



CONTEXTUALISATION OF HUMAN RIGHTS ISSUES AND TREATMENT OF WOMEN IN AFRICAN CONTEMPORARY ANTHROPOLOGICAL TRADITIONAL JUSTICE SYSTEMS

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ABSTRACT: *The article aims to unravel the efficacy of anthropological traditional justice systems on women's human rights concerns, which need to be monitored in the facets of cultural anthropological perspectives. Issues relating to fair trial, ill treatment, and the prohibition of discrimination amongst women in the traditional justice system are going to be analysed from an anthropological point of view. Human rights issues relating to traditional justice systems are one of the contested areas in ontological anthropology perspectives, such that the majority of publications view traditional justice systems as agents for human rights abuse. Indeed, traditional justice systems and their accompanying mechanisms have been in existence in most countries for long periods and they have existed primarily for the purpose of resolving conflicts within and between communities. Some of these traditional institutions and practices have been dogged by a myriad of challenges, such as being undermined by serious and real accusations of politicisation and resistance from rising Christian culture and practices. The study is based on alternative dispute resolution theory as the theoretical framework. The qualitative grounded research methodology forms the basis of the research. Findings from the study show that some of the traditional justice practices have, however, been dogged by a myriad of challenges, such as being undermined by serious and real accusations of politicisation, resistance from rising Christian culture and practices, and accusations of serious bias against women. Recommendations proffer that traditional rulers should be trained to uphold justice at the community level by protecting women's rights. The judiciary in African countries should develop policies which emphasise women's participation in traditional justice systems.*

KEYWORDS: Human Rights, Traditional courts, anthropology, Traditional justice systems, African traditional religion.



INTRODUCTION

Discrimination against women in the traditional justice system is common throughout the African region and the most discriminated against are women with disabilities, minority women, single mothers, older women and those living in rural areas. In African traditional justice systems, women are only allowed to be witnesses and nothing more (Atotso & Achar, 2023). Although equality between women and men is guaranteed in the constitutions of 139 countries and territories throughout the world, inadequate laws and loopholes in legislative frameworks, poor enforcement and vast implementation gaps make these guarantees hollow promises, having little impact on the day-to-day lives of minorities, women and people living with disabilities. GBV affects women in rural communities because of limited social support from governmental agencies and resources (Bob et al., 2022).

Working to ensure that women with disabilities have access to justice—that they are not excluded or marginalised by our justice systems—can be both fulfilling and frustrating. Traditional gender roles, social norms and cultural barriers reinforce hegemonic masculinities in traditional leadership; women can wield silent influence but are seen as transgressing gender norms when they become traditional leaders and may face opposition from their families, communities and other chiefs (Muradzikwa & Madziwa, 2023). Even if one takes a global perspective, it is possible for one to claim that no nation has met the challenge of ensuring women with disabilities participate fully in justice systems. The inability to participate fully is, sadly, not limited to persons with disabilities. Given the tremendous variation in the types and degrees of physical and mental impairments that are possible, however, ensuring that all women with disabilities have access to justice does present unique challenges. The traditional justice system has a significant anthropological impact on the wellbeing of women in the areas of personal law in regard to matters such as marriage, inheritance, and traditional authority.

Background

Before colonisation, traditional African societies advanced with their well-established institutions of administration that covered all spheres of life according to the needs of the society that they made (Atotso & Achar, 2023). The African contemporary traditional justice system emerged as a restorative mechanism which transformed restorative justice. Most of the traditional justice systems are embedded in African contemporary laws, hence reflecting traditional African norms and values (Atotso & Acher, 2023). The traditional justice system employs an approach which mainly focuses on retributive justice, which mainly addresses the major triggers of crime and resolves minor conflicts before they escalate to state interventions. In the traditional judicial system, almost everybody has access to justice owing to its quick dispensation of justice. The African traditional justice systems are regarded as essential elements of African communities, embodying unique philosophies, rituals and practices that have historically played a crucial role in resolving conflicts and fostering peace (Olawale, 2024). Generally, the type of justice offered by the traditional justice system is mainly focused on reconciliation, compensation, restoration and rehabilitation.

To recognise and promote restorative forms of justice, many countries have developed protocols, standards and ethical procedures for practitioners of restorative justice; one such tool is indigenous or tribal courts (Jili, 2020). In Zimbabwe, it has been observed that in traditional justice mechanisms victims and perpetrators meet in amicable situations and environments, discussing what transpired. Through the help of family friends and traditional leaders such as



Headmen and Chiefs they are able to come up with a way forward and usually the talks end up in reconciliation through the holding of cleansing ceremonies and payment of reparations. The traditional justice system fosters a high degree of participation, giving the victim, the offender, and the community as a whole a real voice in finding a hopefully lasting solution to the conflict. Furthermore, they assist in educating all members of the community as to the rules to be followed, the circumstances which may lead to them being broken, and how ensuing conflict may be peacefully resolved.

Wielenga and Batley (2020) state that traditional-based practices speak to the long-held traditions and practices which differ from community to community, which have resonances that are passed on orally from generation to generation. Wielenga and Batley (2020) note that traditional justice systems include rich symbolism and ritual, involve the whole community and much dialogue, are concerned with finding consensus and prioritise compensation or redress.

THEORETICAL FRAMEWORK

The Alternative Dispute Resolution Theory

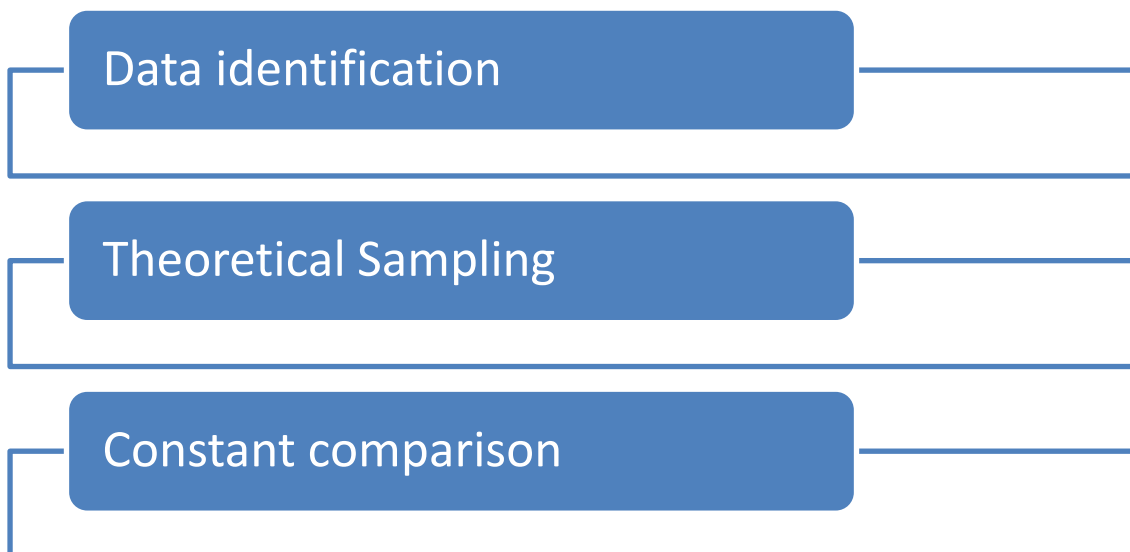
The study used the alternative dispute resolution theory, which is based on the relevance of a variety of dispute resolution techniques involving two or more parties. It can be argued that the third party acts as a facilitator and seeks means of resolving the differences of the two parties by turning to alternative measures rather than accessing formal legal proceedings (Jili, 2020). Traditional justice mechanisms have the potential to bring out the truth about past human rights violations as the perpetrators are allowed to present their stories and narrations in community-based environments where their safety is guaranteed by the rest of the community. Alternative forms of dispute resolution are increasingly used to effectively resolve conflicts (Lipiec, 2023). As much as in modern criminal prosecutions and court processes, the risk of half-truths, lies and manipulation of information can never be done away with. However, the fact that a perpetrator comes seeking community cleansing and is also aware of the need to “cleanse” his own family of social ills bedevilling his relatives facilitates a natural inclination towards bringing out the whole truth. The kind of social and community stigma that accompanies perpetrators who are perceived to be uncooperative with the truth-seeking process is enormous. A whole host of social repercussions can be invoked by communities when dealing with recalcitrant culprits. Usually, communities can shun attending or associating with the perpetrators’ family at community gatherings, funerals or even weddings. In a close-knit society/community this is not desirable and thus will usually force a culprit to become an acceptable member of the community by telling the truth and being seen as a person who values *Hunhu* or *Ubuntu*. Such truth-seeking mechanisms are central to the promotion of reconciliation in divided societies, healing wounds that trials and purges can deepen. It can as well be that for the family and friends of victims there can be no closure, no moving on and leaving the past behind, without knowing what happened to their loved ones.



METHODOLOGY

The study used the grounded theory qualitative methodology to probe and explore emerging topics in traditional courts. Grounded theory research designs present a systematic approach to data collection or generation and development of theory with a focus on identifying basic social processes, conditions and the ways in which participants respond to these (FitzGerald & Mills, 2022). The grounded theory was used as a pragmatic methodology to observe interactions during the traditional court proceedings in the traditional courts. Ethnographic observations based on the grounded theory formed the basis of the research. As interactions and behaviours are amenable to observation, witnessing events firsthand improves the researcher's comprehension of participant accounts and can help reduce the ambiguity and uncertainty of early coding (FitzGerald & Mills, 2022). The qualitative grounded theory methodology was effective to proffer abstract interpretations on the traditional justice systems in African contemporary societies. The principle of data identification in qualitative grounded research helped to construct valuable meaning and interpretation of traditional courts from a human rights perspective in African contemporary courts. Sosa-Diaz and Valverde-Berrocoso (2022) state that the principle of emergence or data identification states that the researcher always remains open to new realities and phenomena that emerge in the course of data collection and analysis.

Fig. 1: Qualitative Grounded Theory Principles





FINDINGS AND DISCUSSIONS

The efficacy of deterrence and closure in traditional justice systems and human rights issues

Findings from the study show that, as much as deterrence is seen to be the preserve of modern-day judicial systems, traditional justice systems in Afrocentric societies have the potential and ability to deter future human rights violations against women perpetrated in communities. The invocation of the *ngozi* or avenging spirits against the perpetrator and his or her family is one mechanism that has played a huge role in ensuring that young people do not engage in criminal activities in the name of political parties or other motives. The spiritual sanction of *ngozi* removes collective guilt that is usually abused to hide behind gross criminal acts and it individualises the offence. Traditional African justice systems exhibit several distinct features that set them apart from formal court systems (Chukwudebelu, 2023). These features are rooted in the cultural, social and historical contexts of African societies, reflecting the unique values and principles that guide the administration of justice (Chikwudebelu, 2023).

Study findings showed that traditional justice mechanisms have a way of bringing closure to most cases of human rights violations and community crimes against women. It was discovered that, when victims and perpetrators meet, discuss and finalise the outstanding issues, there is usually an agreement to bring closure and finality to the case. Women often cited the confidentiality of the process as one of the primary reasons for preferring the community-based mediation alternative, as it allowed them to raise issues for example, domestic violence, which they would not be able to bring up as part of the dispute in other forums (Aiyedun & Ordor, 2016). In addition, because the fate of the disappeared, dead, and stolen livestock is known, it becomes easier for victims' families to get death certificates and even finalise the estate of the deceased. Inheritance issues can also be dealt with in cases where families would not have distributed the estate fearing that the person might emerge one day.

African traditional leaders in attesting to human rights violations in traditional justice systems.

The research findings showed that traditional leaders in Afrocentric societies play a significant role in advocating for women's rights in traditional courts. The traditional leaders include sub-chiefs, elders, kings and elders who act as mediators for women facing the atrocity of human rights violations in Afrocentric traditional justice systems. Findings showed that women are given the opportunity to diversify values and social norms during the traditional court session. Ethnographic observations showed that in some instances, traditional leaders oblige political allegiance and bribery, especially when dealing with issues affecting women in traditional justice systems. Findings also showed that women in traditional courts may be subject to abuse from some traditional leaders as they are threatened to their own authority. may favour certain parties depending on their political allegiance or power in terms of wealth, education or status, where not to do so might pose a threat to their own authority.

Research findings can be supported by Ubink (2010), cited in Chukwudebelu (2024), which emphasises the central role of community leaders such as elders and chiefs in mediating disputes and ensuring justice through customary law. It is believed that Africans can unchain themselves from the colonial legacy by harnessing their leadership capacity and using



strategies to respond to global environmental factors that threaten their existence and the quality of life of their constituencies (Matsiliza, 2024).

The Human Rights Conventions play a significant role in addressing challenges faced by women in traditional justice systems.

Findings from the study show that UN human rights treaties provide important standards for the protection of the rights of persons belonging to minorities, including women and persons with disabilities. The rights guaranteed in all UN human rights conventions apply equally to all members of minority groups, including women and people living with disabilities. A number of international conventions, standards and recommendations, yet in reality, minorities, including women and people living with disabilities. One of the key challenges to the sustainability of the traditional African justice system is their integration with formal legal systems (Chukwudebelu, 2024). The coexistence of these two systems can lead to conflict and inconsistencies, particularly when former legal systems do not recognise or adequately accommodate traditional practices (Chukwudebelu, 2024). This exclusion can be caused by various factors, including discrimination, poverty, low institutional trust or confidence in the process, lack of capacity, language barriers, weak access to information, or living in remote areas with a lack of judicial facilities. Some minorities may also prefer to use traditional justice systems to resolve disputes. Minorities are more vulnerable to arbitrary arrests and are less likely to receive a fair trial due to discrimination, under-representation in legal services, higher levels of social exclusion and language barriers.

RECOMMENDATIONS

- Policymakers should harness the principles of the traditional justice system and prioritise long-term solutions in traditional courts during the policymaking process.
- Traditional leaders should formulate tangible mechanisms that ensure fairness in addressing human rights issues in traditional courts.

CONCLUSIONS

Traditional justice systems and processes are often male-dominated and a hostile location for women participants—potentially discouraging women from bringing cases and/or affecting the impartiality of proceedings. While courts are more accessible and the judgement of traditional authorities generally respected, traditional norms often violate women's substantive and procedural rights, in some cases to grossly inhumane proportions. There is therefore a need to mainstream and ensure gender mainstreaming is made a key component of traditional justice.



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