

DISPENSATION OF JUSTICE AT THE GRASSROOTS.
A CASE STUDY OF THE LOCAL COUNCIL COURTS IN UGANDA

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DECLARATION

This proposal is my original work and has not been presented for a degree or any other academic award in any University or Institution of Learning.

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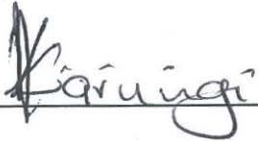
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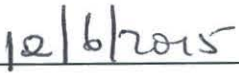
APPROVAL

I confirm that the work reported in this dissertation was carried out by the candidate under my supervision.

A handwritten signature in black ink, appearing to read 'Annette Karungi', is written over a horizontal line.

Ms. Annette Karungi

Supervisor

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DEDICATION

I dedicate this work to my Late grandmother, Alice Nalongo, whose dream i have come to fulfill, my lovely Daughters Mariana Tendo Ssemata and Joy Kulabako Ssemata.

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Seastiano Magaya Vs Sematiya Nsaja Civil Appeal No. 43/ 1989

Juliet Nabirye Vs William Kabi Makooma Mukembo Nanvesi Civil Appeal 20/ 1989

Rubaramira Ruranga V Electoral Commission Constitutional Petition No.21 Of 2006

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ABSTRACT

The quest for justice by mankind is a very old phenomenon that has existed since time immemorial. A majority of people in Uganda have always perceived justice as meant for only those with a high social standing in society and thus far away from them. However, the NRM government from the time of its inception has always purposed at bringing Justice closer to the poor. One of the avenues justice is being dispensed at the grassroots is through local council courts, major focus of this study is put on the operation of Local council courts and how they can be improved. The study too is intended to analyze some of the traditional systems of justice dispensation in Uganda. These are drawn from and deeply rooted in culture whose impact on the implementation of laws is immense.

It is important to note that Uganda as a whole is composed of different ethnic groups with different cultures. Although there are different ethnic groups comprising of the population in Uganda estimated at 37.58 million people as per world bank report 2013, the culture of these different ethnic groups is somehow similar and this is attributed to the fact that various tribes have similar origins. For instance the Luo speaking people are basically found in the Northern and Eastern regions of Uganda whereas the rest of the three regions are composed of the Bantu speaking tribes. There are basically four regions harboring the different ethnic groups forming Uganda as a country and these are; Northern region, East, Western and Central regions. For purposes of this study and to make the research manageable for the researcher a tribe's traditional system of justice from each region shall be ventured into.

For instance the Acholi tribe have a traditional system of justice dispensation referred to as "*mato put*" this shall be analysed on behalf of the Northern region. "*Alluc*" traditional system of justice dispensation among the Iteso for Eastern region shall be analyzed.

"*Embuga*" traditional system of justice dispensation among the Buganda covering the Central region of the country, and finally Ankole will be looked at for the western part of Uganda. So, on the whole, the study will at least cover a tribe's traditional system of justice dispensation from each region forming Uganda.

The researcher having ventured into the details of the traditional systems of justice dispensation and critically analyzing the operation of local council courts particularly citing the similarities of both systems as avenues of dispensing justice at the grassroots, shall seek to establish whether the traditional or local justice systems from the various ethnic groups in Uganda can be incorporated into the Local Council Courts system.

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background

Generally Uganda's population is estimated to have over 40 ethnic groups of whom each of them continue to practice their own cultures and norms. These groups largely correspond to the customary law jurisdictions that exist side by side and often intersect with one another. These systems of law also exist side by side with the received law, which they also intersect.

The colonial legal system which was imposed in Uganda concentrated the different customary law jurisdictions under one centralized state system. This process necessarily imposed legal centralism as the new dominant order. The inherited legal system includes the received laws (*the English common law and doctrines of equity*), statutory law and the formal court hierarchy. The formal courts and laws were introduced under colonialism to replace existing systems of dispute settlement¹.

The effect of this was to outlaw existing activities and stunt the growth of traditional jurisprudence. Customary law was accordingly reconstructed through legislation that restricted its application. The formal courts reconstructed it by interpretation, effectively making it a secondary source of law.

Formally, Local councils were originally called Resistance Councils and after the introduction of a decentralization system of governance, they were named as local councils under the local government Act.

These courts were a concept of the National Resistance Army formalized in 1988 by the Resistance Councils and Committees' (Judicial powers Statute) (JPS).² One of the arguments for these courts is that they are crucial for purposes of signifying the existence good governance.³ For justice to be justice it should be made easily

¹ Jennifer Okumu Wengi, *women's law and the tedious search for justice in Uganda*, p.1

² See reconceptualising and democratizing judicial power .CBR working paper number 30, p. 57

³ Ibid n2 P 58

accessible to every Ugandan that requires it. Noteworthy is that this system was put in place to replace the judicial cadre (the lower-grade magistrates) and also change - the history of them abusing power.

Access to justice is a human right. The constitution of the Republic of Uganda which is the supreme law of the land provides for the creation of LC Courts.⁴ as part of decentralization of power, specifically the judicial power.

Article 126(1) ⁵provides the basis or rationale for the creation of LC Courts since it is a constitutional requirement for people to participate in the administration of justice. This Article further stipulates that judicial power derives from the people and must be exercised in the name of the people. This appears to introduce sociological jurisprudence. The constitution too endorses popular forms of justice and substantive justice that disregard technicalities⁶

Remedies of reconciliation and adequate compensation are emphasized. Parliament then is enjoined to make law providing for participation of the people in the judicial processes.

From the international perspective this study draws inspirations from some of Uganda's neighbors when decentralization of judicial powers is practiced.

Rwanda is specifically ventured into because among other reasons, Banyarwanda are in most cases referred to as indigenous to Uganda. This is because the Kinyarwanda language has a similar dialect to a number of tribes in Uganda to be more specific western Uganda among other reasons.

In Rwanda the local or traditional justice system used is known as ***Gacaca. Gacaca***, which means grass, is a traditional form of Rwandan justice where the village

⁴ Article 180 (1)

⁵ Constitution of the Republic of Uganda 1995

⁶ Article 126 (2) constitution of the Republic of Uganda 2005

communities would gather on a patch of grass to resolve conflicts between the families employing the heads of each household judges⁷

Gacaca courts in Rwanda for centuries operated in such a way that social disputes among members were resolved by an individual who had committed a violation of the social rules being brought before a council of astute and clan elders.

Depending on the nature of the offence, the council would assemble either the offended party or the entire clan and would also be given the opportunity to voice out their position; the community would also be given the chance to express itself.

The process of ***Gacaca*** establishes a dialogic framework through which a victim or the victim's family, the aggressor, and the community would be afforded a discursive space in which to articulate, investigate and engage their positions.

So, this system can presently be loosely based on what the authorities describe as a traditional system of justice involving the local population in tying people accused of participation in the genocide⁸

Remedies, such as public apologies and community shaming are designed to strengthen communal loyalties and overcome special disruptions by reasserting a common and locally sanctioned system of punishment.

The ***Gacaca*** judicial system has been vital in quenching Rwanda's thirst for unity, justice and reconciliation in the communities

As a mode of communal justice ***Gacaca***, operates on three crucial levels the first is as a traditional mode of dispute resolution, its operation entails a high degree of social authority and legitimacy.

The second is its dialogue function generates an open discursive space through which the community itself can create collective memory of atrocities committed.

⁷ BBC *Rwanda launches village courts* .Tuesday ,18 th June 2002 ,11.04 GMT 12.04 UK

⁸ Amnesty international ,press release .the troubled course of justice 26 April 2000.

Thirdly, on a psychological and emotional level the process of mutual understanding and recognition which may facilitate the process of social integration and co-existence.

Vital to note is that these systems of justice dispensation have become popular avenues of administering justice at the grass roots in those jurisdictions due to a number of reasons, the most important of which is that the systems accrue from and are based on culture which is widely respected and acknowledged by the people.

Having stated the details of the operation of **Gacaca**.⁹ courts similar to those of the local council courts in Uganda the study elaborately shows a detailed analysis of how the different traditional systems for Uganda dispense justice at the grassroots.

In addition as earlier on noted and pointed out, the Ugandan government has recently resorted to Local Council Courts whose detailed performance will be analyzed later on.

Today, Local council courts which are approximately 50,000 in the country have gained power and fame in the administration of justice at the lower levels due to the fact that among others they are a ray of hope at the current time when the judiciary is faced with a major problem of back-log of cases partly¹⁰ caused by existence of few judicial officers.¹¹ The major objective of the local council courts is to 'dispense justice at the lower levels, promoting justice and reconciliation in communities.

More importantly the big question is or should be how effective are these courts in the dispensation of justice at the grassroots in Uganda?

As a result an analysis has been carried out in this research in a bid to ascertain whether the various traditional systems of justice dispensation like *Mato put* for the Acholi in northern Uganda can compliment or provide an alternative avenue in the administration of justice.

⁹ Gacaca courts; *Complementing Judicial System*, Daily Monitor, September 2007, p 10

¹⁰ *Approaching National Reconciliation In Uganda*. www.Uncd.Org

¹¹ Staff Reporter. *Kanyehamba Slums Government Over Judiciary*. *The New Vision* 6th September 2007 P.5

Significantly, these traditional systems of justice are based on culture which is highly respected by people in the communities and it is upon this premise that the research is set to determine whether traditional cultural systems of justice dispensation can enhance the efficiency of the Local council courts system upon adoption in this system.

1.2 Statement of the problem

It is evident that Local council courts are faced with certain challenge which minimizes their efficiency. In that regard, how can they be made more efficient?

It is worth noting that there are other systems of justice dispensation operational on culture designed to operate at the grassroots some of which include the *Embuga* among the Baganda and *Matoput* among the Acholi .Therefore, in that regard some of the questions could be whether the traditional systems of dispensation of justice foster the same interest as the LC courts? If so, can incorporating them in the Local Council courts system improve the efficiency of the Local Council courts?

Further, important to note that presently the Local Council Courts are not in operation due to recent court pronouncements regarding the legality of Local Council Executive Committees. Yet the fact is that these are the very people who operate Local Council Courts thus bringing their operation to a standstill.

To make matters worse these courts are faced with certain conflicts such as the Executive committee members who also happen to be court officials facing a problem of conflict of interest while carrying out their judicial and Executive roles in the dispensation of justice at the grassroots.

1.3 Objectives of the study

The objectives of this study are:

To suggest solutions, strategies and recommendations for the improvement of the main stream courts in Uganda for instance advocate for the modification of Local Council Courts in the administration of justice at the grass roots.

To examine the problems and challenges associated with Local Council Courts in the Country.

Determine whether the traditional justice systems from the various ethnic groups, can be incorporated into the Local Council Courts system to increase their efficiency.

To suggest that, other independent court Officials other than the Local Council Committee members that carry out the Court business be put in place to administer and run the judicial activities of Local Council Courts so as to avoid conflicts of interest in the administration of justice.

1.4 Hypothesis

The traditional systems of justice dispensation are geared at attaining similar objectives to those of the local council courts.

Since culture is widely acknowledged in Africa, Incorporation of cultural traditional means of dispute resolution in the Local Council Court system can make the Courts more effective.

Separation of power in the performance of judicial duties in the Local Council Courts may be very vital so as to avoid instances of conflict of interest by Local Council Officers when carrying out their duties.

1.5 Scope of the study

a) Time scope

The study covered the period from 1993 to date. The year 1993 is the time when the Local Council Courts Bill now Local Council Courts Act,2006 was tabled before the Parliament of Uganda.

b) Geographical scope

The geographical scope of the study was the country of Uganda but since the country is too big, not every tribe's traditional system can be dealt with in that study. So, it has

been divided into regions and from each region a tribe's traditional system of justice dispensation shall be analyzed.

c) Subject scope

The study discusses some avenues through which Dispensation of justice at the grass-root in Uganda is carried out namely, Local Council Courts and some traditional systems of justice dispensation.

1.6 Synopsis / Chapterisation

Chapter one covers the introduction, major definitions used in the study, background to the study, statement of the problem, objectives of the study; hypotheses. Scope of the study, significance of the study; literature review; and methodology

Chapter two discusses the operation of Local Council Courts plus the operation of a number of traditional or local justice systems from the various regions in Uganda, emphasis will be put on how they meet the minimum standards of justice.

Chapter three specifically analysed the salient features of both the Local Council Courts and the traditional or local popular justice systems identifying their strengths and weaknesses.

1.7. Significance of the study

The study is significant in that;

It focused on how the existing legal and institutional framework foster

Dispensation of justice at the grass-roots; this can be improved by separation of the local councils' judicial and executive roles while carrying out work in the local council courts.

The incorporation of traditional or local popular justice systems in the local council courts which in turn complement the main stream judicial courts could help improve the efficiency of these courts.

This study therefore, is vital and timely during this period when recent court pronouncements have pointed at showing that the present law on LC courts was designed to operate in a one party system other than the multiparty system under which the country's political affairs operate hence a signal that they are in a way inefficient.

The study is a handy tool especially to policy makers might borrow the study's recommendations and use them to draw new and relevant policies.

The study is also relevant to legislators in a way that the loopholes identified in the current law need to be addressed through amending the legislation.

The study tool could be relevant to researchers as this is a grey area that has not been ventured into a lot and as a result still virgin for research.

Teachers and the general public can benefit from the wealth of information this study unveils both at the local and international levels. On the whole this study generally adds to the realm of knowledge on the subject examined in this study separation of the Local Council Courts Officials' Judicial and Executive roles while carrying out work in the local council Courts.

The incorporation of traditional or local popular justice Local Council Courts which in turn complement the main courts could help improve the efficiency of these courts systems in the stream judicial.

1.8 Literature Review

Generally, society has a quest for justice due to the fact that in the enjoyment of human rights which everyone is entitled to basically because we are human. There have been numerous instances of other people's rights being trampled upon as a result it is only fair that everyone not only be treated fairly but also attains justice from the closest

source to him or her.¹² a lot of literature exists about decentralization generally but information about this aspect is quite limited and also wanting in a number of aspects.

The present day study is more focused on Uganda and brings out contemporary knowledge on the subject being examined. It, therefore, enables readers to appreciate the extent to which justice has been and can be effectively dispensed at the grass-roots in Uganda.

The Authors who have written on this subject include among others

John Rawls in his book, "*A theory of justice*"¹³ states that justice which he regards as fairness is the virtue of social institutions as truth is of systems of thought.

He also adds that justice is the basic structure of society more exactly, the way in which the major social institutions distribute fundamental human rights and duties and determine the division of advantages from social cooperation. Therefore, this work is related to the subject for research in that the research seeks to analyze ways through which justice can effectively be delivered to the communities so as to realize a stable society.

However, the author fails to point out certain shortcomings of some social institutions put in place for instance how some justice systems are barbaric thus necessitating that the minimum standards of justice are met. These shall be derived into details in this study.

The most comprehensive studies in Uganda are those of the state-governed local council courts, which only apply national penal laws using limited customary processes. However, as Barya and Oloka-Onyango persuasively argue, these popular justice courts were not an attempt to revert to tradition, but only to provide a semblance of a traditional approach to judicial power.

¹² (1972) New York, Oxford University Press

Such studies do not delve into the independence of traditional courts.

Jennifer Okumu Wengi, in her book *Women's law & grassroots justice in Uganda*¹⁴ analyses and acknowledges the power of custom in the dispensation of justice. She also points out that customary law and practices are invoked in the majority of inheritance matters', their integration into a system of adjudication is essential. This is related to the research in that the research seeks to advocate for the incorporation of customary practices in the judicial system.

However, she does not analyze the cultural practices and systems of different ethnic groups such as *Mato put* for northern Uganda and many more practiced in other regions of Uganda, and further pointing out whether they fulfill the minimum requirements of justice. This is what this research intends to cover and bring to light thus analyze the different systems of justice dispensation and determine how they can be incorporated in the Local Council Court System

Joe Oloka Onyango, stipulates in his work on '*Judicial Power and Constitutionalism*'¹⁵ is of the view that given the historical link judicial power and state coercion in the development of the capitalist society in Uganda, the notion of popular justice as an alternative to 'the mainstream structures has found some appeal among progressive scholar, politicians and human rights activists.

He thus gives a review of the evolution and development of the notion of popular justice however; he does not show the structure and operation of Local Council Courts. He also does not show how effective they are in dispensing justice at the grassroots.

Valentine Magala (1998) in his paper ¹⁶ begins by giving the historical background of the local council system and notes that they originated in Luwero triangle during the civil war led by Museveni against the Obote11 regime as a result of inadequacies in the

¹⁴ (1997) Uganda Law Watch Center Kampala

¹⁵ *Working Paper No 10 Center For Basic Research Publications Kampala*

¹⁶ *The elusive justice promised by local council system of courts in Uganda by Valenttine Magala (1998)*

ordinary system of courts. While analyzing the conceptual foundations of the local council system, he notes that the act that establishes the local council courts does not give any indication about the nature of the conceptual foundations of the system but provides for a mechanic institutional framework. Justice in the legal sphere means, the functional arrangement put in place to assist people to amicably or peacefully settle their disputes.

This doesn't have to do with the intrinsic quality of justice dispensed by the local council courts because there is no difference between conceptual framework of the ordinary courts of law and the local council courts. This is due to the fact that the 1995 constitution granted the ordinary courts the liberalism enjoyed by the local council courts before the 1995 constitution thereby making the two similar.

He also analyses the institutional framework of the local council courts system, particularly the judicial structure and the civil, customary and criminal jurisprudence.

He further notes that the system has registered some success due to the fact that it is accessible and that the justice offered confirms to the fact that judicial actors belong to the communities they serve. Thus, justice is administered liberally and that there is reduced workload on the ordinary courts of law.

ES Haydon, writes in his book '*Law and Justice in Buganda*¹⁷' that his aim has therefore, been to produce a legal text book which describes the development of Buganda customary law and of the Buganda judicial institutions from the middle of the last century until the present.

To the extent that assimilated English law conflicts with the ancient customary law the customary law, the customary law is ousted. But this conflict rarely arises although the assimilation of the English law is now wholesale because that law is generally adopted to fill in the lacuna in the customary law or native law.

¹⁷ (1960) Butterworth's Great Britain

Haydon's work is of great importance to this research because it recognizes the customary system of dispute resolution and therefore the importance of custom in the dispensation of justice.

Haydon, further describes how customary law in Buganda is related to various aspects and branches of law for instance categorization of such as crimes against the person, crimes against property, Arson, torts, contracts and many more.

However, Haydon does not specifically analyze the *Embuga* traditional which the research intends to venture into. The research too will look at the custom or traditional systems of justice dispensation at the grassroots in the other three regions in Uganda.

Principle and Statutory Legislation

The Constitution of the Republic of Uganda 1995 as amended, which provides for decentralization of powers in Uganda's system of governance as seen when districts are designed with a strong autonomous decision making government to promote good governance within their areas of jurisdiction.

The local council courts Act, 2006 which provides for among others the establishment and operation of these courts.

The Local Council Court Regulations, 2007. These basically are to facilitate better carrying into effect the provisions of the Local council courts Act, 2006. So, this is relevant to this work as it shows how the courts operate though it does not spell out the challenges of the Local Council Courts which this study shall venture into.

The Local Government Act 1997, this identifies and appreciates the roles and powers set for the different institutions

Judicature Act cap 13, law of Uganda, 2000 this law provides that Customary law shall be applicable in the courts of law only if it is not repugnant to justice, morality and good conscience. This means therefore that any traditional norms or custom to be codified and enforced by the courts it must not be repugnant to justice, morality and

good conscience. So, the Judicature act is relevant as it provides for customary law which this research seeks to be incorporated in the LC Court system.

Local Council Administration Of Justice, Revised Trainer's Manual For The Local Council Courts, March 2007. This book is relevant as it stipulated the history and background of local council courts, their operation and challenges to mention but a few. However, the book does not go ahead to provide for the recommendation of these challenges hence an aspect this work intends to venture into.

Article

Undcf News and Events '*Uganda: UNDDP supports decentralization and*

local administration of justice' This article states that local councils have the power to dispense justice and resolve conflicts in the communities and reinforce key principles of democratic governance thus getting justice much closer to the grass-roots level.

Newspaper Articles

Daily Monitor P. 10 "*Do not delay justice for all Suspects*" where it was clearly pointed out that the challenge is for lawyers to act swiftly in all cases to ensure that their clients, rich or poor, enjoy their constitutional rights to bail. This will enhance the credibility of the legal profession. Further, it is pointed out that when judicial officers act 'without fear or favor' That way they would be administering justice for all. This article is relevant to this research in that there is a need for quick disposal of cases to reduce the problem of back log of cases as by so doing they would be showing interest in administering justice.

Thursday 20th April, 2006, The New Vision, '*House debates Local Council courts Bill*'

It was stated in this article, by the Minister Prof, Tarsis Kabwegyere, who tabled the bill that "*LC Courts would bring justice to the doorsteps of the people. This would help Magistrates' Courts dispose off piled cases by introducing participatory justice system at the local level*".

The article further points out that there is pessimism with regard to the operation of the LC Courts that were designed for one party system. Presently Uganda is operating under a multiparty system and according to the recent trend of events it is vital that the necessary adjustments be made- As a matter of fact the recent court pronouncements have nullified the original way Local Council elections were carried out or conducted.

On the other hand though the article states that LC Courts are designed to be participatory they do not incorporate the traditional systems of dispute resolution practiced by the various tribes for instance the *Mato put* in Acholi land, *Alluc* among the *Iteso*, *Embuga* among the *Baganda* plus many others as each ethnic group in the country has a way disputes were resolved customarily. These customary measures of resolving disputes are crucial as this work seeks to find out how they can be incorporated in the LC Courts system.

Daily Monitor September, 2006, '*Progress Evident in Judicial System*'

This article is relevant to this study as it is stated, sighting the major problem of the classical court system that, As a result there was a big backlog of cases that were not moving because of those structural difficulties,"

So, this aspect is crucial to the study as it states the rationale for Local Council Courts which is to administer justice to the people more effectively, at a close range and expeditiously.

Daily monitor September. 2007 '*Gacaca courts complimenting judicial system*' this article shows how the *Gacaca* courts operate and effective in the delivery of justice at the grassroots.

The article does not clearly state the exact time frame within which matters are disposed off quickly hence a major challenge that the Local Council courts are likely to

face since the law governing them does not give a time frame within which cases should be disposed off.

Papers

Ddungu Expedite 1989, *popular forms and the question of democracy the case of resistance councils in Uganda. Working paper no.4 Kampala centre for basic research.*

Case law

In the case of ***Rubaramira Ruranga V Electoral commission, Constitutional Petition No.2 1 of 2006***

The constitutional court held that the local council court system was unconstitutional as it was designed in a Movement political system yet the country now operates under the multiparty system. This case therefore is relevant to this study in that, it provides a curser to one of the many problems that the LC Court system is faced with.

1.9 Research Methodology

This research as based on both quantitative and qualitative methods

This is intended to enable the researcher gather enough and actual on the subject With regard to the Quantitative form. The researcher shall examine various regional and local instruments that relate to the subject matter for investigation as well as Various authors on the aspect of dispensation of justice.

Therefore, the primary data for this research was gathered using two main methods: archive research and informal interviews.

1.9.1 Library

The researcher undertook a detailed survey of the areas to be analyzed in this study. He first carried out a detailed library search for literature related to the subject being examined in a number of libraries for instance the Kampala International University Library, Makerere university Library and many more areas then the researcher critically

analyzed the acquired information to find out how much has been written on this subject.

The study describes a number of avenues of dispensation of justice at the grassroots but further than that it recommends a normative framework which can be taken on to make the Local council courts or the dispensation of justice at the grassroots more effective in this regard.

This dissertation looks at the aforementioned aspects and drawing from are expenses across regions, recommends a framework to be taken to involve cultural or traditional systems of resolving disputes to be incorporated in the Local council court system.

1.9.2 Interviews

During this stage informal field studies were undertaken during which the researcher informally interviewed several persons. The procedure adopted was random sampling. The sample size shall be at least 10 people. The sample of the persons interviewed was basically lay people and clan elders . An average of 10 people was interviewed from each of regions Comprising of Uganda.

Data was gathered mainly through semi structured intensive interviews in line within the parameters of the research.

1.9.3 Observation

In addition to the informal interviews, the researcher also used the observation method especially, as to how justice dispensation systems at the grassroots are operated by the people concerned in the tribe. He too reviewed any other existing related literature on the subject.

In addition to the field work and library information supplementing it, the researcher too reviewed the existing relevant legislation as spelled out in the bibliography and the relevant case law on the subject under consideration.

Field research was carried out by the researcher in Wakiso District while the researcher made frequent visits to Uganda Local Government Association (ULGA) over the period

between January and April 2015 after which the researcher produced a report of the information gathered about Local -Council Courts.

In addition to it is the library and field information. The information obtained from all these sources was then analyzed and reduced into a written text.

1.10 Constraints

Time constraints; being more devoted on the research mitigated these financial Constraints; borrowing mitigated financial constraints for the researcher had to travel to conduct informal interviews so as to gather information pertaining the Operation of LC Courts and the traditional systems of justice dispensation among others.

CHAPTER TWO

2.0 Operation of the Local Council Courts and the Traditional systems of justice from the various regions in Uganda.

2.1 Historical background

Before the arrival of the colonialists in Uganda, Ugandan communities had their own legal systems of resolving disputes. These systems were based on traditions, customs and usages and were enforced by leaders of a particular community. African traditions and morals heavily influenced by the African traditional religion. In the centralized traditional African societies or communities like Acholi, Teso, Ankole, Buganda and many others kings played a dominant role in dispensing justice for more often than they were looked at as fountains of justice.

They too had absolute power over life and death. The legal system was administered by the kings directly or through chiefs and clan heads or elders. In decentralized areas like *Bugishu*, clan heads acted as judges in the native courts.

It is upon such a premiss that this essay digs deeper into showing how the various traditional -stems from each region in Uganda work.

The traditional courts were generally viewed as efficient, transparent and

Popular *Yash Ghaj and Patrick McAusjarn in their book- **Public Law and Political change in Kenya.***¹⁸ Aptly compared the Functions of the traditional courts viz-a viz the native courts in the following words;

The function of the later traditional courts was broadly to establish the social equilibrium of the groups and adjust the claims which had led to the dispute because the group was involved, it took part in the recon2wzpocess and the tradition fudges were therefore in the nature of mouth piece of the group supervising the settlement process and pronounciation the final decision. But a statutory native tribunal did not have the same intimate connection with the group over which it was set. In civil cases it gore

¹⁸ John O. E Arutu .*The Court Users Guide For Local Council Courts In Uganda .P.6*

*a judgment which represented victory just for defeat for the other. In criminal cases it had to enforce a law external to the group. In both cases it was doing something alien to a traditional body and at all times owed allegiance to the colonial power*¹⁹

2.2 Establishment of the Local Council Courts

The Local council courts were first established in Uganda in 1988 by the Resistance Committee as the Resistance Committee Courts. These too have been established by the law and examples of such laws include the Local Council Courts statute and many more. The existence of these courts helped in the performance and dispensation of justice at the grassroots informally

2.3 Rationale for Local Council Courts

The rationale for Local council courts can be quoted to have been summarized in Museveni's speech in an address to the judiciary in his early administration where he stated that;

"We are opposed to a situation where justice is a preserve of (sic) the privileged few and where it is sold like a commodity to the highest bidder. Justice is not for sale; the moment you make justice for sale then it is not justice..... Justice must be made easily accessible to every Ugandan that requires it; this principle is a cornerstone of our judicial policy..... Justice for all not for just a few". (Judicial proceedings) 1987: 23)

So, it is evident that Local council courts are intended to bring justice nearer to the poor in society. Worthy noting too is the fact that Local council courts are very crucial in the dispensation and accessibility of justice in Uganda today and this is basically because they promote administration of justice and demonstrate leadership right from the grass root level thus extending services close to the people.

More to this, in the present day system of governance decentralization has caught fire and is regarded as an avenue through which efficient delivery and accessibility of services can be attained. Besides, it has also been looked at as the way forward in the realization of development in the communities and the country as a whole. So, it is

¹⁹ Supra N.16.P.8

upon such a need for the decentralization of power as provided for by the law under Article 180(1) of the 2005 constitution of the Republic of Uganda that Local Council Courts have become a very pertinent issue in existence today.

2.4 Composition of Local Council Courts

Section 4 of the Local Council Courts Act, 2006 defines the composition of local council Courts at village and parish levels, the Courts are composed of all members of the executive committees.²⁰ Membership to these councils may change every 5 years whenever the election of new executive committee members takes place.

At the level of the sub-county, town and division, the court is composed of five members recommended by the executive committee and appointed by the council. At least two of the five members must be women.

2.5 Operation of Local Council Courts.

2.5.1 Institution of proceedings

The law under section 14 & 18 of the Local Council Courts Act, 2006 provides for institution of proceedings. Note while it is the fact that institution of proceedings is categorized that is, there is a stipulated procedure for instituting civil proceedings different from that of bye-laws. Suits are instituted in such a way that it is the chairperson who receives the suits and in his absence the vice chairperson or General Secretary. This procedure is widely followed as any member of the public who has a dispute with other members in the community is required to report the matter to the aforementioned persons.

2.5.2 Issuance of witness sermons

This is catered for under sections 15 & 20²¹ to the effect that witnesses are required to attend court when called upon to do so at all costs, if they do not have sufficient excuse so as to give court evidence on an issue at hand. The manuals further provide that before the court officials can handle a case they need to establish and ensure

²⁰ V.B Ssekono .*Local Council Administration Of Justice 2007 Revised Guides For Local Council Courts Ministry Of Local Government*

²¹ *Local Council Courts Act, 2006*

among others that the parties witnesses to the case are called. This too is labeled as the fourth step that the officials are to undertake worthy hooting is that these summons can either be oral or written and where the written option is adapted copies of the summon ought to be signed by the person receiving the summons (s)

2.5.3 Records

Record keeping is very crucial in the administration of justice at all levels of justice dispensation; therefore, it is upon such a need that the law under Section 2220 provides that the courts shall keep records of all their proceedings. So, the fact that the chairperson of the local council court is required to have the case reported to him or her written down that is recorded in the format stated by the law.

2.5.4. Right to appeal

Under sections 32 & 33 of the Local Council courts Act, 2006 the right to appeal is open to all parties that are not satisfied with the decision made by court officials. The procedure for lodging appeals is stipulated respectively under this law The fact that section ²² of the Revised guides for Local council courts provides for the right and stipulates the levels of appeal to include, village council courts - parish council courts – sub-county/ town council court- chief magistrate -High court - court of appeal and finally the supreme court guarantees the right to appeal..

2.5.5 Rules of natural justice to apply

Local Council Courts are basically non formal courts and in such courts and systems the importance of the -rules of natural justice cannot be under estimated One of the cardinal principles of natural justice is that there should not be bias as one dispenses his or her activities. For stance according to the Revised guides for local council courts (2007) ²³it is stated that as the local council officials do their work they should be careful not to ask biased questions, give the defendant a chance to state his or her case and many other ways that portray fairness.

²² *Local Council Courts Act 2006*

²³ *Supra N 18 P.7*

2.6 operations of the traditional systems of justice

The Traditional systems of justice are operational on the basis of culture. It is the fact that the traditional systems of justice though very much the same in principle as seen when they all meet the minimum standards of justice are different in the way they operate. However, these operations are not, so very distinct from each other save for the fact those different tribes are organized differently.

The Judicature Act ²⁴ provides that customary law shall be applicable in the courts of law only if it is not repugnant to justice, morality and good conscience. This means therefore that for any traditional norm or custom to be codified and enforced by the courts it must not be repugnant to justice, morality and good conscience.

This essay analyses some of the traditional systems of justice and reconciliation from different regions of Uganda. The following tribe's systems shall be analysed; The Buganda, Banyankole, Iteso and Acholi.

2.6.1 Buganda's Traditional justice system

This is known as '*embuga*' and is practiced among the Baganda, these have their traditional system of justice dispensation analyzed as they represent of the central region of the country. These are "bantu" speaking migrants who migrated from the south of the African continent. Worth - noting is that the Baganda speak a dialect known as the '*luganda*' dialect, they are found in the modern day district of Kampala, Mukono. Mpigi to mention but a few.

The term '*embuga*' which is the traditional system of justice mechanism means court yard, a place where disputes and conflicts are resolved.

Traditional justice in *Buganda* refers to the native regulations, norms, and customs initiated by the fore fathers as a means used to correct the wrongs committed in the community. These norms were commonly known in respective communities and everybody was expected to religiously observe them. These were norms to respect gods, traditional leaders, fellow man and community property. Therefore each time

²⁴ Section 6 cap 13, laws of Uganda 2000

these norms were violated, crime was committed against the gods, traditional leaders and justice was called for to help repair, punish, reconcile, compensate or rehabilitate the victimized person's²⁵.

The family head, clan heads or community elders made sure that the persons who violated the norm was punished and that the punishment helps retribute, appease and rehabilitate the victimized person and community. important to note is that the jurisdiction of *embuga* were limited to punishments for killing a human being, failing to attend funerals, failure to respect elders, rape, incest to mention but a few.

Embuga promoted reconciliation and helped would be perpetrators to draw lessons to deter them from commission of similar crimes. Traditional justice dealt with the interests of the victims to ensure that they are repaired, compensated and or rehabilitated.

The victims were appeased through Punishment of offender, criminals and the punishment helped to rehabilitate the victims and the communities.

2.6.2 Ankole's Traditional justice system

The Banyankole like many ethnic groups have and had a kingship under the *omugabe*. The traditional mechanism of the Banyankole is akin to that of the Banyakigezi and vice versa. Traditionally the Ankole people make up the modern day Uganda districts of Mbarara, Ibanda, Bushenyi, Ntungamo.

The following is a description of scale of the crimes and their punishment as they were regarded in the region. During matters of domestic violence, the Ankole traditional justice promoted reconciliation in family matters and in doing so, meetings of clan heads were called and at such a meeting parties were heard and judgment pronounced on the guilty party²⁶. In some cases punishment was prescribed for example paying a

²⁵ Stephen Arthur Lemony *Approaching National Reconciliation Uganda Perspective An Applicable Justice System UICC WORKING PAPER 2006- 2007,P.45-51*

²⁶ *Supra N 23,P 42 -45*

fine which was paid in kind like local beer, cows, goats and many more. In the event that fines were extracted from the guilty party, they were feasted on by the community.

However, in the event that a guilty party failed to reform he or she was cursed by the clan leader and to be cursed by the clan leaders of the community was considered very seriously or a bad omen.

Under this system victims essentially played no vital role in the traditional justice however, when asked it was argued that victims of crime would appreciate it if a justice mechanism granted a suspect, a fair hearing. In respect of very grave crimes a life sentence as opposed to a death penalty was suggested. They too aimed at promoting reconciliation, providing assistance to victims in terms of acquiring legal counsel and facilitation among others.

2.6.3 Iteso's traditional justice system.

These shall be ventured into for the eastern region since the Iteso hail from that part of Uganda. The Iteso occupy the present day district of Soroti, Sironko, Katakwi, Kumi among others.

The word '*Ailuc*' is an Iteso word for the traditional Justice process that aims at holding persons responsible and punishing them for their wrongs and or criminal actions in the society there by deterring future similar

Ailuc also includes the process of paying compensation for the crimes one has committed. It effectively provided for the law against the values, norms, traditions, and customs of the Iteso people. The whole process of *Ailuc* is normally followed by the process of *Aipuc*. *Aipue* therefore, is a peace process in which a perpetrator tells the victim of his crimes and there after prays for forgiveness.²⁷

²⁷ Stephen Arthur Lamony, *Approaching National Reconciliation In Uganda Perspective An Applicable Justice System UICC Working Paper, 2006 -2007, P 15 -21*

The perpetrator must take responsibility for all the crimes where upon the elders will prevail and ensure that a dispute is resolved peacefully. The perpetrator must initiate the process where the intension is to have a peaceful resolution to the issues leading to the dispute or conflict. It is important to note that when a perpetrator takes responsibility, he should be ready to accept any punishment that may be prescribed with the ultimate goal to reconciliation.

The procedure for disposing off crimes committed in society, it is the obligation of the person concerned to see to it that a report of the commission of the crime is filed with the elder, the elders carry out investigations then they summon the suspects to the meeting both Parties are heard and given opportunity to speak thereafter, the elders make the decision and pass the sentence.

2.6.4 Acholi's Traditional system of justice

This system is representative of the northern region of the country. *Mahout* literally means drinking *Matoput* widely known as a key element of Acholi culture beyond the Acholi borders. Furthermore, the notion of *Matoput* has often been used metaphorically to refer to nearly every reconciliation that takes place in Acholi today, thus bringing confusion to the scope and nature of *Matoput* as properly understood. *Matoput* is the final act which concludes the process of reconciliation that follows a killing.

The leaves of the wild figs have started to fall and the eldest quick to notice the summer season, The Acholi rite of reconciliation is a long process of purification for psychological, moral and social reintegration. The process has the initial purification right, preparation of the reconciliation mix of fruit juice *acuga* and roots *opwut*.²⁸

Preparing the reconciliation mixture to drink is done by an elderly person. (senior in age) the elder prepares from the roots *opwut*. The roots are 'dug up and pounded on a stone to form some sort of powder. The powder is mixed with the fruit juice in a new calabash carefully placed on the ground.

²⁸ *Supra* n 24,p.8 -14

The elderly person and master of ceremony, will take the blood to the two sheep and pour it into the *opwut* and *ocuga* mix to form a single mix of reconciliation drink. The close relatives of the person killed and those of the killer come close to each other and converge on the mixed juice from their opposite directions in a gesture. Signifying the end of hostilities and bring reconciliation drink, the killer and a those relative of the one killed begin to drink.

They both kneel down and close on to the calabash, their hands are folded behind, and they bend on to drink from the calabash three times and then leave way to their close relatives who have come to witness the ritual ceremony.

They also invite her to take of the *opwut* reconciliation meanwhile the carcass of the sacrifice sheep is cooking on fire. As the meat is cooking in the fire some elders come up to examine the indemnity which the family of the killer must pay to the family of the slain person.

There may be variations in detail of the reconciliation rite but essentially the rite includes purification, making confession, making compensation and finally coming from the same dish and drinking from the same calabash. This rite presupposes the existence of the Acholi and political systems under an anointed chief the anointed chief represents the clan god through the ancestors.

The concept of Acholi reconciliation rites is broad. It covers both culpable and inculpable acts of killing of a person. All it says is that life is sacred and so it must be represented and highest care be taken to protect and Preserve it. However, one can not help think or wonder how it will work in the event that people are killing themselves.

Having delved into analyzing the operation of a number of systems and how each dispenses justice at the grass root, it has come to the notice of research that common to all these traditional justice systems. They all have a rich history and practice of dispensing justice. This is because they have values, norms, cultures and customs that they needed members of the society to respect and uphold.

The organization of family, clan and community structures was overseen by the elders.²⁹

2.7 Minimum standards of justice

Traditional forms draw their application from standard practices of an individual society or community handed down from generation to generation. Minimum standards of international justice draw their application from universally agreed minimum standards recognized by states and reduced into international instruments.

Usually the minimum standards that are embedded in the practices of the traditional systems of justice delivery include the right to be heard, to receive reparations, to appeal and others include protection and assistance of traumatized victims to recover from those gross experiences and also help in reintegrating perpetrators into society by engaging in their developments.

This chapter has ventured so much into the operation of local council courts and the traditional systems of justice practiced in various regions in Uganda. Common to all these is the amazing degree with which these operations are not complicated, easily accessible and have got embedded within their operation principles of natural fairness in a bid to address or resolve disputes in society. So it is upon such a premise that the next chapter ventures into analyzing the strengths and weaknesses of these avenues of justice dispensation at the grassroots in Uganda.

²⁹ Stephen Arthur Lemony Approaching National Reconciliation In Uganda Perspective On Applicable Justice System UICC Working Paper 2006-2007

CHAPTER THREE

3.0 The strengths and weaknesses of the Local Council Court system and Traditional systems of justice dispensation.

3.1 Strengths of Local Council Courts

Against the backdrop of the almost total collapse of mechanisms governing the rule of law. The abuse of power by state functionaries like the mainstream courts and the overwhelming importance of the popular classes in the governance of the country, the LC system must be recommended for, at the very least, providing an avenue for the realization of some local, grassroots, popular participation in the administrative, legislative and decision-making spheres of daily, local existence.

3.1.1 Easy accessibility

The biggest and most important strength of this avenue of justice dispensation is drawn from the rationale of the existence and incorporation of the system in Uganda.

Local council courts are very accessible in terms of proximity as services are brought closer to the people, a feature that probably explains the existence of around 50,000 (*Based on number of villages in Uganda*) Local council courts in the country. In the end is more probable than not that justice is administered by the people and to the people at the grassroots level.

Mr. Aluke Lootsma the UNDP resident representative in Rwanda said that, *".....access to justice is very crucial for good governance and development in the country."* He said *the Local council system in Uganda is important since over 80% of the population relies on local council courts for redress and access to justice.*³⁰

3.1.2 Popular Fora of resolving disputes

Local council courts have provided extremely useful popular Fora for the resolution of disputes at the village and local levels and their experiences could be built on in struggles for more fundamental progressive social transformation as seen through the punishments they give. Under module four of the Revised trainer's manual for local

³⁰ www.undcf.org

council courts.³¹ where the defendant has been found to be guilty, sanctions such as restitution reconciliation, compensation, apology, and costs shall be instituted among others

3.1.3 Time and cost effective

Local council courts operate in such a way that they are expeditious in their operation. Local council courts are anchored upon the principles of natural justice and one of the cardinal principles of natural justice are that justice should not be delayed for as one judge propounded in the case of **R V Sussex**³² that justice delayed is justice denied.

This is one distinctive feature of the local council courts compared to the main stream courts which due to their inexpedience in the way justice is dispensed; they have faced a major problem of backlog of cases.

3. 1.4 Simple procedure

The operation of local council courts is amazingly simple as they were formed with the purpose of minimizing or eliminating technicalities in the way justice was dispensed. The simplicity in the operation of this avenue of justice delivery is evident from the fact that advocates are barred from representing parties before the Local council courts. This is because matters are intended to be resolved locally without going into technicalities which lawyers are usually associated or well known.³³ Furthermore courts proceedings can out in the main local language in the area.³⁴ in the in the event that one of the Parties does not understand a given language since proceedings are not mandated to be carried out in English then the services of an interpreter should be employed.

As elaborated upon, Local council courts play an important role in the administration of justice in Uganda. However, studies in the management of local council courts reveal that they face a number of challenges which include the following;

³¹ March 2007 . P. 55-56

³² (1928)2 ALLER 578

³³ *V.B Ssekono Local Councils Administration of Justice 2007 Chapter One Revised Trainer Manual Supra N 26*

³⁴ *Supra n. 26*

3.2 Weaknesses of the Local Council Courts

An overall assessment of the system from its inception during the guerilla struggle to date will indeed reveal that several problems have been encountered, especially concerning the exercise of judicial powers by the LC Court officials. Many of this range from excessive use of biasness and many more as shall be elaborated upon in the proceeding essay.

3.2.1 Corruption

This is the greatest had to the progress of any system in the world. Though highly commendable the performance of local council courts is penetrating through the hampered with due to corruption tendencies system. The rich are said to have peddling influence over the court officials such that the rich and the powerful arm twist the local council officials to do a number of things. So as to delay judgment or have the judgment made in their favor. This is a very unfortunate state of affairs in the operation of Local council courts that should purpose through' thick and thin to deliver justice to the community.

3.2.2 Inefficient sensitization

Inefficient sensitization is one of the grave capacity gaps of local council courts that have contributed greatly to the promotion massive ignorance in the communities concerning Local council courts. Sensitization of the masses about these courts can be done through the media specifically the radio as numerous households use this as an avenue to communicate and to receive communication. In the end it's when the masses are aware of the activities and importance of these courts that they will be able to utilize and benefit from them.

The funding of the local council courts is inadequate yet they are at a very sensitive and tender stage where they need to be well funded such that they can be able to deliver services efficiently. Adequate funding is so crucial at the initial stages of the local council court's activities because they can not sustain themselves besides a lot of costs are incurred through efforts to carry out sensitization of the courts.

Further as a result of inadequate funding the Local council officials are not paid for the services they render³⁵This is very dangerous in a way that these court officials engage a lot in determining sensitive matters so not remunerating them puts them in a slippery position as they could end up being prone to corruption. Yet corruption is another aspect that could cripple the activities of the Local council courts generally.

3.2.4 Qualifications

There is no provision in the local council Courts Act,2006 providing for the minimum qualifications that the local council court officials should have to enable them assume office and also carryout the activities of the court. This poses a problem to the local council court operation as they will be run by lay people not knowledgeable of the law and thus likely to blunder. Case in point is ***Juliet Nabirige V William Waibi Makooma Mukembo Nanvesi***³⁶it was held inter alia that the chief magistrate that the records for the RCIII court "left a lot to be desired" and therefore, the chief magistrate could not come to a just decision and thus ordered a retrial. As a matter of fact the chief magistrate was not happy with RC lay people handling legal disputes as courts. The strength of local education in propelling promotion of the rule of law and observance and respect of human rights cannot be underrated. Observance of human rights is a fundamental aspect in the operation of Local Council Courts and in turn the reality is that though education does not have everything to do with promotion of human rights at least it has something to do with it. More, local council court officials should attained a certain degree of that way efficacy of the Local Council Courts will be attained.

3.2.5 Caution as a sentence

The law does not provide for the sentence of caution yet this is very vital for promoting reconciliation between the parties. The fact that local council courts are community based and oriented courts, for the interests of promoting harmony in the community

³⁵ John Jean Barya .J Olaka Onyango ,*Popular Justice And Resistance Committee In Uganda ,P.29 The Proposed Resistance Committee Amendment Bill Included A Bill With Proposals Of Remunerating L.C Court Official*

³⁶ *Civil Appeal No 20/1989*

caution should be incorporated in the law as a penalty especially for first time offenders.

3.2.6 Proper accountability of fees

There is a likely ability that if the fees collected are not properly accounted for and the purposes for its use not specifically pointed out then it is possible that the money could be mismanaged and misappropriated thus rendering the courts ineffective. To be more specific the law governing the local council courts does not stipulate the exact amount of fees to be paid and also in what instances such fees should be paid. As a result this becomes a precursor to the danger the public is likely to face such as the fact that there could be extortion thus subjecting the masses to exploitation.

3.2.7 Poor record keeping

Not only are court officials unable to keep good accountability of the finances in their control but also records of the court proceedings. Case in point is ***Sebastiano Magaya V Sematiya Nsaja***,³⁷ in reviewing the case file the chief magistrate observed; and stated that,

"I have carefully perused the RC III proceedings and I must attest that a worst piece of work I have never handled. The records do not show if any of the witnesses was sworn. You get sentences marked Q and A presume big meaning question and answer. As to who is asking the question and answering them is often unclear. The witnesses are not numbered and you have to exercise great care that you do not take the evidence of one side's witness for the other. All in all it is a very poor piece of work; no serious tribunal could rely on it to come to a just decision"

3.2.8 Inefficient exercise of people's power

Power as per the constitution of the Republic of Uganda which is the supreme law belongs to the people who play a vital role through elections to determine who gets to office. The people too are faced with an obligation to participate in the administration of

³⁷ Civil Appeal No .43/1989

justice³⁸ however, the law does not give them the mediate to participate in an officer's vacation of office yet it is the same people who can act as a means of checking and balancing the activities of the LC Courts. So, people should have the mandate/powers to impeach none performing and ineffective court officials.

3.2.9 Emphasis on natural justice principles

Natural justice is a major principle forming the foundation for the operation of the local council courts activities yet the law does not give it a lot of emphasis as could be seen when violation of the principles of natural justice is listed among the grounds upon which the local council officer's can be made to vacate office.

3.2.10 Voting criteria

The local council courts Act 2006 provides that after a case has been heard by the officials then can they take or make the necessary decision. This is done by putting up their hands as a way of voting such that the decision of the majority vote takes the day. However. This is a very unfortunate way of reaching decisions as it may cause more harm and damage to the community. Among the numerous disadvantages of taking decisions this way is that realization of peace, harmony and development of the community could be a mystery as people will be out to get at or revenge against each other.

Further, LC Court officials in performing their activities are charged with responsibilities to condemn the various offenses within their jurisdictions.³⁹ due to the powers conferred upon them. Worthy noting is that the notion of separation of powers is minimized since they have executive, legislative and judicial powers all conferred upon them⁴⁰. This is dangerous because it could result fear We system that is the Local Council Court system devolving into one of "mob justice"⁴¹ To make matters worse the functionaries

³⁸ Article 126 ,1995 constitution of the republic of Uganda as Ammended is to the effect that People shall participate in the administration of justice

³⁹ Section 9 And10 Local Council Act 2006

⁴⁰ .V.B Ssekkono Local Councils Administration Of Justice ,Revised Guides For Local Councils Courts 2007 Ministry Of Local Government

⁴¹ CBR Working Paper Number 30 Conceptualizing And Democratizing Judicial Power ,P 57

constituting these courts are not specifically groomed to perform the judicial function as evidenced when they are elected, not appointed to perform these functions.

3.2.11 Prescription of penalties for offences

It is noteworthy that the law that is the local council courts Act should have a provision clearly prescribing the penalties local council courts can issue out when a given offence is committed an aspect presently lacking in the law.

3.3 Strengths of Traditional systems of justice

3.3.1 Culture based

Every traditional system discussed in the preceding essay is one that is not only based on culture but also one that seeks to promote culture in everything done. Worth mentioning is that different tribes have different ways of resolving dispute which explains why every tribe has its own traditional system of justice dispensation for dispute resolution.

For instance among the *Baganda*, the traditional system of dispensing justice is called *embuga* among the Acholi tribe it is called '*mato put*' and many other tribes as earlier on discussed.

Culture is a very important aspect in the lives of people and communities in Uganda; as a result culture is so powerful and important to the extent that usually people without culture are referred to as "trees without roots". The significance of that is that people who do not identify themselves with their culture are lost and without belonging. In that regard the force behind culture cannot be underrated in issues of governance at any level.

3.3.2 Integrity

The performance of activities in societies especially justice related activities were carried out with high levels of integrity. As a matter of fact it were people of integrity in society that were made clan heads and placed in other leadership positions in society. Many

tribes had in their jurisdiction a council of elders that was from time to time involved in settling disputes.

For example minor crimes were handled by house hold heads, crimes that were inter-clan related were handled by clan heads called '*rwot moo*' among the *Acholi And ABataka*' among the Baganda.

On various occasions while the elders carried out their activities ranging from acting as judges or as witnesses in dispute resolution were heard to say that they are elders who can not tell lies. Thus an important aspect portraying high levels of integrity among the elders, in that regard it can be said that indeed justice in the traditional systems was dispensed.

3.3.3 Reconciliatory

Much as many of the traditional systems of justice involved some level and aspect of rendering punishments to offender in delivering justice so that such could be used as an element of deterring potential offenders from committing crime, the community was considered. That is these systems did not only work so much at punishing the offender but also had their emphasis in the way they dispensed justice to reintegrate such a person to the community. An example is the *Mato put* system in Acholi land such that where the matter between these two sides was heard and decided then were they made to eat and drink from the same calabash an aspect that signified unity between the two parties and harmony. So, one can safely deduce that the traditional systems of justice were based on promoting peace and harmony in society other than focusing on only punishing the individual as our present court systems SC) emphasize in the end leading to congestion in prisons since it is believed under this system that offenders are good for nothing and so should be segregated from the community.

3.4 Weaknesses of the Traditional systems

3.4.1 Male dominated

Many of the traditional systems in Uganda were dominated by men This is a vice that is still happening in our societies today as men are the ones looked at objects of power in

most societies. However, the government has done a lot as seen through the supreme law of the land which discouraged all forms of discrimination which includes discrimination against women in society.

So, the clan heads and council's of elders that were in charge of resolving disputes in Uganda were dominated by men since women were regarded as not having the power to deliberate upon such pertinent issues in society

3.4.2 Cruel and degrading punishments rendered

In most cases when an offender was found guilty some of the punishments rendered to him or her under the traditional systems of justice were cruel and degrading to the dignity of that person and human beings in general. For instance once one was found guilty of committing grave crimes in the society he or she was in most cases buried alive, banished from the society among other forms of punishment, this was reiterated in *Satvatori Abuki & anor V Attorney General*⁴²

3.4.3 Easy to manipulate

Yet another weakness of most traditional systems of justice is that they are easy to manipulate. This is because most of these systems are reconciliatory in nature such that once one tells the truth with regard to the issue in contention and the dispute is resolved then no matter how grave the crime is he or she will be forgiven and integrated back in society. An example of a traditional system that operates that way among others elaborated upon in the previous chapter is 'Mato put' practiced among the Acholi who for purposes of this research are representative of the traditional system of resolving disputes in northern Uganda.

Much as forgiveness is vital if justice must be seen to be done it can not transpire without acknowledgment of the truth, it is more probable than not that the perpetrators will manipulate the traditional systems of justice administration so as to get away with their crimes easily since the degree of punishment under the traditional systems of justice are not grave. This could explain why Kony the Lord's Resistance Movement

⁴² *Constitutional Petition No 1/ 1997*

leader and notorious perpetrator of people in Northern Uganda plus his fellow perpetrators are demanding to be tried under the traditional system of justice in Acholi-land and not through the formal court system.

3.4.4 Fall short of some minimum standards of justice

In some aspects most of the traditional systems fall short of the minimum requirements of justice set by the international systems of dispute resolution like the international criminal courts statute and many more. Some of the ways through which minimum standard of justice are not met can be deduced from the weaknesses of traditional systems of justice analyzed earlier on. An example is how these systems of justice are not gender sensitive in their operation.

Many of the traditional systems of justice operate in such a way that the mode of their operation is passed on from generation to generation thus making codification of these systems difficult. This is evident from the fact that various people interviewed during this research gave differing facts with regard to how the traditional systems of justice were carried out. This is a danger in a way that there are no precedents to be followed besides; culture varies from society to society thus posing great difficulties to codification of these systems.

Further in a number of traditional systems of justice the rights of the individual especially the offended are limited for example where a girl was raped and impregnated she was in most cases forced to marry the man who impregnated her to save tarnishing the image of the family and clan as a whole. This is a clear pointer to how the rights of an individual in the traditional systems of justice are limited to those of the community.

On the whole much as the traditional mechanisms of justice are faced with various challenges they are active within the communities and the question of their applicability should not be down played or over looked. This is because they embody a lot of African culture vital in enabling people to identify themselves. Further these diverse cultures express a fabric that keeps communities in harmony since they are reconciliatory and rehabilitator based.

The Constitution of the Republic of Uganda 1995, under Objective XXIV provides that the state has the responsibility to uphold customary values that are consistent with fundamental freedoms, human dignity and incorporates these aspects in people's lives

It further states that a custom that promotes a culture of impunity, disrespect for human rights of the victim should be condoned

Having discussed the importance of the traditional systems justice delivery to the society at the grass root the next chapter will venture into how the challenges of traditional systems of Justice can be gone about there by discussing why and how these systems can work with the Local council courts such that justice is realized and dispensed at the grassroots.

CHAPTER FOUR

To this end, according to the various people and this research it is evident that the Local Council Courts are still a viable venture. Hon. MR. Chief Justice Benjamin Odoki (as he was then) on a number of occasion pronounced himself on the issue of LC Courts appraising it. However, his criticisms also captured in this research only extend to the manner of the operation of the courts and not the substantive issue of whether or not such courts should exist

This therefore is evidence that the aspect of dispensation of justice at the grassroots is crucial and the avenue of LC Courts is not totally futile. Therefore, there is need broaden it to make the system better through various means and even by incorporating the traditional systems of justice and reconciliation which by and large conform to most of the minimum standards of justice.

Besides these are the avenues that helped African communities to resolve the various conflicts in their communities thus living in harmony.

4.1 Conclusion

Today it is important that in all matters of governance, adherence to the will of the people should be kept in mind, this requirement is extended to the dispensation of justice; Article 126 of the Constitution of the Republic of Uganda, 1995 provides that judicial power is derived from the people and shall be exercised in conformity with the values and aspirations of the people.

Unlike the earlier constitutions the present Constitution clearly stipulates the concept of popular justice greatly emphasized today, resulting from the principle of the supremacy of the people that is, that; all power belongs to the people. Further the judicature Act acknowledges the importance of culture in the running of activities in communities, which is with it does not abolish custom completely but rather gives room for good customs to prevail. The early people and communities practiced various customs that were avenues or mechanisms of dispensing justice and reconciliation at the grassroots.

Recently the concept of grassroots administration of justice has gained significance because of a number of reasons ranging from the fact that mainstream courts have failed to deliver justice speedily. Further those responsible for the dispensation of justice lacked the initiative to deal with the demands of the majority of the populace. Presently especially in the northern regions of the country there is need to reconcile the different sectors of the society because of the war that has existed for a very long time.

It is therefore, important that as a result African countries should be prudent enough to return to their roots in aspects regarding dispensation of justice to their people by incorporating and adopting the traditional ways through which disputes were solved; this way the problems faced by African communities will be solved in a more contextualized matter suitable for African countries.

More importance of these systems is realized from the fact that they are vital in the building of communities as seen from their reconciliatory nature thereby deviating from the adversarial system that was adopted after independence.

Important to note is that this is in line with the spirit of the Constitution, according to Article 126(2) of the Constitution of the Republic of Uganda, 1995 judicial power shall be exercised inter alia to promote reconciliation between the parties to the conflict.

Thus, explaining the existence of Scheduling conferences at the initial stages of filing suits presently and the requirement of the need to explore the avenues of Alternative Dispute Resolution widely referred to as ADR

Local Council Courts are the main avenue through which justice is dispensed at the grassroots presently in Uganda since the parliament has according to Article 127 of the constitution, 1995 put in place some laws vital for the establishment and guidance of the courts.

However as earlier analyzed these courts are also overwhelmed by numerous problems ranging from the enabling statute and others such as likelihood of bias, the duly limited jurisdiction of the courts to mention but a few.

CHAPTER FIVE

RECOMMENDATIONS

Despite these shortcomings the Local council courts are a remarkable development and it largely meets the basic principles of popular justice. However, in order to make them and the traditional systems of justice more effective as popular avenues of dispensing justice at the grassroots the following recommendations are suggested.

In light of the various shortcomings of the LC Court system, it is essential to affirm the constitutional right of all people to have access to judicial redress at every level, and in particular to reconfirm the notion popular justice as a fundamental right.

This should be constantly followed by serious re-examination of the performance of the system, and to explore ways and means of strengthening it as the recommendations mentioned below suggest.

Needless to say, there is the need to vigorously train the court officials in matters of the law since they are not lawyers generally. This is because there is a clear unwillingness to countenance the issue of lay people exercising judicial powers. So, they should be trained in matters of substantive and procedural laws plus the administrative law so as to manage the courts.

Since it is vital for people to participate in the administration of justice it is also crucial that this - training be extended to the general populace thereby sensitizing them especially in areas of the functions of the LC Courts and others like customary laws that is what is relevant and what is not relevant. This is because a number of people especially the young generations do not know how traditional justice and reconciliation was or is dispensed in their various tribes or communities.

The jurisdiction of the courts should be revised to increase the monetary limitation such that more cases can be handled. The jurisdiction should not only be expanded in civil matters but also to include some criminal matters or cases. The Judicial and Executive powers placed in the local council officials should be severed to avoid instances of conflicting loyalty. These conflicts too are not felt or experienced within themselves but

also to the broad protecting the integrity of the LC courts. In that regard the courts should be facilitated in terms of transport, stationary, shelters and many more.

Women should be encouraged and sensitized on the need for them to participate in the administration of justice at the grass roots so as to break the culture and monotony of the administration of the justice being dominated by men. Many cultures forbid women from engaging in matters that affected the society, this is because they were trained and groomed to participate in the backyard activities like cooking and breastfeeding only.

This problem is not only rampant the traditional systems of justice delivery but also in the Local council courts system where there still is a challenge of gender imbalance.

On the whole having analyzed the processes of the reconciliation and traditional justice fora it is evident that they provide a useful popular for the resolution of disputes at the village and local levels and their experience could be built on in struggles for more fundamental I progressive social transformation in Uganda.

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