TRADITIONAL VERSUS MODERN JUDICIAL PRACTICES: A COMPARATIVE ANALYSIS OF DISPUTE RESOLUTION SYSTEMS AMONG THE SOUTH-WEST YORUBA OF NIGERIA

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INTRODUCTION

Some of the preliminary issues we intend to consider in this paper are the extent to which modern day judicial practices, as manifested in Courts are well fitted for Dispute Resolution. The second is whether disputes are central to the work of Courts. The nature of our response to these issues will justify the need or otherwise for an alternative dispute resolution method.

Richard Lempert defines disputes as 'controversies involving two (or more) parties, each making a special kind of claim: a normative claim of entitlement' (Lempert 1981:708).
Another definition holds that a dispute is 'a social relationship created when someone (an individual, a group, or an organisation) has a grievance, makes a claim and has that claim rejected' (Kritzer, 1981:510). The problem with seeing dispute processing as central to the work of courts is two fold. First, there are good grounds for saying that the adjudicative process of courts is extremely poorly fitted for dispute resolution. Secondly, there seems to be considerable evidence that a great deal - probably the major part in terms of total number of cases - of courts' work is concerned with matters other than disputes in these senses. Each of these matters will be looked at in turn.

Shapiro's analysis of the 'social logic' of the trial suggests important reason for denying that courts are well fitted for resolving disputes. (Shapiro, 1981). For in so far as the work of courts is held to centre on adjudication and the role of the judge is seen as being to decide the 'rights and wrongs' as between two parties in dispute and to provide a dichotomous solution to their conflict in which one party is held to be right and the other wrong, courts and judges stand at the opposite end of the continuum of dispute settlement from mediation or negotiation through a go-between. They stand at that end of the continuum where consent of both parties to a solution put forward by the third party (judge) is least likely. Consequently, the processing of the dispute by the court is unlikely to result in a genuine resolution of it; that is, a solution acceptable to both parties. The dichotomous right/ wrong judicial solution is likely to appear as an imposed two-against-one solution which may make continuing relations between the disputants difficult or impossible.

A court hearing may escalate a dispute by making it public and focusing attention on it in a way that can often be avoided by using the private and sometime less complex and protracted proceedings of arbitration. Further, judicial proceedings 'do not lend themselves well to the consideration of multifaceted disputes. The adversary proceeding oversimplifies many conflicts, and consequently,

many disputes are brought to court only as one stage in their ultimate resolution' (Jacob, 1978:11). What have been called 'polycentric problems' (Polyanyi, 1951:170) are difficult to solve through adjudication since they involve complex networks of relations, like a web in which if any one strand is pulled a complex pattern of adjustment runs through the whole (Jowell, 1973:213; Jowell, 1975:151-5). In addition, as Vilhelm Aubert has stressed, legal decisions by courts have a 'marked orientation toward the past' (Aubert, 1969:287). They interpret and assess, in terms of legal doctrine, past actions and events, accrued entitlements, established obligations and claims. Yet dispute resolution may also require innovative planning and policy-making to govern future conduct and events.

The court's judgment on the law is perhaps best seen, then, not primarily as the resolution of a conflict but as an assertion of normative order, a definition in terms of legal doctrine of the way a particular social situation or relationship is to be understood. The successful party in the case may be happy to see the situation in this way, at least in most respects. The loser (if he does not choose or does not have the opportunity, to appeal to a higher court) must readjust his expectations and perceptions of the situation in accordance with the court's view of it.

Before concluding this Introductory section, we shall briefly describe the study setting - The Yoruba of South-West Nigeria.

The Yoruba society is patrilineal, and several nuclear families form each extended family. The compound is a collection of apartments which house different nuclear families. The head of the extended family, who lives within the confines of a compound, is referred to as the *Bale,* who is selected on the basis of seniority and of certain achievements. He is governed by a set of informal rules and obligations. Issues that cannot be resolved at the level of the family are brought to the attention of the *Bale* who, in turn, effects settlement of the issue in conflict. There are laid-down principles which govern the behaviours of members of the extended family and of outsiders. (Buendia (ed.) 1989:144).

The point to be noted, as Fadipe (1970) observes, is that the Yoruba have a well-developed system of conflict-resolution mechanisms as well as principles that govern the administration of justice, he points out that, except for cases of murder, incest, and the violation of the secrets of secret societies, other matters were within the *bale's* competent jurisdiction. As much as possible, he guarantees the good name of the compound and defends the interests of its members.[1]

Another element of Yoruba society that deserves mention is the use of religion and rituals for the purposes of social control and sanctions. There are various Yoruba gods, each of which is referred to as *orisha.* These *orishas* are of different varieties, and they serve different religious and occupational functions. So highly esteemed are the various *orishas* that once an individual has agreed to swear by one, he or she would be expected to say nothing but the truth. If a crime is

committed within the community, a particular *orisha* may be asked to search for and punish the culprit who, invariably, will show up later to admit the alleged offence.

It would appear that some aspects of this belief system have been eroded by the influence of modernization resulting from contact with the outside world. Nonetheless, it can be said that the *orisha* cult still exerts considerable influence on both the "traditional" and "modern" Yoruba; in this sense synonym bonds are engendered.

Be that as it may, the rest of this paper shall be discussed under the following major heads.

In the first section, we shall attempt conceptualizing 'Traditional' and 'Modern' societies with emphasis on the nature of Dispute settlement procedures in these societies.

Second, we also want to identify the various methods of Alternative Dispute Resolution (ADR).

We also intend in the third part discuss comparative differences in Dispute Settlement among the South-West Yoruba of Nigeria and the contemporary Western approach.

The concluding section will attempt making suggestions towards streamlining the present court system with the principles of ADR.

THE CONCEPTS OF 'TRADITIONAL' AND 'MODERN'

Traditional societies applies best to small, isolated non-literate, and homogenous groups. This is a society in which PEOPLE feel they belong together because they are of the same kind. Broadly speaking, they are kin, and cannot freely renounce their membership, for it involves great emotional meaning for the group as well as for the individual. According to Broom and Selznick, people "are born into it or grow into it in the way the bonds of friendship grow. (Broom and Selznick, 1968). In this type of society, people remain essentially united in spite of all separating factors. This implies that it is an association in which natural will predominates.

In contrast, modern societies are large, non-isolated, literate and heterogenous, it is a society in which the major social bonds are voluntary and based upon the rational pursuit of self-interest. People enter relations with one another, not because they 'must' or because it is 'natural', but as a practical way of achieving an objective. The typical relation is the contract, and the typical group is the voluntary special-purpose association.

According to an anthropologist Laura Nader[2], we can categorize all dispute settlement systems into two: a 'give-a-little, get-a-little' and 'winner-takes-all'. The former is common in relatively unstratified simple traditional societies, while the latter is usually associated with complex/modern and stratified societies as we have in our cities today.

Dispute arise because one party does not act as the other wants or expects him to do. Norms express role-expectations. Disputes necessarily take the form of a claimed breach of the norm. Once it has been established that a person's or group's rights have been infringed upon and responsibility for the deed has been determined - through whatever procedures for inquiry and adjudication - the final step in the judicial process is to redress the breach. As with all of the other elements of law, modes of redress, of 'righting a wrong', vary from society to society as well as within a single society. These two systems co-exist in Nigeria.

At the grass-root level located more in the rural areas, the dispute-settling process entails a bargaining relationship. The bargain aims not to determine that one side or the other breached the norm at issue but to find a compromise solution that will leave neither party so strongly aggrieved as to prevent future amicable relationships. Thus, in our rural areas, 'give-a-little, get-a-little' becomes the appropriate principle of decision-making in cases where the dispute on its resolution anticipated a continued relationship. (Uweru, 135, 1990). Steward Macaulay demonstrated that businessmen do not bring law suits against customers whose trade they want to keep after settling the particular dispute.[3] Married couples who want to preserve their marriage do not take their disputes to courts; they take them to marriage counselors or family heads, who usually try to help find compromise solutions. Because they must continue their relationship after a dispute, trade unions and employers favour arbitration. This behaviour pattern towards disputes seems to be a universal yearning of human society: how to repair broken relationship.

In the 'winner-takes-all' system, on the other hand, a third party usually the judge controls dispute-settlement even when no one wants to continue the relationship. When a person gets involved in a motor vehicle accident, usually he had no prior relationship with the other party and anticipates no future relationship. In such cases, the parties typically expect at the end of the trial process to settle the dispute on a 'winner-takes-all' basis. So also in criminal matters; either the accused is guilty or not guilty. In this kind of system, bargaining may take place, and often compromise controls the actual disposition. Bargaining over a 'negligence claim' only aims at saving the parties the time and expense of an actual trial. They bargain, not in an effort to make possible a future relationship, but in light of their estimates of the probabilities of a favourable outcome of the potential 'winner-takes-all litigation. Guilty, plea bargaining in 'criminal cases likewise arises from the convenience of avoiding a 'winner-takes-all' result', result of the potential trial.

SOME METHODS OF ALTERNATIVE DISPUTE RESOLUTION (A.D.R.)

i. NEGOTIATION

The first one is negotiation. Negotiation is the process whereby the parties attempt to resolve the dispute between themselves without the intervention of a third party. Quite often the parties' lawyers negotiate for the party. We all negotiate everyday either in our legal practices or in our personal relationships. In the legal system, lawyers negotiate for their party's interest and many cases settle through negotiation, either between the parties or between their lawyers.

ii. MEDIATION

The next type of ADR is mediation. Mediation is an alternative to litigation, whereby the parties to a dispute work resolving their difference with the assistance of a trained third party facilitator, the mediator. The mediator cannot force a settlement or dictate the result. Rather, the mediator controls the process, but the parties control the result. The parties are active participants in the process and any settlement is the result of a mutual agreement.

The thing about mediation that is of essence is that it is assisted negotiation. The mediator is trained to help people solve their own disputes. It makes ultimate sense that grown up should be able to sit down and solve their disputes rather than turn them over to a disinterested third party and have that judge or that jury decide how the dispute is to be resolved. Since the final agreement is one of the parties' own making, they are happier with it. They can live with it because it is theirs. They own it. (Davis, L. .1994).

iii. MINITRIAL

A minitrial is another type of ADR. The American Bar Association Standing Committee on Dispute Resolution defines a minitrial as follows: "A minitrial is a flexible, private, consensual proceeding where counsel for parties to a dispute make an expedited presentation of their best case in the presence of representatives of the parties who have authority to settle, and usually, but not always a neutral third party. The third party renders non-binding options as to the probable litigated resolution of specific, legal, factual, and evidentiary issues as well as the probable overall outcome of the dispute. Then the parties enter into confidential settlement negotiations premised upon the information and insight gained through the case presentations and the third party's opinions. The ultimate desired result of a minitrial is a voluntary out of court settlement of the dispute." A voluntary out of court settlement is the ultimate result of every form of Alternative Dispute Resolution. What distinguishes the minitrial from other types of ADR is that it is an actual trial, although it does not happen in the court and there is no real judge present. Instead, it is a kind of mock trial in which the parties, in an abbreviated fashion, present their best case.

iv. SUMMARY JURY TRIAL

The next type of ADR is the summary jury trial which is similar to a minitrial, but occurs on a more everyday basis in contemporary Western societies. The summary jury trial actually takes place in the court-room and uses an advisory jury drawn from a regular jury panel list of registered votes. An abbreviated jury trial is conducted in front of these real jurors. The court conducts a brief voir dire. Each attorney presents his case within well defined time limits, the court briefly charges the jury and finally the jury deliberates and returns an advisory and therefore nonbinding verdict. This is a true dress rehearsal of a real trial but it happens within very well defined time limits. Summary jury trials make people get to the meat of the matter right away. The goal is to give the litigants an idea of what would happen if they went to a real jury trial because they are real jurors there who issue a verdict at the end.

vi. ARBITRATION

The next major category of ADR and one that is in very widespread use, is arbitration. Arbitration is a process whereby a trained, third party neutral hears the evidence and makes a decision which is binding on the parties. The arbitrator acts as a judge and becomes the trial of fact. In more complicated cases, there may be a panel of three arbitrators. The control is not within the party's hands, which is what the other forms of ADR have in common. But the reason arbitration is included in Alternative Dispute Resolution is that it makes the process much simpler, less expensive and efficient. A case can be arbitrated much more quickly than it can be litigated. Many contracts, especially in the construction industry have arbitration clauses which provide that the case automatically goes to arbitration before it could ever go to litigation.

vi. MED-ARB

The final type of ADR we are discussing here is an interesting concept. It is called med-arb. The process begins as a nonbinding mediation, but the parties know and agree that if a settlement is not reached, the mediator, who cannot tell them how they will solve the problem, becomes an arbitrator who can act as a judge. He is the decision maker. As an arbitrator, he or she has the authority to render a final and binding decision. One might use med-arb in an instance where the parties really would like to make their own decision and to solve their dispute, but they also want to be sure that the case is concluded by the end of the day.

DIFFERENCES IN DISPUTE SETTLEMENTS BETWEEN THE YORUBA OF SOUTH-WEST NIGERIA AND THE WESTERN APPROACH

By and large, the traditions of virtually all the Nigerian communities have remained essentially communal, in contradistinction to the Western tradition of individualism. The resultant political consequence of the latter is a form of democracy which extols individual rights and results ultimately in government and opposition. The former, on the other hand, results in communal democracy, within which each person exercises his individual rights in the context of communal corporate rights, giving rise to government by consensus, which itself ultimately consists of government by all, operating through negotiations and compromises, in order to accommodate the view of all, but never by voting. (Adeyemi, 1991:212).

In matter pertaining to dispute resolution, the Western individualistic culture has resulted in strict enforcement of individual rights and duties, Whilst the Nigerian (and indeed the African) culture recognises individual rights and obligations, within the context of communal rights and obligations. The ultimate of Western legal culture, in this regard, culminates in the Rule of Law which subsumes, within its concept, propriety of behaviour by government and the people, respect for constituted and human dignity, and an enlightened sense of social obligation by both the government and the people. In the Nigerian and other African legal traditions, the same ideas are subsumed under the concept of Maintenance of the Social Equilibrium.[4]

Fadipe wrote that long before the establishment of British rule in Yorubaland (South-West of Nigeria) the people had reached the stage where redress for injuries suffered directly or indirectly was taken out of the hands of the individual and his kindred. In other words, the stage of public as opposed to private justice had already been reached. (1970:223).

What is central to the process of adjudication is peace-making between the parties at conflict. In peace-making justice, the aim is to intervene and arbitrate in quarrels and misunderstanding which impair kinship or social solidarity or are likely to deteriorate into an actual breach of the peace. In this form of justice, more than in others while the apportionment of praise and blame is the desideratum, it sometimes requires to be tempered by the necessity to conciliate according to the prejudices and customs current in Yoruba society. Thus, conceptions of seniority or of the superiority of husband to wife, or even of man to woman, are often taken into account in adjudicating in disputes of this class. As to the nature of such disputes, they generally involve breaches of codes of manners, behaviour and usages such as cannot be taken direct cognizance of by the authorities unless the parties concerned are themselves members of the administration, or unless curses are invoked and the matter cannot be settled informally.

Opinions of authors vary as to whether a clear distinction exist between civil and criminal matters, as obtained in countries of the West. Olusanya (1989:9) believes that there is no distinction between civil and criminal law as there is in complex societies. Fadipe (1970:227) was of the view that "the classes of cases which came up for court decision were not only divided into these categories (civil and criminal) but their descriptions were also substantially similar to those of the Western countries." Ajisafe (n.d.:28-31) was of the view that the Yoruba have their criminal law. He said that the crimes of witchcraft, sorcery and poisoning are punishable by death. A number of other crimes were listed. There are all sorts of punishment for crimes which apart from death includes flogging, whipping, beating, tying, chaining, lacerating and fines. Fadipe recognises the following as falling under criminal actions: witchcraft, incest, divulging secrets of certain religious and political organizations, pronouncing a curse, manslaughter, malicious wounding, arson, theft, burglary, poisoning (1970:228).

The cases which fall under civil matters as Fadipe pointed out are the following: actions for recovery of debt, for seduction, breach of contract, compensation for unintentional injuries to person and property; misappropriate and divorce (1970:227). In civil matters, an aggrieved person is expected to lay a complaint before the relevant judge or authority which could be the *Baale* (household head) or *Baale* (head of a dependent territory) or *Oloye* (a ward chief) or the king himself. After the complaint is laid, the defendant is summoned and asked to state his or her own side to the complaint. If the litigation is of a nature that cannot be resolved without inviting witnesses, they may be summoned at an appointed time. Other judges may also be invited to attend. The appointed time may be after a day's job - indeed any time which is convenient. Usually, someone who has personal interest or is in any way directly connected with the matter in hand is rarely allowed to preside over such matters. It is also part of the Yoruba legal system that the other party must be heard and indeed

a judge who goes ahead to give his verdict without having heard the other side or giving ample opportunity for him or her to be heard is regarded as wicked. Before commencing a trial, the parties may be asked to swear in the name of the ancestors (Olurode & Olusanya, 1994:145-146).

THE JUDICIAL HIERARCHY AND THEIR SPHERES OF COMPETENCE

The administration of justice started from within the compound among the Yoruba.. The more comprehensive court above that of individual compound was that of the chief of the ward, while the central court had jurisdiction over the whole town. The spheres of competence of these various courts are hereby discussed.

The Baale's Court: The *baale's* court of the compound was concerned with disputes between members of the compound. It also shall dealt with cases of theft committed by members of the compound. As already pointed out, cases between members of two different compounds in the same ward could be settled by agreement jointly by the two *Baales* concerned. The case was heard in the compound of the senior *baale*. But if the two *baales* were not on good terms with each other or if the decision of a *baale* in a case of undivided jurisdiction was disputed by one of the parties concerned, the case was carried to the higher court, namely, the court of the ward chief.

The settlement of quarrels and disputes between women of the compound was often left in the hands of the *baale's* eldest wife (Fadipe, 1970:228).

No fees were chargeable at these *baale's* courts. The courts were not an imposition from without but a necessary outcome of the duty and interest of the *baale* to keep his people together in a harmonious relationship.

The Tribunal of the Ward Chief: The class of cases dealt with here was not much wider than that dealt with in the *baale's* tribunal. The difference lies in the greater and more comprehensive field of jurisdiction of the tribunal which was disputed by one or both of the parties was also referred to the ward chief's tribunal. Although the ward chief was not entitled to try criminal cases on his own responsibility, any such offence occurring within his jurisdiction had to come under his notice and be referred to the central tribunal after a preliminary hearing.

The Central Tribunal: The personnel of this court were usually the same as that of the council of state. The court was in fact the council of state sitting in its judicial capacity. The council, on its meeting day was successively an executive council, a legislative council, and a judicial council. This tribunal was both a court of first instance as well as the last court of appeal.[5] Civil cases in which the parties concerned belonged to different wards and in which the chiefs of these wards were not on sufficiently friendly terms to arrange a settlement at a joint hearing were brought to this court. So also were cases in which judgement handed down by these courts. The actual decisions of the traditional peace-maker are to be found well embedded in an articulate restatement of the salient

facts, copious references to the relevant customary norms and admonitions made light by an indulgent acknowledgement of the human imperfections that might have led the guilty to error. The guilty is urged to be apologetic, the innocent, to be understanding.

The apparent aim of this doublespeak is the reconciliation of the parties. It is in recognition of the fact that a bare resolution of the dispute and apportionment of guilt may, in turn, breed bad blood between the parties. Hence, even the imposition of an obligation to pay damages to the innocent is not done in accordance with some predetermined scale. The capacity of the guilty to pay is taken into consideration and, in spite of that, it is not unusual for the innocent to waive the payment in a spontaneous show of goodwill.

Where the parties are satisfied by the decision, a formal apology by the guilty forms part of the proceedings. The innocent also declares before the audience that he does not bear a grudge. It is not unusual then for both parties to swear a reciprocal oath to bury the hatchet. If however, either or both parties are dissatisfied with the decision, they take the matter to a higher person or group in the social hierarchy.

THE WESTERN APPROACH TO DISPUTE RESOLUTION

Generally, this approach is characterised by the following:

(a) Confidentiality
(b) Exclusive to disputants
(c) No power to sanction agreement
(d) Consensual (inter-disputants)
(e) Addresses emotions
(f) Non-spiritual elements (oaths)
(g) Gender free
(h) Flexible
(i) Professional mediators
(j) Win-win outcome
(k) Remunerates mediators
(l) Training required (formal)
(m) Signed agreements etc.

Time and space limitations will not allow us to go into details about all these characteristics here. However, in the course of the discussions that follows, we shall touch on most of them.

Western culture has not resulted in a homogenous approach to its legal procedural approach, in fact, it accommodates a dichotomy, namely: the Accusatorial procedure of the common law jurisdictions, and the Inquisitorial Procedure of the Civil Law jurisdictions. On the other hand, the Nigerian/ African legal traditions have favoured the Inquisitorial Approach to its/their legal procedure. (Adeyemi, 1991:212).

Among the Yoruba, the parties to the proceedings are the victim/complainant and the accused person and the court is specifically enjoined to consider the interests of the victim, the accused person, and the society. Hence, the significance of the concept of the "maintenance of social equilibrium"[6] earlier on discussed but which has sometimes not been properly understood in anthropological literature[7] Yet, our Western-oriented formal criminal justice system of today emphasizes the state and the offender as the parties to the criminal proceedings, Whilst the victim is assigned the mere role of a Prosecution Witness.[8] To the average Yoruba and indeed the Nigerian victim, this situation will seem to place the offender on a higher pedestal in the criminal proceeding than himself (i.e. the victim). Adeyemi noted that this fact can be sought to be justified on the basis that the accused person requires such a position to enable him defend his rights which have become jeopardized by his criminal trial (1991:213).

Another critical issue is the position of individuals in the judicial system. To a large extent, the principle that no person is above the law operated in the traditional societies as in the contemporary societies, although in some cases, in both societies, the reality may be different. In reality, some people may seem to be above the law by virtue of their positions (Soyombo, 1994:134).

Soyombo further stated that in the traditional societies, as in the modern legal system, in principle, an accused was deemed innocent until proved guilty. Thus, in the traditional societies, an accused person is usually subjected to the 'due' process of law, although the type of evidenced required for the proof of guilt may differ. For instance, while importance is placed on the oracle, juju and divination in the traditional society, the modern legal system does not have a place for these and is likely to discountenance any submission that is based on them. This is understandable from the modern point of view, as they are not scientifically verifiable. This raises questions about the relevance of modern legal systems to the customs of the people. Many people still have strong belief in the supernatural and as W.I. Thomas noted, if people believe situations to be real, they are real in their consequences (1944:135).

Moreover, the amount of evidence that may be considered sufficient in the traditional system may be considered insufficient in the modern legal system. The traditional system would accept anything that may throw light on the issue at hand, including hearsay evidence (Emiko, 1986:318).

Presently in the Nigerian society, the two judicial systems can be said to run *pari pasu*. But it is significant to note that the traditional approaches are still very much patronized, and they are in no way limited to the rural areas. Some reasons can be adduced for this.

Firstly, administration of justice under the traditional method is quicker and cheaper than in the modern legal system where cases can take a very long time to settle. The cost hiring a legal practitioner could also be very expensive for some people. Thus, the traditional methods are easier for many people to use. Another advantage of traditional adjudication system is the emphasis on

restitution and reconciliation. Efforts are made to reach an agreement that is acceptable to both the complainant and the accused. As Olusanya noted, the modern court may fine or imprison a thief without the complainant getting back the stolen items. This may explain the reluctance of some members in contemporary society to go to court (1989:31).

Another factor is the reservations which some members of the society have about the Western-type judicial system. This factor has led to the belief that 'legal justice' may be different from 'social justice'. Under the modern legal system, a thief may be discharged and acquitted on technical grounds, even if he was caught in the act. While this may seem reasonable from the legal point of view, it may be difficult for the victim to accept the reason for this. For these reasons, some people will not bother to go to the modern court, believing that they may not get 'justice'. In these days of 'plea bargaining', justice can be negotiated, it is the poor that is always at the receiving end.

Reports abound on the consequences of the enstrangement of the masses from the modern legal system in Nigeria. One consequence is the practice (which is becoming disturbingly frequent) of using hired assassins to eliminate, for example, fraudulent business associates who might otherwise secure legal acquittal. (Olusanya, 1989:31).

CONCLUSION

Attempts have been made in this paper to consider the usefulness of courts in dispute resolution. We discover that the imposition of the court system to resolve disputes in African societies has created apathy and removed the pleasantness usually associated with dispute settlement in these societies. Among the Yoruba, for instance, certain factors are responsible for this pleasantries in dispute settlement, although things of the past.

First, customary law is a part of popular culture well known by virtually all members of the society. The law derives its validity not from the will of a sovereign or supreme legislature, but from its acceptance by the people. Observance is therefore spontaneous.

Secondly, contacts between different groups is fairly minimal. Each local community is a component unit of which virtually all the members knew themselves.

Thirdly, the traditional societies of which we speak is characterised by certain values: obedience to custom and the spirit of the departed ancestors; respect for age and experience; a sense of comradeship among members of the same community and fear of supernatural powers. As we depart from these values, we lose the feel of the old ways, for better or for worse (Ipaye, 1994).

What we can gather from the above analysis is that given the social realities of modern societies, it may be difficult, if not impossible to practice the traditional African ADR. One reason for this is that it is difficult to practice in multi-cultural settings. Also when we talk about full participation of

members of the public without any form of discrimination - we found that women are often excluded from the process. Be that as it may, in order to reduce the alienative effect of modern day judicial practices on the Yoruba of South-West Nigeria, we advocate that more of these procedures should address the cultural reality of the people.

NOTES

1. Fadipe (1970 identified three levels of administration of justice: the bale's court, the tribunal of the ward chief, and the central tribunal.

2. Nader, L. (1964): *Style of Court Procedure: To make the Balance.*

3, Macauley, S. (1963): Non-Contractual Relations in Business Preliminary Study, *American Sociological Review,* 88:p.61.

4. See the summarisation of these concepts in T.O. Elias, "Traditional Forms of Public Participation in Social Defence, in *International Review of Criminal Policy,* Number 27 (1969), United Nations, pp.18-24, @ p.19.

5. In Ife there were two central tribunals, namely: The *Feku* court and the *Geru* court. It was the *Geru* court that correspond to the council of state and was the highest tribunal as well as the last court of appeal (Fadipe, 1970:229).

6. See T.O. Elias, "Traditional Form of Public Participation in Social Defence," *Ibid,* at pages 19, Second Column; T.O. Elias *Nature of African Customary Law* (1956), at pp.111, 120, 215, 268 and 269; and T.O. Elias, *Government and Politics in Africa* (1963), at pp.212-218.

7. See, for example Driberg, "Primitive Law in East Africa," *Africa,* Vol.1 (1928), 63; and also Driberg, Africa Conception of Law," *Journal of Comparative Legislation and International Law,* (1934).

8. See A.A. Adeyemi, "Towards Victims" Remedies in Criminal Justice Administration in Nigeria, Adetibas (ed.) Compensation and Remedies for Victims of Crime, Federal Ministry of Justice Law Review Series, Vol.5 (1990).

REFERENCES

Adeyemi, A. A. (1991): The place of Customary Law in Criminal Justice Administration in Nigeria In Osinbajo, Y and Kalu, A (eds.) *Towards a Restatement of Nigerian Customary Laws:* Fed. Ministry of Justice Publication.

Ajisafe, E.A. (n.d.): *The Law and Customs of the Yoruba People,* Abeokuta: M.A. Ola Fola Bookshops.

Aubert, V. (1969): Law as a Way of resolving Conflicts: The case of a small industrialised society In L. Nader (ed.) *Law in Culture and Society,* pp.282-303: Chicago, Aldine.

Broom, L and Selznick, P. (1968): *Sociology.* New York: Harper and Row.

Buendia, H. G. (ed.)(1989): *Urban Crime: Global Trends and Policies.* The United Nations University.

Davis, L.P. (1994): "Alternative Dispute Resolution in Obilade, A & Braxton, G. (eds.) *Due Process of Law.* Southern University Law Center, Louisiana and Faculty of Law, University of Lagos Publications.

Emiko, A. A. (1986): "The Judicial System" In Falola, T. and Adediran, A. (eds.) *A New History of Nigeria for Colleges,* Book One: Lagos: John West Publications.

Fadipe, N.A. (1970): *The Sociology of the Yoruba.* Ibadan: Ibadan University Press.

Ipaye, A. R. (1994): "Dispute Settlement in Traditional African Societies in Obilade, A. & Braxton, G. (eds.) *op. cit.*

Jacob, H. (1969): *Debtors in Court: The Consumption of Government Services,* Chicago: Rand McNally.

Jowell, J.L. (1973): 'The Legal Control of Administrative Discretion' *Public Law* 178-220.

Jowell, J.L. (1975): *Law and Bureaucracy: Administrative Discretion and the Limits of Legal Action,* Port Washington, N.Y. Dunellen.

Kritzer, H.M. (1981): 'Studying Disputes: Learning from the C.L.R.P. Experience' *15 Law and Soc. Review* 503-524.

Lempert, R.O. (1978) 'More Tales of Two Courts: Exploring Changes in the 'Dispute Settlement Function" of Trial Courts, *13 Law & Soc. Review* 91-138.

Olusanya, P.O. (1989): *Some Traditional Methods of Theft Defection Among the Yoruba: A Sociological Analysis.* Lagos: Kristal Publications Ltd.

Olurode, Lai & Olusanya, P.O. (1994): *Nigerian Heritage: The Yoruba Example,* Lagos: Rebonik Publications.

Pelyanyi, M. (1951): *The Logic of Liberty: Reflections and Rejoinders* (London: Reutledge and Kegan Paul.

Shapiro, H.M. (1981): 'Studying Disputes: Learning from the C.L.R.P. Experience' *15 Law and Soc. Review,* 503-524.

Soyombo, O. (1994): "Traditional Approaches To Curbing Deviant Behaviour in Nigeria" In Obilade, A. & Braxton, G. (eds.) *op. cit.*

Uweru, B. (1990): 'Case for Victims of Crime Support Scheme' in Adetiba, S. (ed.) *Compensation and Remidies for Victims of Crime in Nigeria.* Federal Ministry of Justice Law Review Series.