it does by focusing on the relationships between the various social institutions that make up society for instance, government, law, education and religion. Hence the need to strengthen traditional courts as part of society and whose distinct roles and functions can supplement the functions of other social institutions (Robert: 2006).

It was mentioned that if at all counsellors were unable to handle the matter the counsellors refer such cases to the chief to resolve the matter. This in itself helps to make the court effective because it ensures that there are checks and balances.

As the Chinese saying postulates, 'the Palest ink is mightier than the finest memory'. The recording of all the cases brought before the court in a book for future reference, authenticates the adjudication process and ensures accountability and transparency in the disposing off of all the cases that come before the court. The practice of keeping records just like in the state judicial courts adjudication process makes it easy to keep an eye on those perpetual offenders and perpetrators of conflicts.

The study revealed that the traditional courts were an efficient system in resolving conflicts in the sense that the aim of resolving the conflict was to bring the parties together through reconciliation. This is in line with other findings in other countries where similar traditional courts exist. The case of Rwanda is in tandem with the research findings in Chief Chitimukulu and Munkonge Chiefdoms. Butera (2005) states that:

> In a traditional trial, there was no winner or loser. Everybody had to feel that he was not only gaining, but also losing. However, the family was always the winner because the decision would result in reconciliation. There was always an obligation to tell the truth, as

> illustrated by the Rwandan saying/principle: "*aho kuryamira ukuri waryamira ubugi bw'intorezo*" meaning literally that, instead of hiding the truth, one would rather be beheaded.

The study also revealed that the traditional courts are not in the practice of imposing fines or instituting reparations on the offenders or those found guilty. The major emphasis is premised on the aspect of reconciliation. This also in line with the findings in Rwanda. As Rautenebach (2003:17) asserts that, "The main aim of the Gacaca process was to ensure social harmony between lineages and social order throughout the Rwandan ethnicities".

The study also revealed that the practice of not fining and awarding damages to the wronged person serves society from further division and bickering amongst the subjects. This is also a common practice among the Acholi people of Uganda through the community justice system popularly known as Mato Oput. Though in some circumstance a small fine may be instituted, Radolphe (2009) aptly says, "The constant focus on finding a conciliatory judgment required the traditional judges to favour socialization in lieu of punishment. Most decisions involved affordable reparations being paid by one party to the other"

It was further alleged that there are situations and instances where some people are charged some amount of money. This has been cited as being detrimental to create a peaceful environment as it takes time for one to heal and will always be looking for an opportunity to revenge. Such practices lead to a divided and hostile society with people full of bitterness and anger. Not instituting heavy fines is a principle under which the community justice system is also founded in Burrundi. According, Bernard (2013), "Quite frequently, the Bashingantahe express themselves through proverbs and call for conciliation and mutual understanding" When a matter is resolved without making one a loser or a winner it contributes to the creation of a united, just and fair society.

However, from the group discussion, it was revealed that the traditional courts were not an efficient system for resolving conflicts. Some participants that the traditional courts were not effective and cited instances were justice was denied. This may not be peculiar to the traditional court systems in the afore mentioned chiefdoms in other societies similar systems exist. In Burundi for instance the community justice system has been condemned in some instances for irregularities in handling cases. Ibid aptly says, "In some places, the Bashingantahe were accused of being biased or even corrupt". There were similar concerns

about the effectiveness of the Gacaca traditional courts in Rwanda were the reconciliation and restorative justice were not embraced. A victim of the 1994 Genocide is quoted by Butera (2005) lamenting that:

> Put yourself in our place, someone raped you, and then you see him come back, a free man. Understand our fears, suppose one day he is drunk or you have a confrontation in public, then he starts bragging that he raped you, what then?

These are normal reactions of people who experienced a high degree of suffering and trauma during genocide. However, those feared confrontations may or may not happen, and are certainly not sufficient grounds to abandon the process. Even the divergent views of some participants may be acceptable but they may not necessarily dilute the effectiveness of traditional courts in resolving conflicts in the two chiefdoms.

5.5. Summary

The chapter discussed the findings in line with the research objectives. The first research objectives focused on the people who preside over cases brought before the traditional in Chitimukulu and Munkonge Chiefdom of Zambia's Northern Province. The adjudication process of the cases, the specific cases brought before the traditional courts and the effectiveness of traditional courts in resolving conflicts. The overall findings were that traditional courts are effective in resolving conflicts. The next chapter is the conclusion and presents the recommendations arrived at having undertaken this study.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.0 Overview

This chapter presents the summary of the findings of this study which employed a critical investigation on the adjudication process of traditional courts system, identification of people who preside over the court cases, ascertain the specific cases that are taken before the courts and explore effectiveness of traditional courts in conflict resolution in Chief Chitimukulu and Munkonge chiefdoms of Zambia's Northern Province. Therefore, this chapter endeavours to conclude the findings of the research and suggests some possible recommendations based on the study findings.

6.1. Conclusions of the Study

The study investigated the effectiveness of traditional courts in conflict resolution in chief Chitimukulu and Munkonge Chiefdom of Zambia's Northern Province. The target population were the Chiefs, members of the royal establishment, the village heads and the subjects. The study revealed that the traditional courts locally known as "Incenje" were fully operational in the two chiefdoms.

The study further revealed that the traditional courts have been in existence in the two chiefdoms since time immemorial and have presided and continue to preside over a number of cases. The traditional courts still exist in these chiefdoms despite the presence of a fully functional of State Judicial court in the area. It was discovered that there was no conflict of roles between the two categories of courts because their different and distinct roles complement each other in the resolution of conflicts. The study also revealed that some of the cases that were heard in the local courts started in the traditional courts.

It is worth noting that the study also revealed that the traditional courts are presided over by a group of counsellors locally known as "Ba chilye" or "Ba nchenje". The counsellors are appointed by the chief have no fixed term of office and there is no standardised composition in terms of gender and the number. The study also shows that is no bureaucratic structure for the counsellors who preside over cases they are all at the same level, this is in a bid to curb conflict among them and any malpractice. They all accountable to the chief who is the final authority in all the matters that are handled by the traditional court. It was also discovered that

the composition of the counsellors which constituted the panel of adjudicators was quiet big because sometimes the handling of the cases was decentralised in order to allow for speedy trial of cases. In some instances, the chiefs divide the group and sends them out to hear cases in far flung villages, this has helped to reduce on distances that the people have to travel to have their case heard at the traditional court.

The study also revealed that there are variety of cases that are brought before the traditional courts for redress. The most common ones being witchcraft cases, land disputes, marital disputes and theft. Cases of a criminal nature such as defilement, rape, murder and manslaughter are not tried in a traditional court, the reason being that they are serious omission and felonies that can only be handled by the judicial courts. However, it is worth noting that not all cases are accorded a hearing at the traditional court. The chiefs itemised some categories which in some instances are not worth the attention of the traditional courts, cases such as petty domestic differences are handled by the village heads. The reason being that the village heads are better placed to understand intricacies involved in such small issues.

The adjudication process of the traditional court system is not complex but simple one and doesn't have lengthy bureaucratic procedures like the state Judicial courts. Thus in a traditional court system cases are reported to the court through the Chief returner who takes record of the details of the case and forwards the case to the council of elders for consideration. The councillors preside over the case and once the verdict has been passed, the councillors forward the details of the judgement to the Chief for the approval and endorsement of the verdict. There are no set or established forms of sentences to be meted against those found guilty. Most cases end in reconciling the conflicting partners but there are very rare cases were physical punishment or fines or reparations are instituted.

The study also revealed that the traditional courts were effective in conflict resolution. The participants emphasised that the traditional courts were an efficient system in resolving conflicts in the sense that the aim of resolving the conflict was to bring the parties together through reconciliation. The study showed that the practice of not fining and awarding damages to the wronged person serves society from further division and bickering amongst the subjects. It was further indicated that situations and instances where some people where charged some amount of money compromised harmony in the community and led to hurt feelings and harbouring of grudges. It takes time for the person who had been made to pay to heal and

would always be looking for an opportunity to revenge. Hence, leading to a divided and hostile society with people full of bitterness and anger.

6.2 Recommendation of the Study

The following recommendations are made on the basis of the conclusions;

- There is need to strengthen the operations of the traditional courts through a legal framework. Through the House of Chiefs, the government can come up with a tentative policy to guide the operations of the traditional courts.
- The government should support the operations of the traditional courts; for example, construction of shelters for the courts as most of them operate in make shift structures
- There is need to create a link between traditional courts and the local courts so that they can complement each other in resolving conflicts because they deal with similar issues.
- There is need for workshops, seminars and short trainings for the counsellors who preside over cases. That will equip them with basic skills on how to handle cases in the traditional set up and have a better understanding of customary law.
- The dates for the sessions in a traditional court should be fixed so that there is no speculation about the sittings of the court.
- There is need to reform some sentences that are meted against those found guilty of practising witchcraft. Ordering them to leave the village does not help them to reform instead the problem is only transferred from one village to another.
- Local courts to serve as appellant courts for the traditional courts.

6.3 Recommendations for Further Research

The focus of the study was to investigate the effectiveness of traditional courts in conflict resolution in chief Chitimukulu and Munkonge Chiefdoms of Zambia's Northern Province. The study revealed enough information to justify the effectiveness of traditional courts in resolving conflicts. A number of gaps were noticed during the study and therefore some of the issues for future research may include:

- No research has been conducted in Northern Province regarding the effectiveness of traditional courts in conflict resolution. Before the study was conducted very little if not none was known about the effectiveness of traditional courts in conflict resolution. In order to mainstream these traditional courts into structures for conflict resolution there is need to carry out a nationwide research so as to ascertain their effectiveness in resolving conflicts. That will help in winning back the confidence of the people in resolving conflicts through traditional systems as the case was in Rwanda after the genocide. The Gacaca played a pivotal in trying the cases that would have taken even ten years if they were taken to the conventional courts.

- The nature of collaboration between the traditional court systems and the State Judicial courts in Zambia.
- Modernization and increased institutional recognition of the "Incenje" traditional courts is needed

- Traditional courts as viable alternatives for conflict resolution in the communities

6.4 Summary

The chapter looked at the conclusion of the study and presented the recommendations that would strengthen the operations of the traditional courts. It highlighted the major findings of the study which focused on the effectiveness of the traditional courts in conflict resolution. The chapter also presented recommendations for further research.

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APPENDICES

Appendix 1: Interview Schedule (Chief, Village heads and members of the royal Establishment)

Interview guide

RESEARCH TOPIC: Effectiveness of the traditional court system in conflict resolution: a case of chief Chitimukulu chiefdom and Munkonge chiefdom in Zambia's Northern Province.

PERSONAL INFORMATION

1. Gender Male ☐ Female ☐
2. Age Between 25 – 35 ☐ 36 – 45 ☐ 45 and Above ☐

Interview schedule for the Chiefs, members of the royal establishment and Village Heads

People who preside over cases

1. Do you have a traditional court in your area?
2. For how long have these traditional court systems been operational in your chiefdom?
3. What are the reasons why traditional courts still existing in your area despite having convention courts?
4. Name the people who preside over cases in these traditional courts
5. What is the composition of adjudicators in a traditional court system?
6. Who is the final authority in passing judgement or deciding a verdict?
7. Who appoints the adjudicators who preside over cases in these traditional court systems?

Cases taken to the traditional court

8. What are the common cases brought before the tradition courts which you preside over?
9. As a tradition leader, do you think all cases brought before traditional court are worth before the court?
10. As a traditional leader, do you have limitations on cases to handle at the traditional court?

Process involved in the adjudication of cases

11. Can you briefly explain the structure of a traditional court system?
12. Explain briefly the justice process or procedure of handling cases in a traditional court
13. Is there a standardised way of sentencing people found guilty?
14. What are some of the sentences that are meted against those who are found guilty?

Effectiveness of traditional court system

15. Do you face any challenges when handling cases?
16. What are some of the challenges faced in presiding over cases?
17. Is there any documentation that is done or records kept for all the cases that pass through the traditional court?
18. What do you do when the tradition court system fails to handle the case?
19. In your own view, do you think traditional court have been effective in dealing with various cases in your area,
20. If Yes, explain how effective the court is
21. If No explain why it is not effective and suggest ways of making traditional courts to be effective.

Appendix 2: Focus Group Discussion (For the Subjects)

RESEARCH TOPIC: Effectiveness of the traditional court system in conflict resolution: a case of chief Chitimukulu chiefdom and Munkonge chiefdom in Zambia's Northern Province.

PERSONAL INFORMATION

1. Gender Male ☐ Female ☐
2. Age Between 25 – 35 ☐ 36 – 45 ☐ 45 and Above ☐

Focus Group Discussion with the subjects

People who preside over cases

1. Please introduce yourselves
2. Do you have a traditional court in your area?
3. For how long have these traditional court systems been operational in your chiefdom?
4. What are the reasons why traditional courts still existing in your area despite having convention courts?
5. Name the people who preside over cases in these traditional courts
6. What is the composition of adjudicators in a traditional court system?
7. Who is the final authority in passing judgement or deciding a verdict?
8. Who appoints the adjudicators who preside over cases in these traditional court systems?

Cases taken to the traditional court

9. Have you ever taken a case to the traditional court? And if you have, what the common cases are taken to the traditional court.

Process involved in the adjudication of cases

10. If one wants to take a case to the traditional court, what is the process or procedure to be followed?
11. What is the process of adjudication of cases in a traditional court?
12. Is there a standardised way of sentencing people found guilty?
13. What are some of the sentences that are meted against those who are found guilty?

Effectiveness of traditional court system

14. Have you ever taken a case to the traditional court? If yes where you satisfied with the judgement?

15. Is there any documentation that is done or records kept for all the cases that pass through the traditional court?

16. What do you do when the tradition court system fails to handle the case to your satisfaction?

17. In your own view, do you think traditional court have been effective in dealing with various cases in your area,

18. If Yes, explain how effective the court is

19. If No explain why it is not effective and suggest ways of making traditional courts to be effective.