THE EFFECTIVENSS OF THE TRADITIONAL JUSTICE SYSTEM IN RESOLVING DISPUTES IN THREE CHIEFDOMS OF MONZE DISTRICT

By

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CERTIFICATE OF APPROVAL

This dissertation for Mateo Siang'ombe is approved as fulfilling part of the requirements for the award of the degree of Master of Science in Peace Leadership and Conflict Resolution by the University of Zambia and the Zimbabwe Open University.

Signature of Examiner	Date of Approval
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DEDICATION

To my Family and Friends, mother Joyce Muziki, uncle Costan Muziki, Beatrice Muziki, and my beloved wife Munsaka Chikuba, daughter Maluba and Mukuli. Lastly my brother and sisters

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First foremost, I would like to thank the Most High God up above for granting me good health and intellect to complete my studies. Secondly, I would wish to express my sincere thanks and gratitude to all people and institutions that rendered me help and made this study possible. My greatest thanks goes to Dr. Muleya G., the course coordinator (MSPL), to Mr Moonga A.L.H, my supervisor and mentor for sharing his knowledge and experience of research, and for always offering positive encouragement along with useful critique, assistance, encouragement and counsel throughout my study. I would like also to extend my sincere thanks to the staff at the Institute of Distance Education (IDE) for their unwavering support and encouragement. To Mr Mwanabike, Dr Moyo and Mrs Simuyaba, my sincere gratitude for your guidance and support and lastly Magistrate Sibaleya Chikuba who gave me legal information related to this topic. Special thanks go to the Chieftaincy Choongo who contributed posthumously through her special assistant Mr Maamba, may her soul rest in peace. His royal highness Hamusonde and Moonze for the knowledge and wisdom I gathered from their chiefdoms. Mr Sianzalu, the head teacher of my school and Mr Siamalumbe the HoD for Social Sciences for allowing me to leave the station during my studies. I also acknowledge the support of my fellow students who stood by my side and helped to refine my work. Last but not least, my appreciation goes to all the respondents for their willingness to freely share their views and made it possible for this work to yield fruits.

DECLARATION

I declare that THE EFFECTIVENESS OF THE TRADITIONAL JUSTICE SYSTEM IN THE RESOLUTION OF DISPUTES IN 3 CHIEFDOMS OF NONZE is my own work, that it has never been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

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ABSTRACT

The aim of this study was to assess the effectiveness of the Traditional Justice System in the resolution of disputes in three chiefdoms of Monze district. The research design used in this study was a mixed method design. This is a method that involves collecting, analyzing and integrating qualitative and quantitative data. The study was motivated by the perceived uncertainties in the effectiveness of traditional courts by certain sectors of society especially those in urban areas. This study design was anchored on the following objectives; to find out people's awareness regarding the way traditional courts resolve disputes; to assess the effectiveness of traditional courts in resolving disputes; to find out whether people are satisfied or not with the way traditional courts handle disputes and to establish the challenges faced by traditional courts. The target population included residents from the three chiefdoms of Monze district; namely Moonze, Choongo and Hamusode. The sample size comprised of 50 participants which included 6 traditional leaders, 3 traditional court judges, 30 subjects, 1 magistrate, 2 local court judges and 2 officials from Ministry of Chiefs and traditional affairs. The sampling technique used was purposive sampling and data was collected using questionnaires and interview guides. The findings of the study reviewed that the traditional justice system is effective in resolving disputes in Monze district. In addition, it was also discovered that traditional courts are highly respected and they are a preferred mode of dispute resolutions in these communities. It was also discovered that most of the subjects from the three chiefdoms said that they were satisfied with the way traditional courts resolved disputes because these courts are legitimate. However, the effectiveness of traditional courts tends to be affected by the many challenges such as corruption, contempt, discrimination against women, lack of modernized court rooms and many others challenges which must be eliminated. In order to enhance the effectiveness of traditional courts, the following were the recommendations. The government may consider formalizing traditional courts, building modernized customary courtrooms, paying traditional court judges, and many other recommendations that may enhance the effectiveness of traditional courts. In conclusion, this study is very significant because it reviews that having effective traditional justice systems is the beginning of having peaceful communities. This is so because traditional courts promote law and order at village level where statutory courts and the police are not found. Lastly, they help to decongest the mainstream courts because certain disputes are resolved by elders at village level there by promoting equitable justice to the majority poor in rural areas.

KEYWORDS

- ✓ Traditional Justice Systems
- ✓ Customary Law
- ✓ Dispute
- ✓ Effectiveness
- ✓ Justice
- ✓ Conflict resolution

ABBREVIATIONS

- ✓ TJS: Traditional Justice System
- ✓ ZLDC: Zambia Law development Commission
- ✓ LCA: Local court Act

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CHAPTER ONE

INTRODUCTION

Monze is a small town in the Southern Province of Zambia with a population of about 30,000 and is about 180 km south-west of Lusaka. It is the administrative center of Monze District. The town is named after Chief Monze, widely acknowledged as the spiritual leader of the Tonga people who inhabit the district. His palace is south of the town near a place called Gonde where the ceremony called Lwiindi takes place. This annual festival is a thanksgiving ceremony which attracts many people from around the country. The main industry in the district is agriculture, with maize being the most important crop. At one point in the past, the district used to produce more than 25% of the maize in Zambia. It was popularly known as the 'home of Zambia's granary'. Although its status as the leading maize producer has declined over the years, the most prominent feature in the town is still the grain silos to the north of the town (www.monze.com/educationfund)

1.1. Background

African traditional justice systems commonly referred as Traditional Justice System(TJS) are all those mechanisms that African peoples or communities have applied in managing disputes/conflicts since time in memorial and which have been passed on from one generation to the other. According to Hunter (2011) Traditional Justice Systems 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. The recognition of Traditional justice systems where 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 (Hunter, 2011).

Since independence, Zambia has maintained a dual legal system which recognizes both statutory law and customary law, with the latter being practiced mainly in rural areas. Although traditional

justice systems administered by traditional chiefs are not recognized by the State legal order, they still play a vital role in settling disputes (Afronet, 1998).

In addition, it is also important to note that traditional justice systems play a key role in the administration of land in rural areas, where approximately 80 per cent of the land is held under customary law. Land is meant to secure the livelihood and the well-being of the community as a whole, and not the individual or the family. Therefore, land rights are not secured through written proof of ownership or binding agreements, but rather in trust relationships by persons designated by the traditional leadership (Afronet, 1998).

Therefore, chiefs and headmen in Zambia have authority by virtue of laws and customs based in tradition that encompass a range of inherited cultural and metaphysical ideas, ways of life and moral and social values. To many Zambians, chieftaincy embodies the identity of their ethnic group and belonging. The traditional institutions serve and protect those values and represent historical continuity" (ZDLC, 2006).

In terms of organization, Traditional justice systems are structured and follow some form of a hierarchy in their administration of justice. The resolution of disputes usually begins from family level, to village headman, then escalated to the senior village headman or zonal courts and finally to the chiefs palace. This hierarchy simply shows that chiefs do not exercise power alone, but in conjunction with the indunas and having regard to the need to maintain consensus in the community.

Lastly, despite the fact that about 80% of all disputes at village level are resolved by elders using Traditional Justice system. It should be brought to your attention that certain cases are still referred to statutory courts for reexamination. In other words, traditional courts sometimes fail to resolve certain cases and refer them to statutory courts. For example, in a case of Hangoma and Michelo who had a misunderstanding over the sale of an animal, the traditional court at Nteme was unable to resolve this case and it was forwarded to the magistrate court in Monze for reconsideration. The questions that arise from this is that, does it mean that these courts lack the capacity to resolve cases? It is from such that the effectiveness of traditional justice system needs to be assessed.

1.2. Problem Statement

The Zambian statutory justice system through the criminal justice system draws attention to the need for reforms that will enhance and ensure justice for all. A report by Eldis (2017) noted that Zambia has made great progress in terms of justice since the introduction of democracy but there are some serious gaps in its criminal justice law reforms. The distinctive feature of the duality of Zambia's legal system comprising of customary and common law creates a troublesome paradox. Generally common law or statutory law is accessed and understood by a minority of the population because of its complex legal procedures. The majority of Zambians especially those in rural areas understand and access customary law which is informal. The problem here is that traditional courts that administer customary law are perceived to be ineffective by certain sectors of society. Still others are of the view that traditional courts do not have the capacity to promote justice because they are not viable as seen from their irregularities. It is from such assertions that the researcher was motivated to assess the effectiveness of the Traditional justice system in resolving disputes in the three chiefdoms of Monze district.

1.3. Purpose of the Study

The purpose of this study was to assess the effectiveness of the Traditional Justice system in dispute resolution in the three chiefdoms of Monze district.

1.4. Objectives

The objectives of this study were to;

1. To find out the extent to which people are aware of the way traditional courts handle disputes
2. Assess the effectiveness of the traditional justice system in resolving disputes
3. Find out the extent to which people are satisfied with the way traditional courts handle disputes
4. Explore the challenges faced by traditional courts.

1.5. Research Questions

The following are the research questions of this study;

1. What do people know about dispute resolution by traditional courts?
2. How effective is the Traditional Justice System in handling disputes?
3. How satisfied are people with the way cases are handled in traditional courts?
4. What challenges do traditional courts face as they administer justice?

1.6. Delimitations

This study focused on Monze district as it has been perceived as one which has shown a growing over reliance on traditional justice courts especially for people in rural areas. Therefore, the findings of the study are specific to this study area though generalizations of the findings shall be made with caution to areas of similar demographical characteristics.

1.7. Significance of the study

This study is very important as tries to enlighten the general public especially those in urban areas on the importance of having effective traditional courts and that African societies should not do away with these courts because they promote cheap and accessible justice to the majority poor who cannot afford legal fees. In addition, the Traditional Justice System is known to promote restorative justice which helps to mend broken relationships in society. In African circles, Justice should not always result in punishment. Apart from that, effective traditional courts should be the beginning of conflict resolution. Before cases especially those to do with family or community welfare are escalated to the mainstream courts, they are supposed to pass through elders in the villages. Traditional courts are supposed to be the first court of hearing especially on civil cases to avoid case overloads on the mainstream courts. It may also help the government and other policy makers to build capacity in traditional courts through funding and logistical support because law and older is maintained by effective traditional justice systems especially bearing the fact that in rural areas police posts are not usually found. Furthermore, this study may assist the government to realize the important role that these courts serve in the administration of equitable justice for all. This is due to the fact that traditional courts serve the majority of the people in the rural areas. In doing so, this may result in government aiding the construction of modernized customary court rooms in all chiefdoms country wide. The study is also important because it tries to establish whether traditional courts that having been working

alongside the mainstream statutory courts are effective. If this is proven, it may help in formalizing the status of traditional courts and probably align them to the judiciary. Lastly, the findings of this study may help government to come up with a deliberate policy of paying village headmen just the way traditional leaders (chiefs) are paid. Village headmen are the custodians of the law at village level. If we have peaceful communities then we have a peaceful nation.

1.8. Definition of key terms

For the purpose of this study the following defining terms will be used in this study;

a) **Disputes**: According to the Berkeley (1995:448) disputes, refers to an inverse relationship or a disagreement between two or more Persons, between groups, regions or even nations originating from different insights and interests. Generally refers to disagreement, struggle or opposing about something, to strive for, against or resist it.

b) **Conflict:** refers to an expressed struggle between at least two interdependent parties who perceive incompatible goals, and interference with the other party in achieving their goals (Hocker and Wilmot, 1991).

c) **Conflict/Dispute resolution:** is, the process used by parties in conflict to reach a settlement.

d) **Effectiveness**: successful in producing the desired or intended results (Encarta, 2009)

e) **Traditional Justice System**: are all those mechanisms that African peoples or communities have applied in managing disputes/conflicts since time in memorial and which have been passed on from one generation to the other (Hunter, 2011).

f) **Customary law:** sometimes called 'customary justice' or traditional justice refers to a system of customs, norms and practices that are repeated by members of a particular group for such an extent of time that they consider them to be mandatory and meant to be part of social order.

CHAPTER TWO

LITERATURE REVIEW

2.0. Introduction

This section aims to provide an overview of the issues described in the literature that are related to traditional justice system and dispute resolution. It will begin by conceptualizing traditional justice or outline a detailed meaning of traditional justice system. The second part presents how this study fills in a gap in relation to other similar studies done by other scholars. It will also include an overview of traditional justice systems at global level, African level, in Zambia and it will also outline the merits and demerits of traditional courts. Lastly the conceptual and theoretical framework will be included.

2.1. Conceptualizing Traditional Justice

Traditional justice system can be defined in so many ways but for the purpose of this study, African traditional justice systems commonly known as 'TJS' 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. TJS 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. Although, they 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. This is so because of the many challenges that are faced by traditional courts (Hunter, 2011).

Allen & Macdonald, (2013) adds that Traditional systems are often referred to by other terms, such as customary, informal, community-based, grassroots, indigenous and local. Their appeal lies in their potential to resonate more with local populations and thus to be more effective in providing a sense of justice and restoring community relationships. They are more familiar to

local populations and allow for local contexts to be incorporated into transitional justice processes and have also been known to be faster and more convenient to implement.

It is also important to note that traditional justice systems have to do with customary law. Fenton (1998) generally defines customary law as that which was established by practices of persons in a community over a period of time and became generally accepted and adopted as the norm. It is when accepted as the norm that it becomes law and everyone in that community expected to go by it. It does not need to be passed by any group of persons meeting to discuss it. This is why the basic principles of customary law date back to time immemorial. It is in many respects elastic and growing but has the tendency of being swallowed up as the community changes. An example is seen in the impact of Islamic law on customary law. Because of the similarity of many aspects of Customary law with Islamic law, e.g. in marriage and succession they tend to be favored by people tending to lean towards the latter law instead of the former (Fenton, 1998).

2.2. Effectiveness of traditional justice systems

The need to assess the effectiveness of traditional courts grows out of the dualistic nature of most African legal systems which consists of statutory law and customary law on the other side. Despite this fact, the Traditional justice system is still perceived to be informal and generally ineffective even though it is the one which is better placed to deal with disputes at community or village level and is well known to bring about social harmony. According Stuart (1996) most 'traditional' justice processes have a strong restorative justice flavour. Over the past thirty years, restorative justice has developed into a powerful criminal justice reform movement in many developed countries and consciously draws on a long historical lineage going back to 'traditional' small-scale indigenous societies and pre-industrial western justice traditions. Therefore, since the traditional justice system promotes restorative justice, it can be perceived to be an effective means of resolving disputes or conflict at community level as it manages to restore broken relationships among the parties to the conflict.

A study done by David, Wilson, et 'al (2017) on the effectiveness of restorative justice for juvenile offenders concluded that restorative justice programs and practices focus on restoring the harm done by a criminal act, rather than focusing on punishment. The evidence regarding the effectiveness of these programs in reducing continued delinquent behavior is promising, but

given methodological weaknesses of the literature do not allow for a strong positive conclusion. Similarly, non-delinquency outcomes for youth are promising, but inconsistent, with the exception of the youth's perceptions of fairness, which were greater for the restorative justice programs. There was also strong evidence for the effectiveness of these programs for victims. Victim participants appear to experience improved outcomes related to perceptions of fairness and satisfaction.

On the other hand, Hissong (1991) used a matched sample to evaluate the effectiveness of youth courts, finding that youth court is more effective for white males, the largest group of youth court clients. Results showed that the first year after completion, youth court participants were less likely to recidivate than the comparison sample. The effect changed after 1 year in which youth court participants were more likely to recidivate. It should be noted, however, that the follow-up procedure is faulty because the records used to document recidivism were only collected within one city.

In addition, Stickle et al. (2008) studied the effectiveness of four youth courts in Maryland. They found that 85% of participants completed the process and their assigned sanctions. The outcome showed that youth court participants had less favorable outcomes than the youth who were processed in the Department of Juvenile Services. Youth court participants self-reported significantly more delinquent behavior following their experience than youth completing the Department of Juvenile Services program (Stickle et al., 2008). Because of the increased delinquent behavior in their study, the authors suggest that research supporting restorative justice, diversion, and labeling can explain as much of why youth court should work as well as why it does not work. They argue that programs may not be effective at targeting minor offenses or that the stigmatization of the programs are not successful at the lower end of offending. One possibility is that the embarrassment of going before one's peers for judgment may create successful shaming rather than successful reintegration. Stickle et al. (2008) argue that perhaps little or no action by the Department of Juvenile Services is more fitting for minor first-time offenders instead of the review of the offense in front of peers.

Just in the same vein, the evidence regarding the effectiveness of restorative justice programs for juveniles is mostly positive. However, the most recent reviews have come to contradictory findings. The proposed meta-analysis aims to resolve this conflict by examining a broader

collection of studies, including both randomized controlled studies and quasi-experimental comparison group designs, to directly test whether various features of restorative justice programs are more strongly related to recidivism. Although including quasi-experimental studies raises internal validity issues, the larger collection of studies provides additional variability to explore in a moderator analysis. That is, by working with a larger set of studies, we can examine the influence of specific restorative justice components, such as the involvement of parents in the conference or the inclusion of restitution, on effectiveness.

Lastly, it should be brought to your attention that even though these studies presented above deal with restorative justice which makes up traditional justice, they do not directly assess the effectiveness of traditional justice systems but are centered on assessing the effectiveness of restorative justice with regards to juvenile justice. This study therefore fills in the gap left by other studies because having effective traditional justice system is very important because traditional justice system work side by side with the mainstream courts. Apart from that, traditional court serves the majority of people especially those in rural areas. Therefore, this study is inevitable as it brings out new knowledge regarding the effectiveness of traditional courts.

2.3. Global perspective

Traditional Justice Systems are an important part of delivering justice in both rural and urban areas worldwide. In the Declaration of the High-level Meeting on the Rule of Law, Member States acknowledged that informal justice mechanisms, when in accordance with international human rights law, play a positive role in dispute resolution, and that everyone, particularly women and those belonging to vulnerable groups, should enjoy full and equal access to these justice mechanisms. The United Nations points out that Estimates are that in many developing countries around 80% of cases are resolved through such mechanisms. Informal justice systems tend to address a wide range of issues of significant concern to the people, including personal security and local crime; protection of land, property and livestock; resolution of family and community disputes; and protection of entitlements, such as access to public services (www.un.org).

Fenton (1998) adds that even though the majority of the population in less developed countries, about 75% is persons naturally governed by customary law. With the rapid advancement of

education and Western influence, at least 50% of that number do not feel bound by customary law but have more regard for legislative laws instead.

2.3.1. Traditional Justice Systems in selected countries of the world

Indonesia

Indonesia became an independent republic in 1945, during this period national policy promoted a uniform legal system. At the same time, the Constitution and later amendments provided limited and conditional recognition of traditional customary law. Traditional *adat* law remains a default legal source and is applicable informally or where statutory regulations are silent. Although the administration of justice remains a central government function, the process of regional autonomy launched in 1999 has opened up opportunities for engaging in local 'traditional' justice approaches. Informal justice approaches, through mediation and conciliation, remain popular in many local communities and are often preferred over what is viewed as a corrupt and expensive state justice system. The types of informal justice mechanisms operating in Indonesia are many and varied a reflection of the ethnic diversity that characterizes the country (World Bank, 2008).

Colombia

Colombia has 86 ethnic groups with an estimated population of around 785,000. The Constitution of 1991 declares the country to be pluriethnic and multicultural. It granted indigenous peoples fairly wide ranging powers to exercise autonomy in their territories, subject to the constitution and national law. This includes rights to, exercise jurisdictional functions in accordance with their own norms and procedures, administer and govern their territories, and to be governed by their own authorities and administer their interests, in accordance with their own customs (Tobin, 2008). The result is to provide indigenous peoples with significant rights to exercise control over their lands, resources, knowledge, cultures etc.

Legislation adopted in 1997 creates obligations on the state and the wider population to protect the cultural patrimony of the nation. It also recognizes the rights of ethnic communities to conserve enrich and diffuse their cultural patrimony and identity and generate knowledge over these in accordance with their own traditions. This legislation seeks to protect the language,

traditions, customs and knowledge of ethnic groups, guaranteeing their collective rights and promoting ethno education and diffusion through the mass media. The cumulative effect of these and related legislative provisions is to provide a firm basis for the exercise of customary law by indigenous peoples (Tobin, 2008).

Solomon Island

While the national legal system is based upon introduced common law, traditional or customary law as it has adapted to change remains an important source of social regulation for many rural Solomon Islanders. This informal system has worked reasonably well in many areas, though less well in others. It has come under increasing pressure from modernization, as well as from the ethnic tensions and lawlessness that gripped parts of the archipelago from 1998-2003 (World Bank, 2008).

Fiji Republic

In the Fiji republic, the 1997 constitution allows for a new system of voluntary dispute resolution in accordance with traditional Fijian processes. 'Traditional' justice continues to provide an important informal source of conflict management in many rural ethnic Fijian communities. Traditional practices reflect the hierarchical and patriarchal character of Fijian society and the relatively homogenous character of indigenous Fijian culture. Formal recognition of the authority of traditional chiefs is provided by the Constitution and through the existence of the Great Council of Chiefs. 'Tradition' has nevertheless become increasingly contested in light of broader processes of social and political change, including the chronic political instability that has taken root since 1987 (World Bank, 2008).

2.2. African Perspective

According Francis (2014) in several African countries like Nigeria, Botswana, Zimbabwe, Malawi, South Africa and Sierra Leone, the British created a dual tribunal system, with "customary courts" being given first instance jurisdiction in matters of customary law. Appeal from these customary courts was to the formal judiciary. In other countries, like Kenya and Tanzania no separate customary tribunal systems were created and the formal judiciary adjudicated on matters of customary law. In these countries, informal customary law tribunals continued to operate at the level of the village and the community, in several forms, including

councils of elders, clan or family tribunals and village associations (Francis, 2014). This predominant existence of traditional justice systems in many African countries simply draws us to the important role of these courts. Below are the selected examples of traditional justice and how it is handled in Africa;

Rwanda

Whenever conflicts arise amongst African communities, parties often resort to negotiations and, in other instances, to the institution of council of elders or elderly men (Bashangathae) and women who act as third parties in the resolution of conflicts. For instance, 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 (Francis, 20114).

Botswana

Similarly amongst the Tswana of Botswana it is documented that dispute resolution starts at the household (lolwapa) level. If a dispute cannot be resolved at the household level, it is taken to the Kgotlana (extended family level) where elders from the extended family sit and listen to the matter. The elders emphasize mediation of disputes. If the Kgotlana does not resolve the dispute, the disputants take the matter to kgotlana, which is a customary court with formal court like procedures (Francis, 2014)

Kenya

Amongst the Ameru people of Kenya there is a council of elders called Njuri Njeke which plays a key role in dispute resolution. It is reported that the phrase Njuri Ncheke connotes an elected council of adjudicators with a definite social role' and the members of the council are 'carefully selected and comprised mature, composed, respected and incorruptible elders of the community' because their work calls for greater wisdom, personal discipline, and knowledge of the traditions (Francis, 2014).

2.4. Zambian Perspective

According to Fergus, Lungowe, et al, (2012), chiefs and headmen in Zambia have authority by virtue of laws and customs based in tradition that encompass a range of inherited cultural and

metaphysical ideas, ways of life and moral and social values. To many Zambians, chieftaincy embodies the identity of their ethnic group and belonging. The traditional institutions serve and protect those values and represent historical continuity. Custom regulates and controls relationships and social behavior within a traditional community.

In addition, Ray & Reddy (2003) clearly points out that a traditional leader is eligible for leadership by birth and exercises influence over a geographically defined area through authority over instruments of administration including traditional or customary courts. Traditionally, leaders would have been held to varying degrees of accountability (depending on balances of power within the community) by councilors (called ndunas in some communities) and the community as a whole. Generally, chiefs did not exercise power alone, but in conjunction with the ndunas and having regard to the need to maintain consensus in the community. The importance of favorable relationships with Chiefs and headmen in order to access land meant that the position of chief provided great power (Bastian, 1999).

In Zambia, as in many African countries, chiefs and headmen settle a large number of disputes. The resilience of the traditional governance and justice systems has been attested to in a number of studies. The Zambian Law Development Commission (ZLDC) found that "there is a viable traditional court system in existence in the country", and confirmed this to be the case even in the Southern Province, where the system was not traditionally strong. In matters concerning customary land, chiefs remain the natural source of authority, exercising executive and adjudicative functions (ZLDC, 2006).

Even in non-land related matters, the justice systems that operate under traditional leaders tend to fill the gaps left by the lack of outreach and familiarity of the "modern" or state justice system. These courts were created in order to deal with disputes locally and tend to be more active in communities where the police are not present or accessible or are present and accessible, but have failed to address crime over a long period of time. Thus, Dr. Chikwanha remarks that many citizens are forced to turn to customary justice because of the inaccessibility of the state system. Headmen, Chiefs and the traditional courts that operate under their auspices remain "tribunals of preference" or "tribunals of default" for many rural citizens and an option for the indigent who cannot afford travel costs and litigation fees in distant statutory courts (Chikwanha, & Barbara, 2007).

2.5. Merits and Demerits of Traditional Justice System

Observer accounts from research assistants have highlighted a number of factors that make traditional courts stand out from the "modern justice system. According to Fergus, Lungowe, et al, (2012) the advantages of the traditional courts are seen most strongly in terms of their accessibility. This is to mean that traditional courts are very close to the people and can easily be accessed by all the local people.

Another reason is that customary law is 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. For example, Traditional leaders assert that they apply customary law in settling disputes. As it has been pointed out in other studies, the rural population gives primacy to customary law in most parts of Zambia. Each of the 73 ethnic groups in Zambia has its particular customs, ways of settling disputes and maintaining social order. Chiefs' and headmen's courts have criminal jurisdiction over statutory offences, offences (Fergus, Lungowe, eta l, 2012).

In addition, 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. Traditional courts and dispute resolution mechanisms particularly at the lower levels - are "fast track courts" cases are quickly disposed of, and unlike the local courts which are usually congested, the traditional courts are easily accessible to the people. Nevertheless, this does not necessarily always hold true. There are also reports of cases pending in traditional courts for long periods (Fergus, Lungowe, et al, 2012).

Proceedings in traditional courts are conducted in a language that both parties are comfortable with. They almost always take place in the vernacular of the particular village or community. The terms used in court are simple and familiar. Technical language is not used in the proceedings (Fergus, Lungowe, et al, 2012).

Legal feels have been cited to be the most common impediment to justice in Zambia and most African countries especially among poor people (Fergus, Lungowe, et al, 2012). However, traditional justice systems have acted as an alternative because they are cost effective. According

to ZDLC (2006) the system is said to be inexpensive. Most members of the community can afford to have their case heard before the court.

However, traditional courts have adapted to social change and do charge fees. It is reported that at the level of Chiefs' Courts at least, these fees are kept at the same level as Local Court fees. Figures like K5 for a summons, or K7, a chicken or goat as hearing fees was also mentioned. Village headmen feel they have to be paid or at least fed while sitting at a traditional court (ZLDC, 2006)

With regards to treatment of children by traditional courts, there is little information or documentation available on the treatment of children by traditional courts. However, Fergus , Lungowe, et al, (2012) discusses the evaluation of the Child Justice Forum (CJF), and how the Barotse Royal Establishment was represented in the Mongu CJF, and how this might help in ensuring that traditional courts in Western Province are "kept abreast of developments in the field of child justice". In the survey responses, Zambians overwhelmingly (83%) responded that children old enough to speak out and have an opinion should be allowed to speak in disputes that concerned them. Thus, in this instance, popular opinion would seem to be entirely in conformity with instruments such as the convention on the rights of the child (Fergus, et al, 2012).

Despite all these advantages of traditional justice system, still others argue that these courts are not well placed and not competent enough to handle disputes or other cases because of the increased complexity of modern life. There are various reasons why this is so and the first one is that there is Non-recording of decisions in traditional courts. In practice, proceedings and decisions are generally not recorded, making it difficult to standardize the decision making and quality of justice dispensed or to monitor the substance of decisions made or observe inconsistencies (Fergus, et al, 2012). Fergus, and others further indicate that the non-codified and flexible nature of customary law means that it can be very pragmatic in the solutions that it reaches. While pragmatism has advantages, it may also mean treating powerful people differently to poorer and less influential ones.

In addition, The ZLDC, found that "In the traditional courts there is no record keeping as such, but rather the traditional courts keep a register of complaints and their hearing dates (like diaries). The traditional rulers interviewed said that they use oral traditions and as such, written

records are not necessary. The Chiefs further informed researchers that traditional courts apply precedent through the use of proverbs. They argue that this is the most efficient way of dealing with cases as they are based on events of the past". They said this also saved time (ZLDC, 2006).

Traditional justice systems have also been found wanting in relation to gender discrimination: The 2006 ZLDC study found that while "Most traditional officials said that they treated men and women equally in court, by giving them an equal opportunity to state their case, a statement to be taken with a pinch of salt. Female litigants spoken to in the research recounted stories of the ridicule that they are subjected to in traditional courts, and that proceedings are steeped in culture, which makes it difficult for them to take their grievances to court, especially where men were involved (ZLDC, 2006).

Lack of impartiality has also been cited as one of the inefficiencies of the Traditional Justice systems. According to Fergus, et al, (2012) there were reports in one area that in cases where the traditional leaders had an interest in the case, they refused and threatened that one would be expelled from the village if they do not respect the judgment passed.

Apart from that, illegal coercion and "contempt of court" is also a serious weakness of traditional courts. Fergus, and others (2012) have shown that to obtain confessions or use of trial by ordeal is occasionally encountered, sometimes amounting to severe mistreatment or torture. It should be viewed together with the imposition of illegal penalties. For example, There are a number of times when community members especially women, the poor and children have been cited for contempt of court and punishment for failure to pay, including treatment that would amount to cruel, inhuman and degrading treatment including tying someone to a tree, forcing them to sit in the sun for a number of hours. The survey assistants heard one account of a woman had her hands tied up and was made to hang from a mango tree. Thus in some areas the traditional reconciliatory nature of the traditional court may have changed significantly. Civil and criminal cases stemming from the same event are often heard simultaneously. An offender used to be sentenced to some punishment such as banishment from the chiefdom, corporal punishment, or ordered to the pay compensation. The accused person must prove his/her innocence (Fergus, Lungowe , et al, 2012).

In addition, ill-treatment also surfaces in relation to punishments meted out by traditional courts. Eye witness accounts from the traditional justice field teams mirror the conclusions that drawn by the African Human Security initiative that they may be swayed by mob influence to arrive at decisions. One relatively well-documented and fairly recent case concerns allegations the use of so-called "water"in Mazabuka, in Chieftainess Mwenda's area. "Water dipping" is a euphemism the practice was similar to the much criticized torture of terror suspects through waterboarding. From newspaper reports it appears as though large numbers of people looked on and a number of headmen and traditional chiefs were involved, as well as a "neighborhood watch" association. Reports seem to show that it was documentation and intervention by the ZHRC, rather than the police, which brought these practices to a stop (www.postzambia.com).

Lastly, law users and civil society organizations have cited the inability of the traditional courts to enforce judgments' as one of the main weaknesses of the traditional court system. This finding is confirmed in the ZLDC report cited herein, as did the survey interviews carried out for the present study. Traditional leaders frequently bemoaned the lack of support from state agencies for enforcement of their decisions and thus a weakening of their ability to provide this service to the community (ZLDC, 2006).

2.6. Status of settlements of disputes reached by customary means

If dispute settlement using customary law is legal, what is the nature and status of such settlements? There are two aspects to this question; (i) Does the legal system see them as binding decisions or as nonbinding agreements? (ii) Could they be enforceable by the courts?

Subsection 50 (1) of the Local Courts Act appears to permit both outcomes that are binding on the parties and those that are not, mentioning both "arbitration" and "settlement of any matter with the consent of the parties there to". If a party to such a settlement were to contest it before a state court, it would appear to be open to the parties to argue that the traditional court outcome or settlement had been agreed to as binding between the parties, either as a prior condition to the arbitration or after the settlement had been reached. It would be up to the state court to arrive at a finding (Fergus, eta l, 2012).

Subsection 50 (1) of the Local Courts Act is also silent on the second question, enforcement of settlements reached according to customary law. Thus no express provisions exist in Zambian

law for the legal enforcement of customary settlements or prohibiting such enforcement. It could thus be argued that as long as enforcement of customary settlements complies with other norms and rules of law, that it is open to the courts to give recognition to them (Fergus, eta l, 2012).

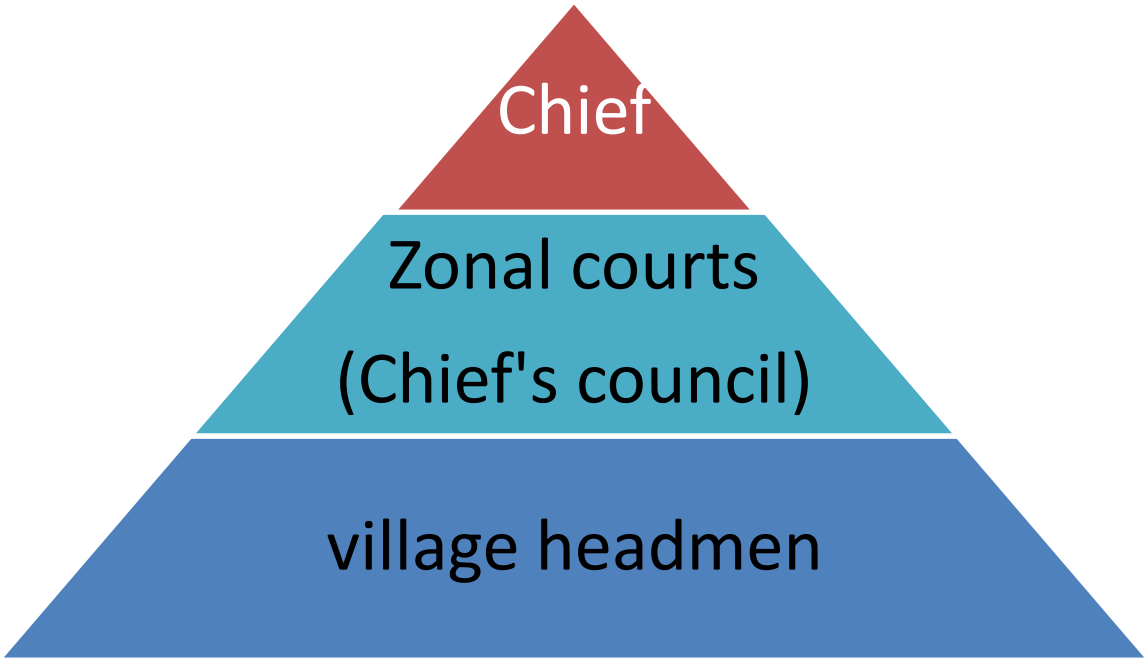
Lastly Fergus, and others (2012), point out that the current legal position takes little heed of the reality in Zambia, especially in rural areas, that the systems of family councils and of traditional leaders, from village headmen to Chiefs exercises an important function in the resolution of disputes. Nevertheless, the flexibility offered by section 50 (1) of the Local Courts Act opens up interesting and little used possibilities for the recognition of customary settlements.

2.7. Structure and composition of traditional leadership and traditional courts

While there are many variations from tribe to tribe and area to area, traditional authority is generally divided into a number of levels or categories, from Paramount Chiefs to Senior Chiefs, Chiefs, Sub-Chiefs and Headmen. There are also deputy chiefs, and among some ethnic groups, such as the Lozi, there may also be institutions such as a chief minister (known as the Ngambela). While there may not necessarily be courts corresponding to all of these levels, there are generally traditional courts operating at least at the level of Village Headman, Sub Chief and Chief, called by different names but often popularly known as kamtengo courts in Zambia (ZDLC, 2006).

Very commonly, the lowest is a "court" or adjudication function at a village headman's home, where the Village Headman is assisted in his functions by a group of village elders. An unsatisfied party can appeal up to the Court at the Chief's Palace, the highest court in the tribe. In recent times, communities and traditional leaders have been innovative, creating zonal courts where a number of village headmen, headed by a senior headman, meet to look at a particular case. However, community members are not forced to appeal to zonal courts from a village headman's court, and may take their appeal directly to the chief's court. It is not uncommon for this system to have family tribunals especially with members of the royal family and a council of elders making up the settlement structure. The Chief may be the only person authorized to formally pass judgment at the level of the Chief's court, but senior headmen in the tribe play a central role in assisting the chief in his adjudicative duties (ZLDC, 2006).

Figure 1.Traditional Courts Structure



2.8. Substantive issues and case loads

Since there is no explicit recognition of traditional courts, they have no recognized jurisdiction. The Local Courts Act section 50 makes it an offense for anyone to sit and adjudicate over any case without authority. Traditional leaders therefore, do not have jurisdiction to adjudicate in criminal matters. In practice, there continue to be reports of traditional courts deciding even over serious criminal matters, including defilement (both so-called "peer to peer" and more obviously abusive defilement). Reportedly, traditional courts often attempt to reconcile the victim and offender with the family playing an important role in the settlement (ZLDC, 2006).

In fact, traditional courts are dealing with a wide range of issues, civil and criminal, including witchcraft, offences against the person, family law issues, and property, especially real property cases. Many actors within the formal justice system have a negative view of traditional justice and have been quick to cite examples of abuse (ZLDC, 2006). Despite this fact, we cannot run away from the fact that the mainstream courts would have had a huge burden of resolving each and every case because this would have meant all case are referred to the mainstream courts regardless of its magnitude.

2.9. Perceptions of traditional courts by people

According to Francis (2014) many justice sector actors have strong views on traditional courts, and cite examples of abuse and injustice. While many of these stories undoubtedly have a basis in truth, there is also exaggeration, and perhaps a failure to recognize that this does not represent the whole truth. Like Local Courts, traditional courts are trying to fill a gap without much in the way of capacity or resources. Many are doing their sincere best to respond to a need that is not otherwise being met.

In addition, Linkages between Local Courts and Traditional Leaders can be both positive and negative, and it would be misleading to generalize. At worst, there are instances of Traditional Leaders interfering with the action of Local Courts to prevent their operation and using various means (ZLDC, 2006). However, traditional courts are perceived with utmost respect from the people as they are legitimate courts that draw their authority from the traditional leader who governs that chiefdom.

2.9.1. Interface between dispute Resolution by Elders and Formal Justice Systems

According to Kenyatta in Francis (2014) there is a marked resiliency of African justice systems in spite of the onslaught and subjugation by formal justice systems. Many reasons abound for this resilience. First, the Western Justice System is in principle very different from the African justice System. The Western system is individualistic, retributive and emphasizes a winner-loser paradigm in resolution of disputes. Moreover, the African justice systems focus on the restoration of social harmony and social bonds between disputants, while the formal mechanisms are destructive and leave wounds unhealed while causing new ones.

Second, and in most cases, African justice systems include a spiritual component. Traditional healers, diviners and seers take part in the process to seek the truth at the core of the dispute. The spiritual nature of dispute resolution is because Africans are still beholden to their ancestors and the dead and they seek to make peace with them. In contrast, the Western-style justice systems are secular and do not countenance rituals. In fact, the Western justice system criminalizes certain acts such as witchcraft and sorcery (Francis, 2014).

Third, traditional justice systems are informal, cost-effective and expeditious. The parties often sit together and resolve their dispute within a sitting or two. Formal justice processes involve

complex and technical procedures that consume a lot of time and resources. This way the poor and indigent clients are locked out of the justice systems as they cannot afford. Thus, in poor rural areas and informal settlements in urban areas, informal, non-state justice systems fill up the void. An interesting example is seen in South Africa where traditional leaders have been given authority to try both civil and criminal matters, yet most disputes are resolved unofficially (Francis, 2014).

In the same vein Fergus, Lungowe and others (2012) further indicate that section 50 of the LCA acknowledges the existence of African customary arbitration and settlement mechanisms. Broadly, these mechanisms operate primarily through family elders in cases to do with marriage and family relations, and through traditional leaders in matters to do with custom, ritual and use and property rights in relation to customary land. The acknowledgement in section 50 of the LCA does not give guidance as to how Local Courts should interact with these mechanisms, or set out any set of principles in relation to them. Paragraph 31 of the Local Courts Handbook urges Local Court officials to ensure that "Every effort should be made to keep the family and matrimonial quarrels out of the courts". This can only mean that such cases will, and in the eyes of the judiciary, be brought before family elders or councils, and perhaps, failing a solution there, before traditional courts.

The 2006 ZLDC study examined issues relating to the interfaces between Local and Traditional Courts in greater detail than is possible in a more global study such as the present one. Some general observations found there are echoed here. One is that issues of customary land are not dealt with to any significant extent by the Local Courts. This area remains firmly within the domain of traditional leaders. For a number of reasons, there would seem to be little immediate prospect of customary land disputes coming within the de facto purview of Local Courts. Firstly, Local Courts very often lack the knowledge necessary to determine these cases, as this is a matter of oral tradition and oral agreement among traditional leaders, village headmen and family heads. Knowledge of the cases can only come if litigants with the ultimate approval of traditional leaders brought case histories before the court. Secondly, in the absence of acceptance of their role by traditional leaders, Local Courts lack the legitimacy and authority to ensure that decisions on these issues would be enforced. The modus Vivendi that exists between Local

Courts and traditional leaders would be upset by any uninformed attempt to appropriate control over this area (ZLDC, 2006).

Lastly, how relationships between Local Courts and traditional leaders actually function varies considerably from place to place. There are districts in which "forum shopping" exists, and others where it is rather a case of "litigant shopping" where Local Courts and traditional leaders feel that they are in a situation of competition with one another. In some areas, Local Courts depend on the traditional leader for legitimacy, and even for a place to conduct court hearings. Most Local Court officials indicated that they defer to the authority of traditional leaders and traditional courts in at least some instances. 55% of Local Court respondents indicated referring cases mainly involving witchcraft, land disputes and conflicts within and between families to the traditional courts. The references to the Traditional Courts were done for the purpose of either seeking reconciliation or to enable carrying out judgment which would provide traditional based compensation and fines (ZLDC, 2006).

2.9.4. Conclusion

From all this literature outlined, it can be concluded that most research concentrated on the merits and demerits of traditional justice systems but not necessarily their effectiveness. Very few contemporary scholars have talked about the viability of traditional courts in resolving disputes. Therefore, if the effectiveness of traditional courts is established, it would help in building capacity in these courts. Furthermore, as Africans we had developed our own mechanism of resolving disputes in society since time in memorial. Due to modernization, traditional justice systems are slowly losing their existence. Henceforth, as Africans if we completely get rid of traditional justice systems it would mean losing our identity. As Africans we believe in restorative justice and not necessarily punishing the offender but mending the broken relations in the community and that is what traditional justice systems do.

2.9.5. Conceptual Framework

Figure 2

The assumption from the figure above is that effective traditional justice system working alongside state or formal justice system will result in equitable justice systems for all Zambians.

2.9.6. Theoretical Framework

Social Solidarity theory as explained by Emile Durkheim

Emile Durkheim (1993) explains society in terms of social order and social facts. According to Durkheim, individuals in a society are social actors who are restrained by social facts to stay in society. Henceforth, Social facts are functionalist in nature. They exist only if the society can derive utility or benefits from them.

This theory is applicable to this study because dispute resolution by elders is viewed as a social fact from which society derives some benefits and because of this it will continue existing. Elders resolve disputes due to their long experience, wisdom and the respect they are accorded in society. The social solidarity theory being a functionalist theory shows that dispute resolution by elders even in modern societies have persevered and have been embraced by western legal systems. Where a community cannot access formal justice systems due to costs and other externalities, elders are there to resolve arising disputes. Therefore, the existence of elders is a social fact in the society providing a dispute resolution utility occasioned by the absence or low penetration of western legal systems (Francis, 2014). Therefore, since dispute resolution by elders is a social fact, there is need for the traditional justice system to be effective as it will always exist and will continue promoting justice in the rural community alongside the state formal legal system.

CHAPTER THREE

METHODOLOGY

3.1. Introduction

This chapter outlines and discusses the most appropriate methods of design, sample selection, data collection and data analysis that will be used in this study. There will be also a description of the ethical considerations necessary to complete the study undertaken.

3.2. Research Design

This study used mixed method design. A mixed method design is a design that uses both qualitative and quantitative methods. This is important as it will allow for the collection of both subjective and objective data, which can give a greater understanding of the perceptions of people. Qualitative research methods therefore allow for participants to describe their experiences and perceptions in their own words, within their own contexts, (Freeman, 2009) in order to acknowledge the unique reality for each participant. The emphasis of qualitative research is on the experiences of people within their context, which in this study was the management of land disputes

3.3. Target Population

The population for this study consisted of residents from the 3 chiefdoms Monze District namely, Choongo, Moonze and Hamusonde. The Target population basically included chiefs, village headmen, and households from the 3 named chiefdoms. It also included a magistrate, a local court judge and officials from the Ministry of Chiefs and Traditional affairs.

3.4. Sample Size

The sample size will be 50 in total, 3 Chiefs, 3 Senior Village Headmen each representing the selected the three chiefdoms, 6 Village headmen, 3 traditional court judges, 30 households 10 from different villages in the selected chiefdoms, 1 magistrate, 2 local court judges and 2 officials from the Ministry of Chiefs and Traditional affairs.

3.5. Sampling Techniques and Procedure

The study used Purposive Sampling to establish its findings because as earlier stated these communities have shown a growing dependability of the use of traditional justice systems.

Systematic and Purposive sampling were used to select this sample in that the researcher used personal judgment in choosing suitable participants. Internal validity was overlooked because the study used a case study research design, which does not require the findings of the study to be generalized. This sampling method was used because of the nature of the study which required qualitative data from precise sources. Therefore, using this sampling method, key informants from selected organizations and independent persons, helped with the generation of the required qualitative data.

3.6. Data Collection Instruments and Procedure

The data collection began with introductions, this includes reviewing the purpose of the study and the ethical considerations outlined in the participant information sheet. At this point a questionnaire was used to collect information from Targets groups administered by the researcher. After collecting the questionnaires, each participant will be interviewed verbally and the researcher will pose questions and note down the answers in his note book. Such an approach will allow respondents to answer in a language of their own choice and was more suitable for respondents who are not literate in the English language. Clarification was made on certain questions if the respondent will not understand clearly. The questionnaire consisted of both open and closed ended questions. For interviews, a structured interviewed guide and follow up questions will be used. Apart from a phone audio recorder will be used so that the researcher will capture the actual words of the respondents.

3.7. Primary Data

Primary data was collected using interview guides or questionnaires that where administered to respondents.

3.8. Secondary Data

Secondary data was collected from articles, previous research findings, books, journals, internet and other sources of reliable information.

3.9. Data Analysis Procedure

Quantitative data was analyzed using the Statistical Package for Social Sciences (SPSS). SPSS is application software used to analyze quantitative data and on the other hand qualitative data was analyzed using thematic analysis. Qualitative data was analyzed using thematic analysis.

Thematic analysis is a cluster of method that focuses on identifying patterns in meaning across a dataset? Patterns are identified through a rigorous process of data familiarization, data coding, and theme development and revision. The advantage of this data analysis data procedure is that it is theoretically flexible. This means that it can be used within different frameworks, to answer quite different types of research question (Auckland University, 2010).

3.9.1. Ethical Considerations

Prior permission to conduct research was obtained from the University. The Researcher provided adequate and clear explanations on the purpose of the study to the respondents and their voluntary participation and consent was sought. Respondents were assured of confidentiality of the information that they provided since they were not required to indicate their names anywhere and thus concealing their identities. The standard of voluntary participation will be adhered to in that no participant will be forced to take part in the research and participants will be free to withdraw from the research at any stage. To maintain objectivity, each answer will be judged as without bias, moralistic judgments and irrespective of the researcher's own opinions on the issue.

3.9.2. Conclusion

This chapter gave an outline of the methodology that was used in this research study; it included the research design, population, sample size, sampling procedures, ethical considerations and data analysis procedures.

CHAPTER FOUR

PRESENTATION OF FINDINGS

4.1. Introduction

This chapter set out to present the findings of the study on the assessment of the effectiveness of traditional justice system in the resolution of disputes. These findings have been presented in line with objectives of the research and as such, data from the respondents where categorized according to the four (4) objectives of the study.

The questionnaires and interview guides of participants which were used to record views on the assessment of the effectiveness of traditional justice system are explored in this chapter.

4.2. Findings from subjects under chief moonze, choongo, and hamusonde

4.3. Demographic Information

4.3.1. Age of the Respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	18-22	5	16.7	16.7	16.7
	23-27	6	20.0	20.0	36.7
	28-32	6	20.0	20.0	56.7
	33 and Above	13	43.3	43.3	100.0
	Total	30	100.0	100.0	

Table.4.1

The table above shows that the majority of the respondents were in the age range of between 33 and above representing 43.3%. This indicates that most of the people who take cases to the traditional courts are elderly people. Young people from the ages of 18-22 where at the bottom in terms of the use of traditional courts represented by 16.5%

4.3.2. Sex of Respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	16	53.3	53.3	53.3
	Female	14	46.7	46.7	100.0
	Total	30	100.0	100.0	

Table 4.2

The figure above indicates that 53.3% of the respondents were males and females where represented by 46.7%. The implication of these findings is that there were more men who take cases to traditional courts than women.

4.3.3. Level of Education of Respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Primary	11	36.7	36.7	36.7
	Secondary	6	20.0	20.0	56.7
	Tertiary	6	20.0	20.0	76.7
	Not Educated	7	23.3	23.3	100.0
	Total	30	100.0	100.0	

Table 4.3

The table above indicates that 36.7% of respondents had primary education while 23.3% were not educated. 20% was representing respondents who had tertiary and secondary education. The implication here is that a lot of people with low levels of education are the ones who use traditional courts mostly.

4.4. Respondents knowledge about the Traditional Justice System?

With regards to awareness, all the 30 respondents portrayed knowledge about traditional justice system. A common response that was given by most respondents was that traditional justice systems were made up of village courts and some included the neighborhood watch which maintained law and order in the villages. For example, one of the respondents under chieftains Choongo, said in Chitonga*, "Ezyi nikunta naa milawo yendelezegwa abami babulongo"!!Ezyi nkunta zyichilila tunsiyansiya twachisi"* this means, these are courts or a legal system run by traditional leaders such as chiefs and village headmen and these courts follow the traditions and customs of the land.

4.5. Usage of Traditional courts?

	Frequency	Percent	Valid Percent	Cumulative Percent
Regularly	21	70	70	70
Not very often	9	30	30	30
Total	30	100.0	100.0	100.0

Table 4.4

The table above shows that 70% of the respondents often take cases to a traditional court while 20% represents the respondents that rarely use traditional courts. The implication of these findings is that the subjects in the three chiefdoms preferred using traditional courts as a means of resolving their disputes.

4.6. Effectiveness of traditional courts

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	21	70.0	70.0	70.0
	No	9	30.0	30.0	100.0
	Total	30	100.0	100.0	

Table 4.6

The table above indicates that's 21 out of 30 subjects interviewed agreed that traditional courts in all the three chiefdoms where effective in resolving disputes. This represented 70% of the respondents. On the other hand on 9 out of 30 subjects where of the view that traditional courts were not effective and this was represented by 30%.

4.7. Whether respondents are satisfied with the way disputes are resolved in Traditional Courts

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	21	70.0	70.0	70.0
	No	9	30.0	30.0	100.0
	Total	30	100.0	100.0	

Table 4.7

According to the figures above 70% of the respondents were satisfied with the way disputes are resolved in traditional courts while 30% of the respondents said that there were not satisfied with the way their cases were handled.

4.8. Challenges faced by Traditional courts

With regards to challenges, the respondents a lot of challenges that cripple the operations of traditional courts? Below were some of the responses; one of repondents said in Chitonga, "*Ezyi nkuta tazibeleki kabotu nkambo kakubula imanda akubetekela. Chiindi chamainza babetesi bajana buyumuyumu kapati"*. Meaning these courts face a lot of challenges because they do not

have proper court rooms, so it because a problem during rainy season. Another respondent said in Chitonga, "*kuulana mabulo mbobuyumuyumu bumwi bujanwa munkunta ezyi nkambo kakuti babetesi bavuna iwa bbadela mali".* The meaning here is that traditional courts face difficulties because of corruption usually because the judges favor the person who has paid a bribe even though he/she might be the wrong. Others cited lack of codifications of some of the laws, lack of transport, contempt from offenders, discrimination of women and children. Lastly, reiterated that tradition courts have got serious difficult with transport and that kapasos have to walk long distances to deliver summons.

4.9. Findings from Traditional leaders/traditional court judges

This section presents qualitative findings from the traditional leaders (Chiefs, village headmen, and traditional court judges) that were interviewed. Below were the findings;

4.9.1. Knowledge of Traditional justice system

The first question was trying to find out whether the respondents understood what traditional justice system is and the responses were as follow; All the 2 traditional leaders and the special chiefs advisor for Choongo chiefdom said that they understood what traditional justice is. What came out was that the traditional justice system was a system of laws that was used by Africans and was passed from one generation to another. One respondent said, "*Traditional Justice Systems has to do with courts that administer justice using customary law or the law of the land. These courts resolve a variety of cases or disputes ranging from family issues, land disputes, marriage, witchcraft, cattle theft or stock theft and many more".*

Generally, all the 3 Traditional court judges and 6 village headmen all portrayed greater understanding of customary law and traditional justice system. One of the respondents said traditional justice system was a legal system that uses customary law to resolve conflict.

4.9.2. Number of traditional courts

With regards to the total number of traditional courts present in each of the 3 chiefdoms the respondents had this to say;

Moonze

Chief Moonze is the largest chiefdom of the three; it has 6 villages in the west of Monze which brings the total number of traditional courts to 7 including the highest court of appeal at the chiefs' palace.

Choongo,

The Chieftains Choongo's special advisor said that this chiefdom was quit large in size and is surrounded by 8 villages and each village has a court which is headed by senior village headmen. Therefore, the total number of courts including the Supreme Court at the palace is 9.

Hamusonde,

According to his Royal Highness Hamusonde, this was a similar arrangement in his chiefdom. Each village has a court run by village headmen but he was quick to mention that there zonal courts which are the highest court of appeal, that is one from the west and the other one from the east part of his chiefdom.

4.9.3. Whether people are satisfied with your judgements

With regards to this question, all the 3 chiefs and 6 village headmen interviewed said that their subjects are happy with the way disputes are resolved by traditional courts. However, there were some instances when parties in disputes are not happy with the judgement of village headmen they would appeal at the highest court based at the chief's palace.

4.9.4. Effectiveness of traditional courts in resolving disputes

In terms of effectiveness, all the traditional leaders and their judges said that their courts where well known for solving cases and in most instance all the parties to the disputes are usually happy the judgements. In addition, the special aid for chief said, "*Traditional courts where effective because they served their intended purpose and sub courts where regularly monitored to ensure that they operated according to laid down guild lines".* In addition, the offenders and the offended are usually encouraged to reconcile and forgive each other. In short traditional courts encouraged restorative justice and not punishment.

4.9.5. Findings from officers in the ministry of justice

4.9.5.1. Demographic information

The researcher managed to interview 3 officers in the Ministry of Justice and of the two, one was a male magistrate in his mid-40s and the other 2 were male local court judges at Monze local court.

4.9.5.2. Knowledge of Traditional Justice system

All of the 3 officers in the Ministry of Justice said that they had knowledge of what traditional justice system is and how they work. However, of the 3, the local court judge proved that they had more knowledge and experience in customary law as urban local courts also use customary law to adjudicate on cases.

4.9.5.3. Nature of cases handled by traditional courts

With regards to the nature of cases deal by traditional court, all the respondents said that traditional courts usually deal with civil cases and other cases that have to do with family affairs. For example cases that has to do with land, and family issues.

4.9.5.4. Competency of Traditional court Judges and village headmen in resolving disputes

Of the three respondents, the Magistrates reiterated that traditional court judges and village headmen are very competent in dealing with customary cases, however he reechoed that traditional courts have fail to resolve complex criminal cases. Even though these courts are present in the villages, such kind of cases still has to be taken to the police and can only be adjudicated by gazeted courts. On the other hand, the local court judge said traditional leaders are very competent in customary law and are the ones with the way people live in those communities. *"The traditional court judges have got a lot of knowledge with regards to traditional law and customs. Even in pre-colonial days elders were known of maintaining law and order in African villages",* one respondent said.

4.9.5.5. Effectiveness of traditional courts

The 3 respondents all agreed that traditional courts are effective in resolving disputes in most cases conclusive judgements usually given. However, the magistrate said that there some cases

which failed to be resolved in these courts and had to be referred the mainstream courts to be reconsidered.

4.9.5.6. Role played by Traditional courts

One of the respondents said "*traditional courts help to decongest the main stream court systems and further help to keep peace in the village whilst acknowledging the authority of traditional leaders"*. The other respondent also agreed to say that traditional courts played a vital role and that they were capable of settling even complicated disputes because they are located in the same locality were cases happen from.

4.9.5.7. Whether Traditional courts have the capacity to resolve disputes

According to the first respondent who was a magistrate had this to say*; "traditional courts do have the capacity to resolve disputes because parties in the conflict generally follow what the chief or village head man advise as traditional leaders hold a lot of authority in rural"*.

On the other hand, the local court judge added that traditional matters come with sanctions which would in turn change the attitude of the person which in turn ensures compliance. However, they just lack capacity because these courts are not funded by the government hence they face a lot of logistical challenges

4.9.5.8. Challenges faced by Traditional courts

One of responded said that traditional courts lack recognition from government especially with regards to their formality. For this reason, some people can easily disregard the judgement of the a traditional court. The other respondent said that in order to build capacity in these courts, government should start funding these courts and they are supposed to provide tool that the village courts can be used.

Another challenge that was brought out was corruption and with regards to this the respondents had this to say, "*Indeed they traditional courts are not free from corruption. This is so because corruption is everywhere and has penetrated in all fibers of society. However, corruption in traditional courts is not so rampant as compared to the mainstream courts"*.

The second respondent reiterated that *''corruption is not a new vice in traditional courts as in some cases people have complained that some judges have been bought. However, he was quick to say that if a traditional court judge was found wanting with corruption allegations, then he could be fired.*

4.8.5.9. Future of traditional courts in Zambia

With regards to the question above, the magistrate said that "*traditional courts had a bright future in Zambia as people especially those in rural areas still used them. This is because of their proximity to the people compared to local courts which are located mostly in urban areas. However, in order to enhance their operations traditional law is supposed to be codified to bring about standardization*".

Apart from that, another respondent said that there is need for the government to build modern court rooms so that people not disturbed especially in rain season because currently village courts do not have proper courts. There was also need for the government to put traditional court judges and village headmen on a salary in order to cub corruption. This would in turn enhance the effectiveness of traditional courts.

4.9.6. Findings from officers from ministry of chiefs and traditional affairs

4.9.6.1. Demographic Information

From this Ministry two officers who were verbally interviewed included one male traditional affairs officer aged 40 years and a female traditional affairs officer in her 30s from Monze district.

4.9.6.2. Knowledge of traditional courts

With regards to this question, all the two respondents showed greater understanding of what traditional justice system is. In simple terms, one of the respondents said, it is a traditional way of resolving disputes while the other one said it is a way of conflict resolution by elders using customary law.

4.9.6.3. Usage of traditional courts

Both respondents, said people in rural areas often resolved almost all disputes using traditional courts other than criminal offences. The other respondent said people preferred to use these courts because they had a good track record in resolving disputes in the villages and that people were familiar with the language and the way these courts operate.

4.9.6.4. Whether traditional court judges possess some form of legal education

The first respondents said that traditional court judges are not trained in statutory law or even though they do not have legal education, they still possess a lot of knowledge and experience with regards to customary law. The second respondent said that traditional court judges used their culture and traditional to adjudicate over cases. She said that certain cases did not legal education, but required the wisdom of elders.

4.9.6.5. Effectiveness of Traditional courts

The first respondents said traditional courts where quit effective especially on civil cases and family disputes. Apart from that, traditional courts where effective because they possess the background and root causes of some the disputes. This was important in the resolution of disputes.

The second respondents was of the same view and said that traditional courts are effective as this was the mode of dispute resolution in most rural areas. However, she was quick to indicate that the effectiveness of traditional courts needs to be enhanced by including these courts to the mainstream justice system and formalizing their operations. Another respondent *said that traditional courts have are effective in resolving disputes because they possess the background of the conflicts in the village.* However, the other respondent said that traditional courts have the capacity to effectively resolve disputes but their capacity need to be enhanced by the government through the building of proper court structures and paying traditional court judges.

4.9.6.6. Failure of traditional courts to resolve disputes

Both respondents said quit often they have mediated on cases that fail to be resolved by traditional courts especially those related to land and king ship. According to one of the respondents, "these wrangles get so serious to an extent that people can end up killing each other. Traditional courts have in certain instances failed to resolve such kind of disputes and we have been called upon to be mediators.

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CHAPTER FIVE

DISCUSSIONS OF FINDINGS

5.1. Introduction

This chapter focuses on the discussions and summary of the findings of the study. It will try to bring out the implication of the findings and relate the findings to other studies reviewed in the literature.

The aim of this study was to assess the effectiveness of traditional justice systems in the resolution of disputes in selected chiefdoms of Monze district. This study is quite important as it will help bring about awareness of the important role played by effective traditional justice system in the provision of equitable justice.

The discussion follows the order in which the findings have been presented in the previous chapter. This order is in line with the main objectives of the study;

5.2. Demographic Data

The findings on age review that most respondents from the household category (subjects) interviewed where falling in the age range of the 33 and above which was represented by the 43.7% which simply indicate that traditional justice system are usually used by elderly persons. There are less young people using traditional courts to resolve their disputes. The additional information gathered by the researcher was that young people shunned the use of traditional courts due to their lack of appreciation of their tradition and culture and perceives traditional courts to be old fashioned. Apart from that, other young people who preferred other means of resolving disputes said that they doubted the effectiveness of traditional courts. However, even though young people understood that traditional courts are not really effective in resolving disputes, they actually said that traditional courts are still the best available method of resolving disputes at village level. Despite these factors, a lot of young people still said that they would opt to using traditional courts rather than travelling long distances to resolved disputes that can be resolved locally.

In terms of sex, the findings show that more men use traditional courts to resolve their disputes as compared to women. As it can be seen from the field findings of 53.3% representing men

while that of women was standing at 43.7%. These findings are consistent with what the ZLDC discovered in relation to traditional justice system being Gender biased. The 2006 ZLDC study found that while "Most traditional officials said that they treated men and women equally in court, by giving them an equal opportunity to state their case, a statement to be taken with a pinch of salt. Female litigants spoken to in the research recounted stories of the ridicule that they are subjected to in traditional courts, and that proceedings are steeped in culture, which makes it difficult for them to take their grievances to court, especially where men were involved (ZLDC, 2006). A number of limitations inherent in customary justice systems stack the system against youths, women, the poor, ethnic minorities and groups who were traditionally discriminated against in the traditional setting for various reasons. This in turn poses big challenges for such core rule of law principles as equality before the law, due process, fair hearing and commensurate punitive measures.

In an attempt to enhance the effectiveness of traditional justice system, there is supposed to be gender balance in the representation of women in these traditional tribunals. If the traditional justice system is to be formalized by government, any form of discrimination against women is supposed to be eliminated. Traditional courts are supposed to be as inclusive as possible. In relation to this, Francis (2014) agrees that there was an explicit attempt to deal with this by mandating the representation of groups that were traditionally discriminated against in traditional courts. Inadequate research has been done to determine what the effect of this measure has been on the justice provided by the traditional tribunals. However, indications are that mandating representation is necessary, but not sufficient to end discrimination and that the presence of women on the tribunals has not had the desired impact on the decision making process in terms of bias against women litigant.

With regards to education, the researcher discovered that most of the respondents that had some primary education were represented by 36.7% and those uneducated were at 23.3%. 20% represented those that had attained at least some secondary and tertiary education. The implication of these results indicated that most people interviewed had low levels of education or they were uneducated. What can be deduced from this is that most traditional courts used by people with less education but are very familiar with traditional knowledge. Furthermore,

traditional courts are located in rural areas were people just manage to attain primary education and the majority of which are uneducated.

5.3. Awareness / usage of the traditional justice system

In all three chiefdoms, all the respondents interviewed had knowledge about traditional justice. They were aware of the existence of these courts in their villages and that these courts were legitimate and drew their authority from the chief. From the findings, it was discovered that 70% of the respondents often take cases to a traditional court and 20% represents the respondents that rarely use traditional courts. The implications of these findings were that the subjects in the three chiefdoms preferred using traditional courts as a means of resolving their disputes. There is a preference to use traditional courts in the three chiefdoms. This is consistent with findings from a similar study which states that one of the strongest arguments presented in support of customary justice systems as dispute resolution mechanisms is simply that they are the preferred means of resolving disputes for the majority of users. On the other hand, there is a growing body of quantitative analysis in support of this contention, albeit country-specific, asserted preference is not a clear-cut indicator in itself, but one that is colored by factors such as limited alternatives and a restricted perspective outside of a respondent's social context. Perhaps most significantly, preference for customary justice can sometimes be more closely related to dissatisfaction with formal state-based justice than to actual satisfaction with customary norms (UNDP, 2005).

On the other hand, while there is a lack of reliable data to accurately gauge the extent of usage of 'traditional' justice approaches the weight of available evidence suggests a very heavy reliance on such approaches among ordinary citizens. Survey data from Papua New Guinea, Solomon Islands, Vanuatu, Timor-Leste and parts of Indonesia indicate a high resort to customary or 'traditional' mechanisms for resolving everyday conflicts and disputes. Such approaches are particularly widespread in rural areas and disadvantaged urban communities where access to state justice remains problematic for many citizens. 'Traditional' approaches are accessible, culturally appropriate and tailored to the most common types of conflict in local communities, including inter-personal security; protection of land, property and livestock; and family and community disputes (UNDP, 2005).

Lastly, a 4,524-respondent survey conducted by UNDP in 2005 across five provinces in Indonesia found that while respondents overwhelmingly stated a preference for the customary justice system, actual patterns of use between the customary system and state courts did not vary considerably. Ten percent of respondents claimed to have used the formal system, while 12 percent claimed to have used the customary system user preference for the customary system has more to do with the availability (or lack thereof) of viable alternatives. Customary justice may not be users' first choice, but rather the only option for resolving a dispute. State justice may be geographically inaccessible or too costly, or there may be cultural disincentives that dissuade users from approaching the courts. State courts may refuse to resolve matters of great significance to communities, either on the grounds of triviality for example, cases involving disrespect or because they do not recognize the nature of the wrongdoing such as in cases of witchcraft or black magic. Alternatively, courts may be weak and unable to offer quality justice in a timely manner, or not be functioning at all, particularly in post-conflict situations or in the aftermath of natural disaster (UNDP, 2005). Therefore, traditional justice system still stand as an effective mechanism of resolving disputes in rural areas since it is still preferred by the majority.

5.4. Effectiveness of traditional courts in resolving disputes

This objective can be seen as the back born of this study as the findings attempted to directly prove the effectiveness of traditional justice system. The finding from the subjects shows that 70% of the respondents agreed that traditional courts where effective in resolving disputes while 30% of the respondents said that traditional courts where not effective in resolving disputes. These findings are consistent with a study done by ZDLC (2006) which review that in Zambia informal customary law remains a viable system with Chiefs' courts functioning very well. The implication here is that traditional courts are quite effective in resolving disputes. However, it should be noted that the existence of a formal parallel system of Local Courts means that it lacks the support of the state.

Traditional leaders and their judges also reviewed that their courts where effective and that their courts are well known for resolving local disputes. This was in line with a study by ZDLC which confirmed that, in Zambia, as in many African countries, chiefs and headmen settle a large number of disputes. The resilience of the traditional governance and justice systems has been attested to in a number of studies. The Zambian Law Development Commission (ZLDC) found

that “there is a viable traditional court system in existence in the country”, and confirmed this to be the case even in the Southern Province, where the system was not traditionally strong. In matters concerning customary land, chiefs remain the natural source of authority, exercising executive and adjudicative functions (ZLDC, 2006).

Other respondents indicated that traditional courts where quit effective in resolving disputes especially those to do with the welfare of people in village such as witchcraft, land issues, adultery and family issues. Apart from that, traditional courts where considered to be effective because they possess the background and root causes of some the disputes. This was important in the resolution of disputes.

In addition, it should be noted that assessing the effectiveness of traditional justice system includes assessing the attitudes of people towards traditional courts. From the findings of this study, the researcher discovered that 100% of all respondents agreed that traditional courts were respected in their villages. This was in line with what Francis (2014) discovered in Kenyatta (1965) where he states that conflict resolution by elders is based on social/cultural values, norms, beliefs and processes that are understood and accepted by the community. For that reason, people are able to abide and comply by their decisions. It is said that as a man grows old, his prestige increases according to the number of age-grades which has passed. An elder’s seniority makes him almost indispensable in the general life of the people. As such the presence or advice of elders is sought in all functions and matters including dispute resolution. Elders hold supreme authority and customs demand that they be given due respect and honors, not only when they are present, but even when absent.

Respect for elders, ancestors, parents, fellow people and the environment is cherished and firmly embedded in the mores, customs, taboos and traditions amongst Africans. According to Bujo the admonitions, commandments and prohibitions of ancestors and community elders are highly esteemed as they reflect experiences which have made communal life possible up to the present. Due to the respect accorded elders, people avoid being in conflicting situations. For example, Kenyatta documents how a man could not dare interfere with a boundary mark amongst the Gikuyu people, for fear of his neighbor’s curses and out of respect. Boundary trees, lilies and demarcation marks were ceremoniously planted and highly respected by the people. If the boundary trees or lilies dried out, fell down or was rooted up by wild animals, the two neighbors

would replace it. But if they could not agree as to the actual place where the mark was, they could call one or two elders who after conducting a ceremony would replant the tree or lily (Kenyatta, 1965).

5.5. Respondents Satisfaction of dispute resolution by Traditional courts

From the findings, 70% of the respondents agreed that they were satisfied with way traditional courts handled there cases while 30% said that they were satisfied with the way traditional courts operated. The implication of these findings is that traditional courts are operating according to the expectation of the people in the selected chiefdoms of Monze district. These findings from the subjects are in line with what all the 3 chiefs and 6 village headmen interviewed said. Their responses where that their subjects are usually happy with the way disputes are resolved by traditional courts. However, there are some instances when parties in disputes are not happy with the judgement of village headmen they would appeal at the highest court based at the chief's palace and sometimes certain cases are further escalated to statutory courts located in town.

5.6. Challenges faced by traditional courts

There many challenges discovered in this study and these challenges have been making traditional courts less effective. Below are some of the challenges;

Corruption is not a new vice in traditional courts as in some cases people have complained that some judges have been bought. However, the second respondent was quick to say that if a judge is found wanting with such allegation then he or she can be fired. In relation to corruption, a study by Francis (2014) review that modernity has had its fair share of negative impacts on African justice systems. In pre-colonial period, elders were the rich and wealthiest people as they held land and livestock. Their wealth and respect enabled them to be independent during dispute resolution processes. However, in modern societies, younger people have accumulated wealth and in most cases, older people rely on the younger people. This has enabled dispute resolution by elders to be affected by bribery, corruption and favoritism. For instance, there are reports that the Abba Gada elders of the Borana-Oromo and the Sefer chiefs of the Nuer community have been corrupted by bribes therefore limiting people's faith in them. However, in as far as this is a fact, the findings of this study show that there are low levels of corruptions in traditional courts.

The third challenge recorded by the researcher had to do with impartiality and biasness of traditional court. According respondents, traditional court judges and village headmen were biased in certain instances especially when one of the parties to the disputes known by the judges or has paid a bribe. According to Fergus, Lungowe, et al, (2012) there were reports in one area that in cases where the traditional leaders had an interest in the case, they refused and threatened that one would be expelled from the village if they do not respect the judgment passed. This is a problem as it is one of the reasons of why tradition courts are ineffective.

No codification of the decisions of the courts is also another factor the researcher saw with tradition courts. According to Francis (2014) because decisions are not recorded, it is difficult to monitor the substance of the decisions made. They are often seen as inconsistent. With regards to this study, even though the finding shows that cases are recorded, it was Just records in a mare court register or diary that simply shows the date and case and who won the case. However, the proceedings and decision of the court case are not recorded so that they are standardized into law. This was consistent with what was found in the literature review.

The challenge for lack of proper infrastructure was also discovered by the researcher in the field. It is a well-known fact that traditional courts are lightly and commonly called Chimtengo courts in most rural areas. This was also the same scenario with grass roots courts and certain zonal courts that still have court hearing under a tree or grass thatched courts. However, the courts are ramshackle courts sometimes grass thatched in some places. This is in line with what Francis (2014) reviews when says he there is no infrastructure to the customary law system, with most proceedings taking place informally under trees, and no support of the state in enforcing its decisions. In addition, traditional courts also suffer have got a challenge of transport and logical. In order to deliver summons, the kapaso has to cover long distances in order to deliver summons because traditional courts do not have motor vehicles or other forms of transport.

According to Francis (2014), the first key challenge of dispute resolution by elders or any form of traditional justice system is the negative attitude they receive from 'modernized' Africans. In Ethiopia, Christians and Muslims alike have criticized the Borana-Oromo-Gadda ritual system as paganism. Traditional practices such as rituals, cleansing, and trial by ordeals which are central in resolving disputes have been declared illegal under most legal systems. Similarly, in most countries in Africa including Kenya, South Africa and Ethiopia, there are laws proscribing

witchcraft and traditional African practices despite their complementary role in dispute resolution.

Secondly, African justice systems are regarded as inferior in comparison to formal justice systems. The inferiority is as a result of the subjugation of African customary law, which is the undergirding normative framework providing the norms, values, and beliefs that underlie traditional dispute resolution. The concept of repugnancy to justice or immorality introduced by colonialists to limit the application of African customary law remains in most African countries even in the post-independence era. In Kenya, for instance, Article 159(3) of the Constitution limits the use of traditional dispute resolution mechanisms. The Article prohibits the use of traditional justice systems in a manner that contravenes the Bill of Rights, is repugnant to justice and morality or results in outcomes that are repugnant to justice and morality or is inconsistent with the Constitution or any other written law. In South Africa, Sections 12 and 20 of the Black Administration Act limits the use of traditional dispute resolution in civil and criminal cases respectively. This subjugation is a feature that is invariably common to virtually all African countries; and acts as a fetter to their effective utilization in enhancing justice among Africans (Francis, 2014).

Thirdly, modernity has had its fair share of negative impacts on African justice systems. In pre-colonial period, elders were the rich and wealthiest people as they held land and livestock. Their wealth and respect enabled them to be independent during dispute resolution processes. However, in modern societies, younger people have accumulated wealth and in most cases, older people rely on the younger people. This has enabled dispute resolution by elders to be affected by bribery, corruption and favoritism (Francis, 2014). For instance, as it was reported by one traditional leader interviewed that there instance where certain village headmen have been corrupted by bribes therefore limiting people's faith in them. Apart from corruption and bribery, modernity and westernization have broken down the close social ties and social capital between families and kinsmen.

5.7. Conclusion

In conclusion, the discussion tried to show through the findings of each objective that guided this study` that indeed traditional justice courts are effective in resolving disputes in Monze district. Even with the many challenges that they face, they still manage to resolve the majority of cases

that take place at village level they by promoting peace in these communities even the absence of the police. In addition, this study has also reviewed that traditional courts are highly respected as shown through the growing resilience in the usage of these courts. If traditional courts are able to dilute tension through conflict resolutions, it implies that they are effective. However, their effectiveness can be enhanced by coming up with deliberate policies that will smoothen their operations and lessen their challenges. It is my wish that with these recommendations below, some of the challenges faced by traditional courts can have solutions and consequently enhance the effectiveness of the traditional justice system.

RECOMMENDATIONS

Below are the recommendation to the government through the Ministry of Justice, allied ministries like the Ministry of Chiefs and Traditional affairs and other stakeholders;

(a) There is need to develop a clear legal and policy framework for the application of traditional dispute resolution by elders. In this regard, we can learn from the challenges and advantages of the traditional justice systems that have been highlighted in this paper.

(b) Emphasis should be placed on traditional dispute resolution as the first option in resolving disputes. Parties in certain personal relations such as marriage, divorce, child custody, maintenance, succession and related matters should first opt to traditional dispute resolution before approaching the formal legal system.

(c) There is need to give elders engaged in the process adequate remuneration to prevent chances and opportunity for corruption. This would prevent corruption as has been observed from the findings of this study would influenced the effectiveness of dispute resolution process.

(d) There is need for a framework for appealing the decision of elders in the traditional dispute resolution mechanisms. For instance, for traditional justice system to be effective, there are supposed to have a structured hierarchy of traditional dispute resolution mechanism which begins at the household level, then goes to the extended family level, the a formal customary court, and lastly to the customary court of appeal, with the status of the High court.

(e) There is need to develop an enforcement mechanism for traditional dispute resolution mechanisms by elders. For instance, in South Africa, if a person fails to obey the decision a traditional elder, the person is reported to a magistrate who gives the person 48 hours to show cause and if he fails to, he is punished.

(f) African traditions and customs should be co-opted into formal education system to enhance the respect for our cultures, especially after centuries of subjugation. Most African customs and practices are neither written nor codified since they are passed from generations to generations through word of mouth. They are at great risk of dying away and should therefore be taught not only for use in dispute resolution but also for posterity and appreciation by present and future generations.

(g) Need for codification of key concepts, practices and norms of traditional dispute resolution to protect them. Further, such codification increases uniformity and consistency of application of traditional dispute resolution mechanisms by elders.

(h) The researcher also recommends that more resources be put into the training and sensitization of officials of traditional justice system. This training should focus on ensuring that traditional courts provide justice that is equitable (especially in relationship to gender), predictable, transparent and nondiscriminatory and that conforms to the obligations of the countries under international treaties on the treatment of women, children and other vulnerable peoples.

(i) The research outlined above would enable policy makers to gauge the most appropriate methods and mechanisms through which to build the capacity of the institutions involved in justice delivery to respond effectively to the needs of the poor. Certain measures are clearly required to improve the quality of justice in traditional courts. These include ensuring that judgments are recorded and that there is adequate supervision of customary tribunals.

(j) Reforms to the formal legal and judicial system so that it includes more of the positive aspects of customary law including the restorative aspects, the accessibility, the speed, the affordability, the lack of complexity, should go hand in hand with reforms to the customary systems. In addition, care should be taken not to sacrifice the advantages of traditional courts in an effort to reduce the disadvantages.

(k) Government should provide transport in form of motor bikes to be given to each court in the village in order to quicken the delivery of summons by the kapasos or neighborhood watch.

(l) The government should also fund the building of modernized courts in each village in order to help uplifting the face of traditional courts. This would legitimatize their existence.

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APPENDIX