Uncounted Success: Rethinking the Role of Traditional Dispute Resolution in Africa

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Abstract

Traditional dispute resolution mechanisms (TDRMs) have long served as foundational tools for managing conflict across African societies. Grounded in communal norms and restorative justice principles, these systems provide accessible, culturally legitimate, and often highly effective alternatives to formal litigation. Yet, despite their enduring relevance and demonstrable success, TDRMs remain insufficiently recognized within formal legal frameworks, marginally represented in policy debates, and largely overlooked in contemporary justice sector reforms.

This paper interrogates the paradox of "uncounted success" — traditional justice mechanisms that consistently deliver meaningful outcomes yet remain excluded from official metrics, legal education, and institutional support. Drawing on comparative insights from Rwanda, Uganda, and South Africa, this paper traces the historical marginalization of customary systems, the persistence of legal hierarchies, and the structural challenges inherent in integrating plural justice models. It further engages with rights-based critiques and procedural concerns, while outlining reform pathways that safeguard cultural legitimacy and strengthen legal accountability.

By rethinking the place of traditional dispute resolution in Africa's justice landscape, the paper advances a more inclusive and pluralistic conception of justice—one that recognizes and values effective practices, even when they operate beyond the boundaries of the courtroom.

A. INTRODUCTION

The administration of justice across the African continent has long been characterized by the coexistence of formal dispute adjudication mechanisms and Traditional Dispute Resolution Mechanisms (TDRMs).[1] TDRMs are community-based approaches to conflict resolution grounded in customary laws, cultural norms, and the authority of elders, chiefs, and

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1 *Orimaye Oluwafemi, et al,* Traditional Conflict Resolution Mechanisms and The Managing Dispute in Protected Areas in Nigeria: A review, Research Square, https://doi.org/10.21203.rs-6887124/v1 (accessed on 18 December 2025), p. 1.

other respected local leaders.[2] They emphasize dialogue, negotiation, and consensus-building, prioritizing social harmony and reconciliation over adversarial confrontation.[3] In many societies, these mechanisms are not only accessible and affordable but also culturally legitimate, reflecting the values and traditions of the communities they serve.[4] Their significance is particularly evident in rural areas, where formal courts may be geographically distant, financially burdensome, or linguistically inaccessible.[5]

According to Professor David McQuoid, TDRMs encompass negotiation, mediation, conciliation, adjudication, and reconciliation.[6] Although these categories are often presented as exhaustive, the practical landscape is far more diverse. Each society develops its own variations of dispute resolution. For example, in Sudan, customary mediation, compensation, and restitution mechanisms[7] are widely used, while other countries employ problem-solving workshops, councils of elders, informal mediation, traditional courts, and collective compensation systems such as diya.[8]

Despite their widespread use and proven effectiveness, the contributions of TDRMs remain largely unrecognized in official records, legal education, and national justice statistics. This paper refers to this phenomenon as "uncounted success"—a term that captures the reality that most disputes are resolved peacefully through traditional mechanisms, yet these outcomes remain invisible.[9] The concept highlights a persistent gap between the practical impact of community-based justice and its recognition within formal legal frameworks. In African justice systems, "uncounted success" reflects the under-acknowledged role of TDRMs in maintaining social stability, preventing conflict escalation, and fostering restorative justice.

Several interconnected issues arise from this situation. First is the paradox of effectiveness without recognition: TDRMs resolve disputes efficiently and are often preferred over formal courts, yet they lack official acknowledgment and institutional support.[10] Second, the absence of a clear legal framework creates uncertainty regarding the validity

2 *Matome Emmanuel Malatsi,* Investigating the restorative nature of the Traditional dispute Resolution Methods (Doctoral dissertation, University of Pretoria), Pretoria 2024, p. 1.

3 *Orimaye,* note 1 , p. 5 & 6.

4 *Muigua Kariuki,* Traditional Dispute Resolution Mechanisms Under Article 159 of The Constitution of Kenya 2010, Nairobi 2014, p. 12.

5 *Kariuki Francis,* Traditional dispute resolution mechanisms in the administration of justice in Kenya. In: E.I. Nwauche (ed), Citizenship and Customary Law in Africa (2020), p.33 – 68.

6 *David McQuoid-Mason,* Could traditional dispute resolution mechanisms be the solution to reducing the volume of litigation in post-colonial developing countries, particularly in Africa, Onati Social-legal Series, 11(2021), p. 7–9.

7 *Samuel Wassara*, Traditional Mechanisms of Conflict Resolution in Southern Sudan, Berlin, p. 8.

8 *Muigua,* note 4, p. 14.

9 *McQuoid-Mason,* note 6, pp. 598–599.

10 *Kariuki Muigua,* Effective Application of Traditional Dispute Resolution Mechanisms in the Management of Land Conflicts in Kenya: Challenges and Prospects, ADR, 10(2022), p. 1.

and enforceability of TDRM decisions.[11] Third, while formal courts—often shaped by colonial legacies and international standards—may not reflect the lived realities of local communities,[12] TDRMs embody indigenous knowledge systems developed organically to meet societal needs.[13]

Fourth, the undervaluation of TDRMs within legal and institutional structures threatens their sustainability and deprives communities of recognition for their own justice practices.[14] This uncertainty also leaves disputants unsure about the appropriate forum to approach or how TDRMs complement formal litigation when disputes escalate.[15] Fifth, the absence of oversight and standardization can perpetuate discriminatory practices, particularly affecting women, children, and marginalized groups.[16] Indeed, although TDRMs offer accessible and culturally appropriate forums, some customary practices may conflict with constitutional guarantees such as equality and non-discrimination.[17] Sixth, TDRMs often operate with minimal financial support, as state resources are disproportionately directed toward formal courts, despite the fact that TDRMs handle the majority of disputes.[18] This disparity reflects a systemic bias toward visible, formal institutions, even though TDRMs deliver most justice services.

This paper argues that addressing this gap is essential to ensure that TDRMs are not only preserved but also meaningfully integrated into legal frameworks, legal education, and institutional support systems. Such integration would enhance inclusivity, accessibility, and cultural legitimacy within African justice systems. Moreover, formal recognition would promote the continued use of TDRMs while ensuring that they operate within constitutional and human-rights-based parameters.

The research findings presented here are based on desk research using a doctrinal methodology to analyze legal doctrines and principles. The study relies on secondary sources, including legal texts, academic articles, statutes, commentaries, etc. This approach enables the identification of legal gaps and inconsistencies and supports a descriptive and analytical examination of the issues.

11 *Kariuki,* note 5, p. 59.

12 Totsuya *Obuchi,* Role of the court in the process of informal dispute resolution in Japan: Traditional and modern aspects, with special emphasis on in-court compromise, Law Japan, *20* (1987), p. 74.

13 *Kariuki Muigua,* Institutionalizing traditional dispute resolution mechanisms and other community justice systems, Nairobi 2017, p. 9.

14 *Ibid.*

15 Derara Ansha *Roba,* The interplay between traditional dispute resolution institutions and the formal justice in Ethiopia: The case of Jaarsa Biyyaa, African Journal on Conflict Resolution, 24(1) (2024), p. 3–5.

16 *Muigua,* note 13 , p. 15.

17 *Ibid.,* p. 15.

18 *Ibid.,* p. 16.

This paper is structured into six sections. Section One provides the introduction. Section Two discusses the historical and cultural foundations of TDRMs. Section Three highlights their efficiency and effectiveness. Section Four explains why the success of TDRMs remains uncounted. Section Five proposes strategies for re-valuing and strengthening the role of TDRMs. Section Six concludes the paper.

B. HISTORICAL AND CULTURAL FOUNDATIONS

The history of Traditional Dispute Resolution Mechanisms (TDRMs) in Africa is deeply rooted in community-based approaches that long predate the introduction of colonial legal systems.[19] Prior to colonial rule, African societies developed their own methods for monitoring, preventing, managing, and resolving disputes.[20] Each region, clan, lineage, or territorial community maintained distinct mechanisms tailored to its social structure and cultural norms. These mechanisms often relied on shrines, oath-taking, divination, and appeals to supernatural forces, reflecting a worldview in which wrongdoing was addressed through spiritual and communal processes rather than punitive condemnation.[21]

In this context, disputes were understood as threats to collective well-being rather than merely private disagreements. Consequently, dispute resolution was grounded in shared communal values rather than the individualism later introduced through colonial legal systems.[22] Concepts such as Ubuntu and Ubumuntu in Rwanda, or Nguni values in South Africa, emphasized dignity, harmony, humanity, and mutual care.[23] These values promoted cooperation for the common good and discouraged adversarial competition that could escalate conflict.[24]

Accordingly, dispute resolution was not conceived as a process of determining winners and losers but as an effort to restore relationships and mend the social fabric.[25] Community figures—elders, chiefs, religious leaders, and other respected authorities—facilitated these processes, drawing on their mastery of customary norms and shared values.[26] Because of

19 *Ejovi Austine., Iwerbgu Chuks Justus, A. Iwegbu,* Traditional Mechanisms of Conflict Resolution in Africa: A Pathway to Sustainable Peace in Nigeria, Zamfara International Journal of Humanities 2023, p. 61.

20 Ejovi/Iwerbgu, note 19, p. 63.

21 *Ibid.,* p. 62.

22 *Yaro, David Suaka, Ibrahim Mohammed Nuru-Deen, and Daniel Dramani Kipo-Sunyehzi*, Traditional Leadership and Conflict Management in Africa: An Examination of the Bole Chieftaincy in Ghana, African Quarterly Social Science Review, 1(2024), p. 57–9.

23 *Barbara Nussbaum,* African culture and Ubuntu, Perspectives, 17(2003), pp. 1–12.

24 *McQuoid-Mason*, note 6, p. 7.

25 *Yaro/Nuru-Deen/Kipo-Sunyehzi,* note 22 , p. 4.

26 *Ibid.,* p. 11.

the deep trust and moral authority vested in these figures, decisions were generally accepted without appeals procedures.[27]

Traditional justice systems were therefore anchored in principles of reconciliation, constructive dialogue, and community cohesion.[28] Emphasis was placed on reintegrating disputants into the community and repairing not only interpersonal relationships but also the broader communal bonds affected by the dispute.[29] These mechanisms were premised on the belief that social cohesion is a foundational pillar of societal stability. A dispute between two individuals was understood to have ripple effects across families, clans, and the community as a whole. Resolutions were thus designed to repair social harm, foster accountability, and prevent further conflict. This holistic approach to justice—highlighting consensus, empathy, and community stability—provides an important foundation for contemporary restorative justice models.[30]

Unfortunately, many traditional mechanisms were weakened or eliminated during the colonial period.[31] As Oyiniyi Abe observes, "with the advent of colonial administration, African values and beliefs which provided the foundational basis for TDRMs were eroded".[32] During colonial rule, traditional mechanisms coexisted with imported legal systems, but the latter prioritized individual rights, adversarial procedures, and the determination of liability. Unlike TDRM, conciliation and restorative justice were not actually central objectives of colonial courts.[33]

Over time, the colonial legal system systematically displaced African traditional legal practices, resulting in a dual legal structure in which customary systems survived but were subordinated to colonial frameworks. The formal courts required the participation of trained lawyers, effectively excluding traditional authorities—elders, chiefs, and other community leaders—from formal adjudication.[34] This exclusion significantly impeded the natural evolution and institutional development of TDRMs.

The marginalization of traditional dispute resolution mechanisms during the colonial period was justified on the pretext that these systems were allegedly unsuitable for handling

27 *Abe Oyeniyi,* Conflict Resolution in the Extractives: A Consideration of Traditional Conflict Resolution Paradigms in Post-Colonial Africa, Willamette Journal of International Law and Dispute Resolution, 25(2017), pp. 56–7.

28 *Skelton,* Regional reviews, in: Handbook of restorative justice, Cullompton 2007, p.468.

29 McQuoid-Mason, note 6, p. 6.

30 *Francis Kariuki,* Conflict Resolution by Elders in Africa: Success, Challenges and Opportunities, Alternative Dispute Resolution (9 July 2025), p.1.

31 *Ejovi/Iwegbu*, note 19 , p. 63.

32 *Oyeniyi,* note 27 , p. 56–7.

33 *Kinyanjui Sarah,* Restorative Justice in Traditional Pre-Colonial Criminal Justice System in Kenya, Tribal Law Journal 10 (2009), p. 1.

34 *Kehinde, Adeola Olufunke, and Modupe Nancy Wiwoloku,* Alternative Dispute Resolution: Historical and Contemporary Perspectives on Enhancing the Role of Traditional Rulers in Nigeria, Štát a právo, 200.

large-scale or complex disputes, particularly commercial matters involving foreigners. This rationale prompted colonial administrations to channel such disputes into formal courts, thereby creating a racially discriminatory judicial framework in which colonial settlers accessed formal adjudication while Africans were relegated to local courts and customary forums.

Colonial authorities often dismissed TDRMs as inadequate for handling complex or large-scale disputes, particularly commercial matters involving foreigners. This rationale justified the expansion of formal courts and produced a racially discriminatory judicial framework in which colonial settlers accessed formal courts while Africans were relegated to local or customary forums. Over time, the colonial legal system marginalized indigenous legal practices, resulting in a dual legal structure in which traditional systems survived but were subordinated. The requirement that formal adjudication be conducted by trained lawyers further excluded traditional authorities and impeded the evolution of TDRMs.

The dominance of colonial and Western legal systems also affected countries that were not formally colonized. Ethiopia, for example, was never colonized by European powers, yet the modernization reforms of Emperor Haile Selassie (1930–1974) introduced Western legal codes that displaced customary law and TDRMs.[35] This situation persisted until the adoption of the 1995 Constitution of the Federal Democratic Republic of Ethiopia, which formally recognized the coexistence of formal and informal justice systems, including religious and customary courts.

On the bright side, despite the historical dominance of formal legal systems, TDRMs continue to play a significant role in many African countries. For instance in Rwanda, succession-related disputes must first be addressed by the family council before being brought to the competent court or the Abunzi Committee.[36] Similarly, disputes arising from systematic land registration and boundary demarcation are initially resolved at the district level, with mediation available upon appeal.[37] In Uganda, land disputes are commonly handled by local leaders, traditional institutions, and elders using customary mechanisms.[38] In Nigeria, most land-related disputes continue to be resolved through traditional forums.[39] In Kenya, TDRMs remain widely used: in 2017, only 10 % of Kenyans with disputes sought court-based resolution, 19 % took no action, and 71 % relied on traditional mechanisms.[40]

35 *Roba,* note 15, p. 1.

36 Law no. 71/2024 of 26/06/2024 governing persons and family, Official Gazette (no special of 30/07/2024), art 386.

37 Law no. 27/2021 of 10/06/2021 governing land, O.G (no special of 10/06/2021), art 73(1,2).

38 Noel Kiiza Kansiime, Promoting Traditional Ways of Handling Land Disputes in Western Uganda. American Research Journal and Social Sciences 2(2019), pp. 17–25.

39 Law no. 27/2021, art. 73(4).

40 Judiciary of Kenya, Most Kenyans resolve their conflicts through Alternative Dispute Resolution (ADR)-CJ Koome. available at https://judiciary.go.ke/most-kenyans-resolve-their-conflicts-throug h-alternative-dispute-resolution-adr-cj-koome/ (accessed on 1 December, 2025).

TDRMs are also entrenched in the constitutional frameworks of several African states. The Constitution of Kenya mandates the promotion of alternative dispute resolution, including traditional mechanisms, as a guiding principle of judicial authority.[41] In Uganda, Article 37 of the 1995 Constitution recognizes the right to practice customary traditions, including dispute resolution. In Rwanda, Article 10 of the Constitution encourages the resolution of disputes through dialogue and consensus.[42] In South Africa, sections 34, 211, and 212 of the 1996 Constitution acknowledge the role of customary law and traditional leadership within the justice system.

C. TDRM'S EFFICIENCY AND EFFECTIVENESS

Traditional dispute resolution mechanisms have, from time immemorial, played a central role in resolving conflicts across African societies.[43] Their enduring significance lies in their embodiment of indigenous norms, procedures, and shared values that long predate the adversarial models introduced through colonial legal systems. The efficiency and effectiveness of these mechanisms are reflected in several interconnected strengths, including their capacity to maintain social cohesion, promote restorative justice, ensure accessibility, and foster sustainable peace. Together, these attributes underscore the continued relevance of TDRMs as culturally grounded and community-responsive approaches to justice.

I. Key strengths

In African tradition, disputes between two individuals are understood as threats to the well-being of the entire community. Communal life has long been a foundational principle of African societies, where individuals perceive themselves as part of a unified social whole.[44] Scholars further observe that even a seemingly minor dispute between two people, families, or communities can escalate into widespread violence, including the destruction of property and loss of life.[45] Against this backdrop, one of the defining strengths of Traditional Dispute Resolution Mechanisms (TDRMs) is their restorative justice orientation. Unlike adversarial litigation—which focuses on determining fault, assigning blame, and imposing punishment—TDRMs emphasize reconciliation, restitution, and the restoration of relation-

41 The Constitution of Kenya, 2010, art. 159 (2) (c).

42 The Constitution of the Republic of Rwanda, Official Gazette (no Special of 04 August 2023), art. 10 (1) (f).

43 *Sergon Joseph/Scholastica Omondi,* Analysis of the Weakness of Traditional Dispute Resolution Mechanisms (TDRMS) As an Avenue of Dispute Resolution in Kenya, IOSR Journal of Humanities and Social Science (2019), p. 1.

44 *Yaro/Nuru-Deen/Kipo-Sunyehzi,* note 22, p. 6.

45 *Osisioma Basil Chinedu Nwolise,* Traditional models of bargaining and conflict resolution in Africa, in: Perspectives on peace and conflict in Africa, Ibadan 2005, p. 155.

ships between disputants and the broader community.[46] As Ifeanyi notes, TDRMs prioritize community participation, the restoration of social relationships, communal well-being, and reconciliation. They offer a holistic approach to justice that aligns with African values and socio-cultural contexts, in contrast to formal court systems that emphasize punitive measures and adversarial procedures.[47] *Yaro/Nuru-Deen/Kipo-Sunyehzi*

Additionally, many African societies prefer traditional mechanisms because they are inexpensive, swift, accessible, and culturally resonant compared with formal litigation.[48] TDRMs are flexible, not bound by strict evidentiary rules, and typically conducted publicly within the community before respected figures such as elders, local leaders, and religious authorities. These mechanisms require minimal financial resources, operate through adaptable procedures, and reflect cultural norms. Their accessibility ensures that even economically marginalized individuals or those unfamiliar with formal legal processes can meaningfully pursue justice.[49]

Equally important, the long-standing use and effectiveness of TDRMs have earned them substantial legitimacy. Their authority derives from shared customs, cultural values, and traditions, which form the foundation of many African justice systems.[50] Scholars also emphasize that the legitimacy of TDRMs stems from their consensual and voluntary nature, as disputants willingly participate in processes they perceive as fair and culturally appropriate.[51]

Furthermore, several states have formally recognized these mechanisms due to their accessibility, flexibility, speed, voluntary character, and cost-effectiveness—not to mention their role in reducing case backlogs in formal courts.[52] Elders and other respected community figures who administer TDRMs possess deep knowledge of shared norms and values and enjoy significant social trust. Their decisions are rarely appealed and are generally respected and voluntarily enforced. This not only prevents the escalation of conflicts but

46 *Joseph/Omondi,* note 43, p. 5.

47 *Ifeanyi A. Chukwudebelu,* Reconciling Cultural Values with Legal Principles: Traditional African Justice Systems in Contemporary Context, Journal of Legal Subjects, 44 (2024), p. 13.

48 *Billy Moonga,* Traditional and modern dispute resolution mechanisms: an analysis of the preferred method by the people of senior chief Ndubeni's chiefdom, PhD diss, University of Zambia (2022). p. 40–48.

49 *Serges Djojou Kamga*, Forgotten or included? Disabled Children's Access to Primary Education in Cameroon, African Disability Rights YearBook 1 (2013), p. 29.

50 *Kariuki,* note 13, p. 9.

51 *Orna Rabinovich-Einy,* The legitimacy crisis and the future of courts, Cardozo J. Conflict Resolution 17 (2015), p. 25.

52 *Francis Kariuki,* African traditional justice systems, The Asia Pacific Journal of Anthropology, 8 (2007), p. 14.

also reduces the likelihood of future disputes, as parties perceive the outcomes as legitimate and aligned with community expectations.[53]

In contrast to formal adjudication—which is often slow, costly, highly technical, and inaccessible—traditional mechanisms are typically faster, especially for interpersonal, family, and land disputes. They are also more culturally resonant and better suited for early intervention, which is crucial in preventing conflict escalation.[54] Consequently, many individuals continue to resolve land-related disputes and other community conflicts through traditional dispute resolution mechanisms.

II. TDRMs case studies

As demonstrated in the preceding sections, Traditional Dispute Resolution Mechanisms (TDRMs) in Africa have historically proven to be both effective and efficient in resolving a wide range of disputes. The selected case studies from various African countries illustrate how TDRMs have managed complex conflicts rapidly, at minimal cost, and with outcomes that formal litigation processes would have struggled to achieve under similar circumstances. The following discussion elaborates on sampled case studies.

The first example is Rwanda's Gacaca Courts. Historically, Gacaca functioned as a communal mechanism for resolving family and community disputes, with a primary focus on reintegrating wrongdoers into the community and fostering conciliation.[55] In the aftermath of the 1994 Genocide against the Tutsi, the post-genocide government faced an overwhelming challenge in delivering justice through conventional judicial structures.[56] This context necessitated the revival and adaptation of the Gacaca system, which had long been recognized for its speed, accessibility, and capacity to promote accountability, unity, and reconciliation at the community level.[57]

In contrast to the International Criminal Tribunal for Rwanda (ICTR), whose processes were markedly slow and resource-intensive, the Gacaca Courts achieved an unprecedented scale of justice. Between 2002 and 2012, they tried 1,958,634 cases—1,320,554 relating to property offences and 638,080 concerning crimes committed against persons.[58] The cost differential was equally striking: Gacaca is estimated to have cost approximately USD 40

53 *Fonkem Achankeng,* Conflict resolution in the extra-activities: A consideration of traditional conflict resolution paradigms in post-colonial Africa, Willamette journal of international law and dispute resolution, 25(1) (2017), pp. 56–7.

54 *Mussa S. Muhoja/ Regina John Lyakurwa,* From conflict to cohesion: community-based grievance redress in informal settlements regularization projects in emerging urban centers in Tanzania, Cogent Social Sciences, 11(1), (2025), Article 2540421, p. 13.

55 Ministry of Justice, Republic of Rwanda, The concept of transitional justice (2020), p. 5.

56 *Ibid.,* p. 7.

57 *Leonard Maveneka/ Zebedee Ruramaira,* Final end of the programme evaluation of the support to access to justice for all, the foundation for good governance and poverty reduction, Rwanda (2008–2013) (2013), p. 39.

58 *Ibid*., p. 40.

million, whereas the ICTR spent over USD 1.3 billion while adjudicating only around 60 cases.[59] Research further indicates that, had the national courts relied solely on formal judicial processes, it would have taken at least a century to resolve the caseload that Gacaca completed within a decade.[60]

The second example is Rwanda's *Abunzi* Committees. These committees comprise recognized lay mediators who reside within the communities they serve and are mandated to mediate disputes—primarily those involving family and land matters.[61] The *Abunzi* system predates colonial rule and has long functioned as an accessible, community-based mechanism for resolving conflicts. Its procedures are characterized by speed, low cost, and inclusiveness, enabling broad community participation.[62] In the post-genocide era, the Government of Rwanda revitalized this mechanism to promote prompt, affordable, and universal access to justice. Importantly, *Abunzi* processes prioritize conciliation and the restoration of relationships, not only between disputing parties but also between the disputants and the wider community.[63] This mechanism has significantly reduced case backlogs, as the majority of civil disputes are effectively resolved at the local level without reaching formal courts.[64]

The third example is Uganda's *Mato Oput*, a traditional Acholi process and ritual ceremony designed to restore relationships between families or clans affected by intentional or unintentional killings.[65] Among the Acholi in Northern Uganda, *Mato Oput* is often preferred over formal justice systems because it addresses both the social rupture and the moral dimensions of wrongdoing.[66] A killing—whether deliberate or accidental—creates a profound rift between the perpetrator's and victim's families, leading to the cessation of shared meals, social interactions, and communal engagement. This estrangement persists until the *Mato Oput* ceremony is performed.

The process begins with the offender confessing before the elders. An arbiter from a neutral clan is then appointed to work with the elders and the aggrieved family to determine appropriate compensation, commonly referred to as "blood money." The reconciliation

59 *Alek Barovic,* Unveiling the Significance of Gacaca Courts: A Socio-Legal Analysis, in: The Palgrave Handbook of Criminology and the Global South, Cham: Springer Nature Switzerland 2025, pp. 1–16.

60 *Maveneka/Ruramaira,* note 57, p. 35.

61 *Martha Mutisi*, Local conflict resolution in Rwanda: The case of Abunzi mediators, in: Integration of Traditional and Modern Conflict Resolution: Experience From Selected Cases in Eastern and the Horn of Africa, Durban: ACCORD 2012, pp. 41–74.

62 *Maveneka/Ruramaira,* note 57 , p. 30.

63 Mutisi, note 61 , p. 60.

64 *Ibid.,* p. 61–62.

65 *Patrick Tom*, The Acholi Traditional Approach to justice and the War in Northern Uganda, Beyond Intractability (2006), available at: https://www.beyondintractability.org/casestudy/tom-acholi (accessed on December 3, 2025).

66 Patricia Bako, Does Traditional Conflict Resolution Lead to Justice? The Mato Oput In Northern Uganda, Pretoria Student Law Review 3 (2009). p. 101.

ceremony takes place in a designated public space, attended by elders, arbiters, and community members.[67] During the ritual, the arbiter invokes the ancestors and the Supreme Being, affirms the commitment to peace, and acknowledges the offender's remorse and payment of compensation, and then appeals for blessings upon the renewed relationship and calls for an end to hostilities between the families.[68] Through this process, social harmony is restored, and the families are reintegrated into mutual coexistence.

The fourth is still in Uganda with the Ekika System of Conflict Resolution (ESCR), a traditional and community-based mechanism used by the Baganda people.[69] In this system, disputants are assisted by a neutral third party—typically elders, clan leaders, kinship heads, or other respected community figures—who facilitate mediation, negotiation, and reconciliation.[70] The process is implemented in a structured and supervised manner to uphold cultural norms and social values. Its primary objective is to help disputants reach a durable settlement, thereby restoring their relationship and reinforcing community cohesion.[71]

The fifth example is the Community Courts of South Africa. These courts emerged in the 1990s in response to widespread distrust of the formal justice system, which many communities perceived as unfair, inaccessible, and ineffective. Over time, Community Courts evolved through generational practice and pilot initiatives in regions such as Gauteng and the Western Cape. They operate on principles of restorative justice, aiming to address local disputes, reduce case backlogs, and promote community participation in resolving minor offences.[72]

These courts typically handle family-related disputes and conflicts concerning access to natural resources. They are administered by family heads, elders, chiefs, and traditional leaders, and unlike informal or ad hoc mechanisms, Community Courts are structured to reflect indigenous needs and social values.[73] Scholars consistently note that these courts are

67 *Ibid*., p. 267.

68 *David-Ngendo Tshimba,* Beyond the Mato Oput Tradition: embedded contestations in traditional justice for post-massacre Pajong, Northern Uganda, Journal of African Conflicts and Peace Studies 2(2) (2015), p. 69–83.

69 *Amos Deogratius/ Willy Obol Olango*, Reconciliation among the central Iuo of Northern Uganda: The ingredients and process of Mato Oput. Cogent Social Sciences 9(1) (2023), Article 2177395.

70 *Mutisi,* note 61, pp. 1 – 2.

71 *Ashad Sentongo/ Andrea Bartoli*, Conflict resolution under the Ekika system of the Baganda in Uganda, in: Integrating Traditional and Modern Conflict Resolution: Experience from Selected Cases in Eastern and the Horn of Africa, Accord Africa Dialogue, Accord Monograph Series 2(2012), p. 13.

72 *Daniel Nina,* Community Justice in a Volatile South Africa: Containing Community Conflict, Clermont, Natal, Social Justice, 20(3/4) (1993), pp. 129–142.

73 *Janine Ubink/ Sindiso Minisi Weeks,* Courting Custom: Regulating Access to Justice in Rural South Africa and Malawi, Law & Society Review, 51(4) (2017), pp. 825–58.

accessible, cost-effective, expeditious, and capable of delivering a simplified yet meaningful form of justice.[74]

The sixth example is Somalia's Guurti. Traditionally, the Guurti referred to councils of respected elders who resolved disputes using customary law and Islamic principles.[75] In its contemporary institutional form, the term denotes the Upper House of Parliament, which is responsible for enacting legislation related to religion, culture, and security. Scholars widely acknowledge the effectiveness of the Guurti in addressing security challenges, facilitating disarmament, supporting demobilization and reintegration processes, and promoting social cohesion and peacebuilding.[76] However, critiques have also emerged: because the Guurti relies heavily on customary norms and Sharia law, it has been accused of impeding the advancement of women's rights and of resisting legislation aimed at promoting gender equality.[77]

The seventh example is Maslaha in Kenya, a traditional dispute resolution mechanism used predominantly within Somali communities. Maslaha is overseen by elders and is designed to facilitate amicable settlement of disputes while prioritising the restoration of relationships among neighbouring families and clans. The process is administered by male relatives of both the perpetrator and the victim, and resolutions typically involve compensation, either in monetary form or through livestock.[78] The emphasis on reconciliation and social harmony underscores Maslaha's role as a culturally grounded mechanism for maintaining cohesion within Somali communities in Kenya.

The eighth example concerns the traditional dispute resolution practices of the Yoruba, Igbo, and Hausa communities in Nigeria. These mechanisms represent long-standing indigenous systems through which these groups address and resolve conflicts.[79] Among the Yoruba, dispute resolution follows a clearly defined hierarchy that begins within the nuclear family, where the Baale (Chief),[80] as head of household, addresses conflicts promptly to

74 *Sanette Nel,* Community courts: Official Recognition and Criminal jurisdiction-A comparative Analysis, Comparative and International Law Journal of Southern Africa, 34(1) (2001), pp. 87–108.

75 *Dunia Zongwe*, The limits and possibilities of the Guurti in solving problems in Somaliland: The protection of Women's rights, SSRN Working Paper No. 2530587 (2007), available at: https://ssrn.com/abstract+253058> (accessed on 10 December, 2025), p. 5.

76 *Carolyne Gatimu,* Traditional Structures in Peace and Security Consolidation: The Case of the House of Elders (Guurti) in 'Somaliland', Occasional Paper, Nairobi: International Peace Support Centre (2014), p. 36.

77 *Zongwe,* note 75, p. 9.

78 *Koriow Zamzam Mohamed/ Peter M. Muriithi,* A critical analysis of Maslaha as a traditional dispute resolution mechanism in North Eastern Kenya, Journal of Conflict Management & Sustainable Development 5(1) (2020), p. 31.

79 *Fidelis Isomkwo Aboh/ Emmanuel Paul Ngele/ Emmanuel N. Okom/ John Augustin Iteh/ James Nwachukwu Eze,* A Review of Traditional Methods of Conflict Resolution from a Nigerian-African-Perspective, Journal La Sociale (4(4), pp. 195–97.

80 *Ibid.*, p. 195–97.

preserve harmony. In extended families, the Mogaji, typically the eldest and most respected member, exercises significant authority in mediating disputes. At the broader community level, more serious matters are adjudicated by the Baale (Chief). This tiered structure reflects a system designed to restore peace progressively, moving from the household to the community as needed, and illustrates a deeply rooted commitment to restorative social order.

The Igbo approach, by contrast, integrates both human and spiritual dimensions. Dispute resolution involves the family, councils of elders, and wider community participation, but also relies on deities and oracles to ensure impartiality, particularly in cases involving witchcraft or other perceived societal transgressions. This blend of communal deliberation and spiritual adjudication underscores the Igbo belief in cosmic justice as an essential component of social equilibrium.[81]

The Hausa method incorporates Islamic principles and emphasises patience, restraint, and the cultural values associated with Pulaaku. Elders serve as mediators and employ strategies such as oath-taking and avoidance to prevent escalation. The integration of spiritual authority, communal norms, and practical conflict-management techniques reflects a holistic commitment to maintaining social harmony and order.[82]

The ninth example is the Jaarsa Biyyaa method in Ethiopia, a traditional dispute resolution institution administered by community elders within the Arsi Oromo culture.[83] Elders are selected based on their honesty, wisdom, and deep knowledge of customary law. They may be approached directly by disputants or may initiate mediation upon learning of a conflict. Within this structure, one elder is designated as the Abbaa Murtii (judge), while two others serve as Oora Lamaan (investigators).[84] The Jaarsa Biyyaa system addresses a wide range of disputes—including civil, commercial, and criminal matters—and exemplifies a culturally grounded model of community-centred adjudication that prioritises reconciliation, legitimacy, and social cohesion.

The tenth example is the Judiyya method in Sudan, a longstanding traditional institution rooted in the cultural and belief systems of Darfuri ethnic groups and predating colonial rule. It is practiced widely across Sudan, the Sahara, and Chad.[85] Judiyya is administered by the Ajaweed, respected patriarchs of extended families, clans, or tribes who often

81 *Grace Umezurike,* Traditional society and conflict resolution in Nigeria: An appraisal of Ibgo traditional method of conflict resolution, IDOSR Journal of Current Issues In Social Sciences (International Digital Organization for Scientific Research, ISSN: 2579–765) (2016).

82 *Usman/ T.M. Ahmed/ S. O. Odobo,* Achieving Effective Conflict Resolution through Alternative Dispute Resolution (ADR) Mechanisms in Nigeria, Journal of Guidance and Counselling Studies 9(1) (2025), pp. 1–15.

83 *Eskedar Girum,* The Role of Traditional Conflict Management Institution among the Aleltu Oromo Community: The Case of Jaarsa Biyyaa (2010), p. 128.

84 *Roba,* note 15, pp. 1–27.

85 *Abdul S. Wahab,* The Sudanese Indigenous Models for Conflict Resolution: A case study to examine the relevancy and the applicability of the judiyya model in restoring peace within the ethnic tribal communities of the Sudan (2018), pp. 9–11.

hold titles such as Sultan, Chief, or Sheikh. These figures mediate disputes by guiding parties through a structured reconciliation process and overseeing the implementation of resolutions within their communities.[86] Despite the expansion of the formal justice system, Judiyya remains vibrant and continues to play a significant role in reconciliation, particularly in rural areas where customary authority structures retain strong legitimacy.[87]

The eleventh example is Collective Compensation (Diya) in Somalia, Chad, and Sudan.[88] In these contexts, conflicts over natural resources frequently escalate into serious harm, including killings. Resolution is therefore essential for community stability and continuity. Diya involves negotiated agreements between clan leaders and the payment of blood compensation for lost lives.[89] The system is administered by a Diya-paying group, which manages collective responsibilities, including the obligation to compensate when a member harms someone from another group or is harmed in return. This mechanism preserves shared values, reinforces communal responsibility, and strengthens social cohesion. Crucially, it prevents cycles of revenge by acknowledging harm and providing compensation, transforming conflict into an opportunity for relationship repair and long-term peacebuilding.[90]

D. WHY TDRM'S SUCCESS REMAINS "UNCOUNTED"

I. Limited formal recognition

A central paradox in the study of African Traditional Dispute Resolution Mechanisms (TDRMs) is that, despite their long-standing effectiveness in resolving conflicts, restoring relationships, and sustaining community peace, they continue to receive limited formal recognition within statutory and judicial systems.[91] This marginalization does not stem from deficiencies in their performance; rather, it reflects historical, ideological, and institutional dynamics that have shaped legal development on the continent.[92]

86 *Dhieu Wol,* Juba Peace Agreement (JPA): Bridging Traditional and Modern Conflict Resolution Mechanisms, Journal on Political Sciences & International Relations 3(1) (2025), pp. 1–7.

87 *Salome Bronkhorst,* Customary mediation in resource scarcities and conflicts in Sudan: Making a case for the Judiyya, Africa Dialogue (2012), p. 121.

88 *Abdullahi EI-Tom,* From war to peace and reconciliation in Darfur, Sudan: Prospects for the Judiyya, African Dialogue Monograph Series 2(2) (2013), pp. 99–120.

89 *Mahdi Egge/ Pchai Tongdeelert/ Savitree Rangsipaht/ Sayan Tudsri,* Collective Actions and the Management of Collectively Provided Rangeland Resources and Activities in Awbere District of Somali Regional State, Ethiopia, Kasetsart Journal of Social Sciences 32(3) (2011), p. 552.

90 *Mohamed Sheik Mohamed/ Joshua Miluwi/ Charles Bilali*, Influence of Clan-Based Reconciliation Mechanisms on Conflict Resolution in Mogadishu, Somalia, Academic Journal of Humanities and Social Sciences Research 2(1) (2025), p. 5.

91 Ibi., p. 3.

92 *Buluma Bwire,* Integration of African customary legal concepts into modern law: restorative justice-A Kenyan example, Societies 9(1) (2019), p. 17.

Colonial administrations deliberately undermined African customary justice systems, replacing them with imported legal models and entrenching a hierarchy that privileged Western norms. These legacies persisted into the post-independence era, constraining the evolution and institutionalization of TDRMs.[93] Unlike TDRMs—which are flexible, culturally grounded, and adapted over generations to meet the needs of indigenous communities—formal justice systems prioritize uniformity, predictability, and codification, making it difficult for pluralistic and context-specific mechanisms to gain formal recognition.[94]

TDRMs also face structural barriers arising from tensions between customary practices and modern constitutional principles, particularly those relating to human rights and gender equality.[95] Concerns about potential inconsistencies with constitutional norms have often led policymakers to hesitate in granting formal status to customary mechanisms. Additionally, institutional self-interest plays a role: formal judicial bodies may perceive the recognition of TDRMs as a threat to their authority, resources, and jurisdiction, thereby resisting reforms that would elevate customary systems. Their predominantly oral and informal nature further complicates formal recognition. Because TDRMs rely on unwritten norms rather than codified rules, they are often viewed as lacking the procedural certainty required by modern legal frameworks. This perception persists despite their demonstrated capacity to deliver accessible, legitimate, and community-centred justice.

Consequently, many TDRMs continue to operate outside statutory or constitutional structures. Some legal scholars argue that, given their widespread use and social legitimacy, TDRMs have effectively achieved de facto recognition, even in the absence of explicit legal codification.[96] This pattern is observable across numerous African jurisdictions, where customary mechanisms remain central to everyday dispute resolution despite their limited formal status.

II. Absence from official justice metrics and legal education

The integration of TDRMs into African legal education and judicial training remains limited, largely due to the enduring influence of post-colonial legal systems that privileged Western jurisprudence. For decades, African legal education has prioritized Western legal philosophies and positivist traditions, producing professionals whose training is largely detached from customary justice practices.[97] This disconnect is compounded by structural challenges, including a shortage of skilled trainers and insufficient funding for initiatives

93 *Awet Halefom,* Integrating Traditional and State Institutions in Conflict Prevention: Institutional, Legal and Policy Frameworks in Ethiopia, Mizan Law Review 16(2) (2022), pp. 339–68.

94 Joseph/*Omondi,* note 43, p. 2.

95 *Muwai Samuel Maina/ Macharia James Muriuki,* Going Back to the Roots; Resolving Disputes through Alternative Means with a Bias in Traditional Justice Systems (2021), p.15.

96 *Halefom,* note 93, p. 1.

97 *Joshua Mawere,* Decolonizing legal education in South Africa: A Review of African Indigenous law in the Curriculum, Pretoria Student Law Review 14 (2020), p. 31.

aimed at incorporating TDRMs into formal curricula.[98] As a result, despite their proven effectiveness in community healing and reconciliation, TDRMs remain marginalized, contributing indirectly to overburdened courts and delays in formal justice delivery.[99]

This educational gap reinforces a perception of inferiority surrounding TDRMs. Legal practitioners trained primarily in Western doctrines often overlook the significant role that TDRMs play in delivering restorative and relationship-centred justice.[100] The legacy of colonial legal systems further entrenches this marginalization: early post-independence reforms failed to reintegrate customary justice into national legal frameworks, leaving TDRMs unacknowledged despite their social legitimacy and practical relevance.

The perception of inferiority is shaped by several factors, including the colonial legacy, legal formalism, concerns about procedural fairness, questions of enforceability, and biases within the formal legal profession.[101] Critiques also arise from documented human-rights concerns: some TDRMs have been criticised for practices that disadvantage women, including discriminatory norms, corporal punishment, or situations where young girls may be compelled into early marriage or required to comply with resolutions reached by elders.[102] Another scholar further notes additional limitations, such as the absence of a formal legal framework, lack of documentation, limited resources, undefined jurisdiction, inconsistency in decision-making, and the evolving nature of communities—all of which contribute to the persistent lack of formal recognition.[103]

Post-independence legal reforms in many African states sought to modernize and harmonize national legal systems. However, these reforms largely reproduced and retained colonial legal structures, failing to acknowledge the legitimacy of indigenous dispute-resolution methods.[104] The result has been a dual legal system in which formal courts—often limited in reach and accessibility—coexist with traditional forums that remain socially central yet legally marginalized.[105] This duality undermines both efficiency and inclusivity: although African communities continue to rely on TDRMs for restorative justice, reconciliation, and culturally embedded dispute resolution, these mechanisms lack meaningful formal recognition or reintegration into national legal frameworks.[106]

To address these challenges, legal education should incorporate the values and principles of TDRMs and equip judges with hybrid adjudicative approaches capable of valida-

98 *Mawere,* note 97, p. 38.

99 *Julena Jumbe Gabagambi*, A Comparative analysis of restorative justice practices in Africa, Hauser Global Law School Program (2018), p. 17.

100 *Volker Boege,* Traditional approaches to conflict transformation: Potentials and limits (2006), p. 18.

101 *Kariuki,* note 52, p. 12.

102 *Kariuki,* note 52, p. 13.

103 *Muigua,* note 13, p. 15.

104 *Gabagambi,* note 99, p. 15.

105 *Kariuki,* note 52, pp. 75–91.

106 *Moonga,* note 48, p. 40.

ting outcomes from traditional forums.[107] Such integration would bridge the gap between formal and customary systems and enhance access to justice.

Western legal systems also entrenched hierarchies of legitimacy that privileged the formal, adversarial model, characterized by codified laws and rigid procedures. As a result, legal professionals internalized the belief that Western legal systems were inherently superior to TDRMs.[108] This perspective gradually displaced indigenous justice systems that had long governed social order.[109] Scholars have shown that colonial rule not only marginalized TDRMs but also introduced an ideological hierarchy of norms that equated written, formal law with modernity, thereby casting indigenous practices as inferior.[110]

Despite this historical erosion, several African countries have begun to revive and reintegrate TDRMs, demonstrating both resilience and institutional renewal. Rwanda and South Africa, in particular, have made notable progress in incorporating traditional mechanisms into their justice systems.[111] Other states—including Kenya, Uganda, Ghana, and Nigeria—are also moving toward formal integration, driven in part by growing public interest in restorative and community-centred justice.[112] This shift reflects widespread recognition of the limitations of the Western adversarial model and the enduring relevance of indigenous approaches to conflict resolution.

E. PATHWAYS TO RE-VALUING TDRM'S ROLE

The continued marginalization of Traditional Dispute Resolution Mechanisms (TDRMs) reflects both enduring historical legacies and gaps within contemporary legal frameworks. Colonial administrations systematically displaced indigenous justice systems by imposing Western-style courts and creating hierarchies that privileged imported legal structures over mechanisms that had been crafted and inherited across generations. These traditional systems were tailored to the cultural dynamics and practical needs of indigenous communities, yet they were dismissed as inferior or incompatible with "modern" governance.

Although post-independence reforms were framed as efforts toward modernization, this study demonstrates that they largely replicated colonial legal frameworks, failing to reintegrate TDRMs into national legal orders. Consequently, TDRMs remain socially relevant

107 *Rashri Baboolal-Frank, Louis Naude,* An evaluation of alternative dispute resolution mechanisms in African mechanisms in the African region, Obiter, 45(1) (2024), p. 74.

108 *Sandra Fullerton Joireman,* Inherited legal systems and effective rule of law: Africa and the colonial legacy, The Journal of Modern African Studies 39(4) (2001), pp. 571–96.

109 George Mousourakis, Indigenous Legal Traditions and Legal Pluralism in Africa, in: Traveling Legal Traditions: Perspectives on Comparative Law and Legal History, pp. 299–316, Cham: Springer Nature Switzerland (2025).

110 *Martin Chanock, Law,* Custom and Social Order: The Colonial Experience in Malawi and Zambia (1985).

111 *Joseph/Omondi,* note 43 , p. 36.

112 *Gabagambi,* note 99 , p. 16–17.

and widely preferred—particularly in rural areas—yet they are legally disregarded. This disconnect undermines inclusivity and limits access to justice, as communities continue to rely on TDRMs for restorative, relationship-centred dispute resolution while formal systems overlook their legitimacy.

These challenges will persist unless effective models for integration are developed. A comprehensive approach requires statutory recognition, institutional support, and procedural safeguards that ensure both legitimacy and rights protection.

First, courts should be empowered to refer appropriate disputes to accredited TDRMs, with outcomes recognized as consent judgments subject to limited judicial review.[113] Indeed, formal courts should validate and enforce TDRM outcomes in the same manner as other recognized enforcement orders.[114] Such a model preserves the community-based legitimacy of TDRMs while ensuring that the rights of all parties are protected within a hybrid, pluralistic justice framework.

Secondly, the adoption of hybrid tribunals offers a promising pathway for integrating Traditional Dispute Resolution Mechanisms (TDRMs) into contemporary legal systems. Panels composed of customary leaders, elders, and legally trained professionals can adjudicate specific categories of disputes within clearly defined jurisdictions, applying customary norms while upholding constitutional guarantees. Such tribunals are particularly well-suited for matters involving land, family relations, obligations, and succession.[115] Scholars argue that customary rules should be applied at the first instance, with the contemporary legal system intervening only at the appellate stage. This approach reinforces the principle that TDRMs should serve as the primary avenue for dispute resolution, while formal legal rules operate as a last resort.[116]

Rwanda's Abunzi Committees exemplify the effectiveness of hybrid structures that combine community-based justice with statutory oversight. The Abunzi handle a wide range of disputes—including succession, property, and breach of contract—provided the value does not exceed 300,000 RWF, as well as family matters not reserved for the courts.[117] Collaboration between systems is institutionalized: primary courts hear appeals from Abunzi decisions, ensuring complementarity and procedural safeguards.[118] Rwanda has also introduced court-annexed mediation, which further demonstrates the incorporation of TDRMs into the formal justice system. This mechanism may be initiated by the parties,

113 *Joseph/Omondi,* note 43, p. 98.

114 *Ibid.,* p. 99.

115 *Leigh T. Toomey,* A Delicate Balance: Building Complementary Customary and State Legal Systems, Law and Development Review 3 (2010), p. 157.

116 *Ibid.,* pp. 1–5.

117 Law no 37/2016 of 08/09/2016 determining organization, jurisdiction, competence and functioning of Abunzi Committee, Official Gazette (no 37 bis of 12/09/2016), art. 10.

118 Law no 30/2018 of 02/06/2018 determining the jurisdiction of courts, Official Gazette (no special of 02/06/2018), art. 28.

the court registrar, or even the judge at any stage of the proceedings, reinforcing a culture of negotiated settlement.[119]

Similarly, South Africa employs a hybrid dispute-resolution system that integrates traditional courts with Alternative Dispute Resolution (ADR) methods such as Med-Arb and Arb-Med. Key features include mandatory mediation under High Court Rule 41A, adaptive mechanisms for consumer and online disputes, and the incorporation of customary law. Across these systems, parties are encouraged to pursue ADR before resorting to adjudication, reflecting a broader commitment to restorative and participatory justice.[120]

Thirdly, statutory recognition is essential for the meaningful integration of TDRMs. Legislatures are uniquely positioned to establish accredited frameworks that grant TDRMs legal recognition, jurisdictional authority, and enforceability powers. Such frameworks provide the most comprehensive pathway for ensuring the holistic incorporation of TDRMs into national justice systems.[121] Equally important, systematic documentation and reporting would enhance transparency, accountability, and public trust in these mechanisms.

Effective integration of Traditional Dispute Resolution Mechanisms (TDRMs) must be supported by policy reforms that provide constitutional, institutional, and procedural guarantees. Constitutional recognition—exemplified in South Africa and Kenya—offers a foundational layer of legitimacy by aligning customary practices with constitutional rights and international human-rights standards.[122] In Kenya, the integration of TDRMs is expressly embedded in Article 159 of the Constitution, which provides that, in exercising judicial authority, courts and tribunals shall be guided by the principle that *reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms* should be promoted, provided they are not repugnant to justice and morality, nor inconsistent with the Bill of Rights, the Constitution, or written law. This provision establishes a constitutional mandate for pluralistic justice.[123]

Similarly, in South Africa, Section 12 of the Constitution recognizes the institution and role of traditional leaders in dispute resolution, provided their practices comply with constitutional norms. Traditional authorities operating under customary law may function within the framework of relevant legislation, and courts are required to apply customary law where appropriate, so long as it does not contravene constitutional stipulations. Section 212 further empowers national legislation to define the role of traditional leadership at the local level and to establish houses and councils of traditional leaders to manage matters re-

119 Law no. 22/2018 of 29/04/2018 relating to the civil, commercial, labour, and administrative procedure, Official Gazette (no special 29/04/2018), art. 9(2), 28, 29, 30.

120 *Barney Jordaan,* Hybrid ADR processes in South Africa, ADR Bulletin 12(5) (2009), p. 2.

121 *Chukwudebelu,* note 47, p. 19.

122 *Petrit Nimani/ Shefqet Avdija/ Artan Maloku,* Customary law and modern legal systems: A comparative perspective, Corporate law & Governance Review 7(2) (2025), pp. 77–83.

123 Constitution of the Republic of Kenya 2010, art. 159.

lated to customary practices. These provisions collectively illustrate a constitutional model that balances customary legitimacy with rights-based safeguards.

For sustainable re-evaluation and integration of TDRMs, states should develop practical guidelines and regular oversight mechanisms that ensure procedural fairness, gender inclusivity, and protection of vulnerable groups.[124] Given that some TDRMs have been criticized for practices that may infringe upon human rights—particularly those affecting women and children[125] —continuous monitoring is essential to achieve an accurate and rights-compliant valuation of traditional justice systems.

Equally important is capacity building for judges, legal professionals, policymakers, and traditional authorities. Holistic training and certification programmes for both formal justice actors and community-based practitioners are vital for strengthening and professionalizing traditional justice.[126] A recent example is the training conducted by Haramaya University, which focused on enhancing the knowledge and capacity of *Aba Gedas* and customary court elders in the Hararghe region. The initiative aimed to improve justice delivery through customary courts established under Oromia Regional State proclamations, reinforcing the Gada system as a foundation for democratic governance and effective dispute resolution within the community[127]

It is indispensable to emphasize that documentation of customary practices and their underlying rationales constitutes a vital pathway for re-valuing Traditional Dispute Resolution Mechanisms (TDRMs).[128] Systematic documentation serves multiple purposes: it enhances consistency in decision-making, supports education and training, and provides a reliable reference point when similar disputes arise. Moreover, documentation preserves cultural heritage and facilitates harmonization with statutory law, ensuring that customary norms can be meaningfully integrated into contemporary legal frameworks.[129]

The reintegration of TDRMs must be guided by the fundamental principles of compatibility and complementarity. Customary norms should be applied when they promote reconciliation, social harmony, and community cohesion, but they must not contravene constitutional rights.[130] Accordingly, safeguards such as informed consent of the parties, access to formal courts, gender-sensitive procedures, and judicial review of alleged rights

124 *Ibid.,* p. 6.

125 *Phathekile Holomisa, Balancing law and tradition:* The TCB and its relation to African systems of justice administration, South African Crime Quarterly,35 (2011), pp. 17–22.

126 *Janine M. Ubink/ Thomas Maclnerney (eds.),* Customary justice: perspectives on Legal Empowerment (2011), pp. 15–16.

127 *Haramaya University,* Capacity-Building Training Delivered For Judges, Elders and Elders of Customary Courts (15–16 March 2023), available at: https://www.haramaya.edu.et/capacity-building-training-delivered/.

128 *Ubink/Mclnerney,* note 126, p. 107.

129 *Nimani/ Avdija/ Maloku,* note 122, p. 5.

130 *Ibid.,* p. 3.

violations are essential. These measures ensure that cultural legitimacy does not compromise fundamental protections but instead operates in a complementary manner.[131]

In sum, formal justice systems must recognize indigenous practices as legitimate, complementary, and rights-compliant. The referral approach, hybrid tribunals, and statutory recognition offer viable models for integrating TDRMs, provided they are supported by constitutional guarantees, policy reforms, capacity-building initiatives, and robust documentation. Collectively, these measures would not only contribute to the decolonization of African legal frameworks but also strengthen access to justice by bridging the gap between legality and lived legitimacy.

F. CONCLUSION

TDRMs remain a vibrant and indispensable component of Africa's legal ecosystem, particularly in contexts where access to formal courts is constrained by cost, distance, and procedural complexity. Their continued prevalence is rooted in communal values, social cohesion, community participation, and a commitment to restorative outcomes—elements that play a central role in conflict management. The emphasis on these culturally grounded principles not only reflects norms that resonate deeply with indigenous communities but also demonstrates the efficiency and social relevance of TDRMs in addressing the specific needs of African societies.

Despite their enduring significance, TDRMs continue to be marginalized within statutory frameworks, constitutional design, legal education, and formal justice systems. This marginalization does not reflect a lack of relevance; rather, it reveals the persistence of colonial and neo-colonial legacies, the dominance of Western legal models, and the continued acquiescence of African states to externally imposed legal hierarchies. Concerns about standardization, constitutional compatibility, and human rights protections are often cited as barriers to reform. However, the exclusion of TDRMs alienates communities from justice institutions, perpetuates inequalities in access to justice, and contributes to the overburdening of formal courts—ultimately resulting in justice delayed and, for many, justice denied.

To address these challenges, this study proposes the following policy and institutional reforms for policymakers, legal scholars, community and religious leaders, and other relevant stakeholders:

- Adopt a legally pluralistic justice model that reflects a hybrid system. TDRMs and formal courts should not be conceptualized as competing institutions but as complementary mechanisms capable of advancing accessible, restorative, and community-centered justice, particularly in civil, family, and land-related disputes.
- Undertake statutory and constitutional reforms to formally recognize TDRMs. Such recognition should clearly define their jurisdiction, establish minimum procedural safe-

131 *Chukwudebelu, note* 47, p. 15.

guards, and articulate their relationship with formal courts, including referral pathways, validation and enforcement of outcomes, and appropriate judicial oversight. Here, policy recognition is a critical gateway to harmonization and successful integration, enhancing legal certainty while preserving cultural legitimacy.

- Reform legal education to reshape perceptions of TDRMs. Law curricula should incorporate courses on legal pluralism, customary law, and traditional dispute resolution as core subjects. This would equip future judges, lawyers, and policymakers with the conceptual and practical skills necessary to engage meaningfully with pluralistic justice systems. Clinical legal education and community-based learning can further bridge the gap between theory and practice, fostering respect for indigenous mechanisms alongside formal legal training.
- Invest in capacity building for TDRM practitioners—including community leaders, elders, religious authorities, and local administrators—who play a central role in dispute resolution. Training should focus on aligning traditional practices with constitutional guarantees and international human rights standards, particularly regarding equality, inclusiveness, and procedural fairness. Dialogue between TDRM actors and formal justice institutions, coupled with documentation of customary norms, can enhance transparency and legitimacy while preserving the restorative ethos of TDRMs.
- Mobilize sustained support from both state and non-state actors. Financial, technical, and institutional support from governments, civil society organizations, and international partners is essential for the sustainability of TDRMs. Such support is necessary to ensure their effective integration into national justice systems and to promote a comprehensive, culturally grounded, and accessible justice framework.

In brief, revitalizing and integrating TDRMs is not merely a matter of cultural preservation; it is a pragmatic and necessary step toward building inclusive, efficient, and contextually relevant justice systems in Africa. Recognizing and strengthening TDRMs offers a pathway to a more holistic and equitable legal order—one that reflects the lived realities of African communities while upholding constitutional and human rights standards.

G. SELECTED REFERENCES

1. *Abe Oyeniyi*, Conflict Resolution in the Extractives: A Consideration of Traditional Conflict Resolution Paradigms in Post-Colonial Africa, Willamette Journal of International Law and Dispute Resolution, 25 (2017).
2. *Awet Halefom*, Integrating Traditional and State Institutions in Conflict Prevention: Institutional, Legal and Policy Frameworks in Ethiopia, Mizan Law Review 16(2) (2022).
3. *Barbara Nussabaum*, African culture and Ubuntu, Perspectives, 17 (2003).
4. *Barney Jordaan*, Hybrid ADR process in South Africa, ADR Bulletin 12(5) (2009).

5. *Billy Moonga*, Traditional and modern dispute resolution mechanisms: an analysis of the preferred method by the people of senior chief Ndubeni's chiefdom, Phd diss, University of Zambia (2022).
6. *David McQuoid-Mason*, Could traditional dispute resolution mechanisms be the solution to reducing the volume of litigation in post-colonial development countries, particularly in Africa, Onati Social-legal Series, 11(2021).
7. *David Ngendo Tshimba*, Beyond the Mato Oput Tradition: embedded contestations in traditional justice for post-massacre Pajong, Northern Uganda, Journal of African Conflicts and Peace Studies 2(2) (2015).
8. *Derara Ansha Roba*, the interplay between traditional dispute resolution institutions and the formal justice in Ethiopia: The case of the Jaarsa Biyyaa, African Journal on Conflict Resolution, 14(2024).
9. *Dunia Zongwe*, The limits and possibilities of the Guurti in solving problems in Somaliland: The protection of Women's rights, SSRN Working Paper No. 2530587(2007), available at : https://ssrn.com/abstract+253058> (accessed on 10 December, 2025).
10. *Efeanyi A. Chukwudebelu*, Reconciling Cultural Values with Legal Principles: Traditional African Justice Systems in Contemporary Context, Journal of Legal Subjects, 44 (20240.
11. *Ejovi Austine/* Iwerbgu Chuks Justus, A. Iwegbu, Traditional Mechanisms of Conflict Resolution in Africa: A Pathway to Sustainable Peace in Nigeria, Zamfara International Journal of Humanities (2023).
12. *Eskedar Girum*, The Role of Traditional Conflict Management Institution among the Aleltu Oromo Community: The Case of Jaarsa Biyyaa (2010).
13. *Francis Kariuki*, African traditional justice systems, The Asia Pacific Journal of Anthropology, 8(2007).
14. *Francis Kariuki*, Traditional dispute resolution mechanisms in the administration of justice in Kenya. In: E.I. Nwauche (ed), Citizenship and Customary Law in Africa.
15. *Joshua Mawere*, Decolonization legal education in South Africa: A Review of African Indigenous Law in the Curriculum, Pretoria Student Law Review 14 (2020).
16. *Kariuki Muigua*, Effective Application of Traditional Dispute Resolution Mechanisms in the Management of Land Conflicts in Kenya: Challenges and Prospects, ADR, 10(2022).
17. *Kariuki Muigua*, Institutionalising traditional dispute resolution mechanisms and other community justice systems, Nairobi 2017.
18. *Kariuki Muigua,* Traditional Dispute Resolution Mechanisms Under Article 159 of the Constitution of Kenya 2010, Nairobi 2014.
19. *Leigh T. Toomey*, A Delicate Balance: Building Complementary Customary and State Legal Systems, Law and Development Review 3(2010).

20. *Leonard Maveneka/Zebedee Ruramaira,* Final end of the programme evaluation of the support to access to justice for all, the foundation for good governance and poverty reduction, Rwanda (2008–2013) (2013).
21. *Martha Mutisi*, Local conflict resolution in Rwanda: The case of abunzi mediators, in: Integration of Traditional and Modern Conflict Resolution: Experience From Selected Cases in Eastern and the Horn of Africa, Durban: ACCORD 2012.
22. *Petrit Nimani/ Shefqet Avdija/ Artan Maloku*, Customary law and modern legal systems: A Comparative perspective, Corporate Law and Governance Review 7(2) (2025).
23. *Phathekile Holomisa*, Balancing law and tradition: The TCB and its relation to African systems of justice administration, South African Crime Quarterly, 35 (2011).
24. *Rashri Baboolal-Franck/ Louis Naude*, An evaluation of alternative dispute resolution mechanisms in African mechanisms in the African region, Obiter, 45(1) (2024).
25. *Sandra Fullerton Joireman*, Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy, The Journal of Modern African Studies 39(4) (2001).
26. *Sergon Joseph/ Scholastica Omondi*, Analysis of the Weakness of Traditional Dispute Resolution Mechanisms (TDRMS) As an Avenue of Dispute Resolution in Kenya, IOSR Journal of Humanities and Social Science (2019).
27. *Yaro David Suaka/ Ibrahim Mohammed Nuru-Deen/ Daniel Dramani Kipo-Sunyehzi*, Traditional Leadership and Conflict Management in Africa: An Examination of the Bole Chieftaincy in Ghana, African Quarterly Social Science Review, 1 (2024).