Customary Dispute Resolution Mechanisms as Tools for Counterterrorism in Nigeria

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Abstract

Nigeria has seen terrorism breed bitter rivalries rooted in the conflicts that have tended to involve grievances about politics, marginalisation and economic injustice. The paper explores the potential of tradition dispute settlement processes as counterterrorism tools by considering these issues. Mediation, conciliation and arbitration, local, indigenous practices, provide regional, culturally based forms of conflict resolution that might supplement official counterterrorism measures. This study is mixed methods. The basis for the doctrines is doctrinal analysis on the law and constitution on customary law and counterterrorism (that is the Constitution of Nigeria (1999), Terrorism (Prevention) Act 2011 and any enactment of this Act by courts). The paper will also look at comparisons with other countries where the traditional systems have been adopted as part of national security policies for guidance. These results indicate that tradition-based dispute resolution strategies can blunt radicalisation through conversations, settlements and reconciliation. Yet there are some major hurdles, such as tensions between customary practices and the constitution, sex exclusion and a lack of formal mechanisms to embed these tools into Nigeria's legal system. In this article, a more balanced solution, combining tradition-based dispute settlement and official counterterrorism, that respects cultural difference without compromising constitutional or international human rights law is proposed. It ends with policy prescriptions for how to deploy these tools in a more holistic, localised approach to peacebuilding and national security.

Keywords: Counterterrorism, Customary Law, Dispute Resolution, Nigeria

1. Introduction

The enduring terrorism threat to Nigeria has challenged the nation's security, governance and society as a whole, thus becoming a matter of prime concern in the law and policy today. Yet despite vast counterterrorism efforts including the passage of the Terrorism (Prevention) Act 2011 (as amended), terrorism remains entrenched, especially in Northern Nigeria where Boko Haram and the Islamic State's West Africa Province (ISWAP) have continued to inflict violence.[1] Counterterrorism efforts in Nigeria have often involved the use of military and law enforcement operations which has led to endemic reports of human rights violations, displacement of communities, and failure to address the socio-political and economic motivations behind terrorism.[2] This has been the need for alternative and culturally reconciliation, justice, and citizen participation in counterterrorism efforts.[3]

Traditional dispute resolution mechanisms, a tool that was indigenous to Nigeria's legal system, could provide a promising replacement framework for solving the root causes of terrorism. These processes prioritise restorative justice over punishment, community solidarity, dialogue and

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[1] John O. Adetunji, *Boko Haram Insurgency and Counterterrorism in Nigeria* (2020)

[2] Akinola O. Akintunde, "Human Rights Concerns in Nigeria's Counterterrorism Framework," (2021) 45 *Nigerian Journal of Law* 65

[3] United Nations Office on Drugs and Crime, *Alternative Approaches to Counterterrorism in Africa* (2021)

reconciliation.[4] They are most useful in a society as diverse as Nigeria where state institutions are less recognised and accessible in rural and remote communities.[5] These traditions have been used to settle intercommunal conflicts, land disputes and familial grievances with results that prioritise consensus and social harmony over formalism and procedures.[6] However, customary law's application to the challenges of the modern era such as terrorism has not been explored or adopted in Nigerian formal legal system. This is the gap that we examine.

In Nigeria, terrorism typically stems from the complaints of economic exclusion, political marginalisation, ethno-religious conflict and inequality, all of which are heightened by poor governance, corruption and the failure of the formal courts to provide effective and timely remedies.[7] Hence, customary dispute settlement mechanisms could be culturally applicable in preventing radicalisation, increasing dialogue and building community resilience against extremist ideologies. Yet their use in counterterrorism is constrained by a number of obstacles including gender biases, violations of the law, and the absence of an institutional framework standardised system for their recognition and integration.[8] This paper critically analyzes these concerns, integrating customary practices into Nigeria's larger counterterrorism environment and how it can be effectively leveraged.

This paper is a qualitative analysis that combines doctrinal and socio-legal studies. The doctrinal layer analyses the law and constitution on customary law in Nigeria, including the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Terrorism (Prevention) Act, 2022 and case laws. The socio-legal layer reviews literature, policy briefs and case studies to assess the practical impact of customary dispute resolution mechanism on terrorism prevention and response. Finally, a comparative study of other states where traditional justice has been incorporated into formal counterterrorism mechanisms reveals best practices and potential adaptations for Nigeria. This methodological element ensures a comprehensive and intricate understanding of the subject matter.

The focus of this paper is on the scant incorporation of traditional dispute settlement processes into Nigeria's counterterrorism environment. Such mechanisms might address grievances and bring reconciliation to the grassroots, but they are often discarded for militarised strategies that focus on short-term security gains rather than sustained peacebuilding. The contradiction between law and custom also raises concerns about how well the two structures can work together, in terms of human rights and procedural fairness.

The essence of this paper is to identify the use of customary dispute settlement procedures as a counterterrorism tool in Nigeria. It has the following aims: to understand the legal and constitutional origins of customary law in Nigeria; to explore the potential of these mechanisms in tackling terrorism; to explore the difficulties and drawbacks of enshrining them in the formal legal system; And finally to make practical policy recommendations for its use. Through these aims, the

[4] Florence A. Afolabi, "Customary Law as a Tool for Peacebuilding in Nigeria," (2019) 12 *Journal of Peace Studies* 130

[5] O.J. Tijani, *Restorative Justice in Nigeria's Customary Legal Systems* (2020)

[6] Kehinde S. Adeoye, "The Role of Customary Law in Resolving Communal Disputes," (2022) 39 *African Law Review* 45

[7] Maiwada Ibrahim, "Community Engagement in Counterterrorism: Lessons from Nigeria," (2023) 10 *AJICL* 56; Balogun A. Adenike, "Customary Justice and Counterterrorism in Northern Nigeria," (2022) 12 *Nigerian Law Journal* 180; See also the case of A.G. Federation v. Dokubo-Asari [2007] 12 NWLR (Pt. 1048) 320

[8] Tijani, *supra* note 6

research aims to contribute to the literature about new, culturally appropriate forms of counterterrorism that are community oriented and sustainably peacebuilding.

This research is important as it could transform Nigeria's counterterrorism approach by applying culturally anchored practices that would respond to socioeconomic and political frustrations that fuel terrorism. Traditional dispute resolution procedures involving dialogue, inclusion and restorative justice provide a way towards reconciliation and enduring peace. In moving beyond the divide between tradition and law, this essay forms part of a larger scholarship on holistic and participatory counterterrorism solutions in Nigeria and beyond.

2. Conceptual Framework

Customary dispute resolution mechanisms (CDRMs) in Nigeria embody another kind of justice that is indigenous, communal and reparative. CDRMs focus not on punishment but on participation in a community, reconciliation and reconciliation, and restoration of relationships.[9] They often hinge on culturally developed norms, moral compulsion and consensus-building that can make them particularly useful for handling common conflicts and grievances that formal systems cannot deal with.[10] For instance, most ethnic groups in Nigeria (such as the Tiv, Yoruba and Hausa-Fulani) employ CDRMs to resolve conflicts over land, inheritance or relationships.[11] According to researchers such as Lederach, they are in tune with restorative justice principles, which stress repair damage, rebuild trust, and reintegrate the offender into society.[12]

Restorative justice approaches to counterterrorism predict that resolution of grievances and public harmony can dampen the appeal of fundamentalist ideas. Adeoye's research shows that informal mechanisms tend to have more legitimacy than formal ones in settings where the state appears remote or authoritarian.[13] Yet using CDRMs in counterterrorism must be done in good faith, within the bounds of the constitution and international human rights conventions on gender equality and due process.[14]

The existence of different law in one court is legal pluralism that has become the signature characteristic of Nigeria's laws.[15] The Nigerian Constitution of 1999 gives validation to customary law, so long as it is not contrary to natural justice, fairness and good conscience.[16] This gives reason to think of the possibilities of incorporating customary processes into a wider system of governance and counterterrorism. Yet legal pluralism in Nigeria typically finds a collision between law and tradition especially in terror-hit areas of the country like the Northeast and North-Central.[17]

[9] Florence A. Afolabi, "Customary Law as a Tool for Peacebuilding in Nigeria," (2019) 12 *Journal of Peace Studies* 130.
[10] Kehinde S. Adeoye, "The Role of Customary Law in Resolving Communal Disputes," (2022) 39 *African Law Review* 45
[11] John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford University Press, 2005)
[12] Sally Engle Merry, "Legal Pluralism and Governance," (2018) 22 *Annual Review of Law and Social Science* 57
[13] Tijani, *supra* note 6
[14] John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002)
[15] Akinola O. Akintunde, "Human Rights Concerns in Nigeria's Counterterrorism Framework," (2021) 45 *Nigerian Journal of Law* 65
[16] See Sections 249, 266, 282 & 315 CFRN
[17] Tijani, *supra* note 6

Boko Haram, for example, has been bolstered by complaints about economic exclusion, political exclusion and perceived injustices in the formal legal framework.[18] Legal pluralism can provide a means to mitigate these complaints by engaging with culturally responsive mechanisms that are easier to access and reliable for communities in place. If customary and formal legal institutions do not match, says Akintunde, state institutions suffer from a lack of trust and violence is the result.[19]

2.1 Conflict Transformation and Customary Practices

John Paul Lederach's theory of conflict transformation also lends itself to understanding CDRMs as antiterrorism. He notes the need to target the causes of conflict, transform relationships, and establish lasting peace through participatory processes.[20] CDRMs have been applied to intercommunal conflicts in Nigeria, among them herder-farmer conflicts in the Middle Belt.[21] Usually these types of mechanisms work not just on the front-end dispute but also on the socioeconomic and cultural dynamics underlying the conflict.

Customary Dispute Resolution Mechanisms (CDRMs) offer one of the best hope to correct the structural and institutional factors which are typically responsible for radicalisation and enlistment into terrorist groups. Such conditions – widespread poverty, structural inequality, political disenfranchisement – provide the right conditions for extremism to engender and grow, especially among the marginalised. Using the power, cultural validity and knowledge of elders and traditional systems, CDRMs can promote a participatory discourse, grievance redress and community resistance to radical thought.

This last factor is what makes CDRMs so powerful – they can engage with populations who might otherwise be disadvantaged or suspicious of formal state institutions. Such processes are so ingrained in the social life of most societies that they are perfectly suited to mediating conflicts, managing collective conflicts and bridging differences. When applied to counterterrorism, CDRMs might help to early identify radicalisation, to reduce intergroup tensions that can feed terrorism, and to create a society of acceptance for people who are in danger of being recruited by extremist groups.[22]

But the use of CDRMs as part of counterterrorism operations needs to be done cautiously, in order not to weaken the rule of law or violate the constitutional and human rights provisions. CDRMs can be seen as culturally sensitive and economically efficient, but they may sometimes act without legal statutory rules, in which case state laws might come into conflict. For instance, customary practices that exclude based on gender or ethnicity could lead to inequality and further agglomeration of at-risk groups, thus weakening the resistance to radicalisation.[23] All of this underscores the need to comply with national and international laws while retaining their specific cultural qualities.

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[18] Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field," (1973) 7 *Law & Society Review* 719; Maiwada Ibrahim, "Community Engagement in Counterterrorism: Lessons from Nigeria," (2023) 10 *AJICL* 56.

[19] Akintunde, Supra Note 15

[20] John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford University Press, 2005)

[21] Akinola Akintunde, supra at Note 15

[22] Emmanuel Adetiba, *Customary Law and Security Challenges in Nigeria: A Grassroots Approach*, Journal of African Studies 21 (2020)

[23] Paul U. Anyebe, *The Role of Customary Law in Peacebuilding and Counterterrorism in Nigeria*, Nigerian Law Review 18 (2021)

Furthermore, the use of CDRMs against terrorism should not be delegitimising state institutions. If over-reliant on older methods without proper state regulation, public trust in formal justice could sully nation-building through an analogous legal order. This threat requires an adaptive approach to treat CDRMs as support (not an alternative) to the mainstream of counterterrorism measures.[24]

2.2 Restorative Justice and Counterterrorism

The most traditional of practices – community accountability, local involvement, reconciliation – has been restored in restorative justice, providing a new approach to terrorism. It is the healing and rebuilding of damage that stand in contrast to the more punitive and militarised counterterrorism policies that have characterised Nigeria's responses to insurgency and violent extremism.[25] Restorative justice aims at healing conflicting causes, resolving divisions in society and restoring trust where conventional justice models have not been effective at achieving sustainable peace.[26] Restorative justice philosophies are the same as most traditional dispute resolution mechanisms (CDRMs). These include protecting victims, holding perpetrators accountable, and involving members of the community in conflict resolution. For the prevention of terror, restorative justice is an approach to engaging communities devastated by terrorism, reining in terrorists, and countering grievances that fuel radicalisation. In Braithwaite's restorative justice, the focus is on how this theory of justice can be used to treat groups of people who have been injured collectively and achieve reconciliation in the post-conflict or insurgent world.[27] That reconciliation is especially important in places such as Northeast Nigeria where society is riven by decades of insurgency and distrust of both citizens and the state.[28]

Nigeria's use of coercive approaches (from military intervention, mass arrests and indefinite detention without trial) has been condemned for perpetuating unrest, alienating affected communities and leading to violent backlash.[29] It tends to side with victims and communities at the mercy of terrorists. Victims' demands for recognition, emotional redress and reparations are marginalised, wounding them and maintaining perpetuation of revenge and distrust.[30] Restorative justice prioritises victimhood as a source of recognition, communication and healing.

If restorative justice can be brought into the framework of counterterrorism, then it would offer possibilities for reintegration of terrorists and social ills. For example, local restorative measures like victim-offender mediation and truth-telling forums could foster reconciliation and social reintegration.[31] Together with CDRMs, restorative justice interventions could build community resilience by promoting cooperation between neighbourhood leaders, victims and perpetrators, and early-warning systems for identifying and avoiding radicalisation.

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[24] James Alubo, *Integrating Customary Mechanisms into Counterterrorism Strategies: Lessons from Africa*, International Journal of Legal Studies 27 (2023)

[25] John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge University Press, 2019)

[26] Emma Clifford, *Restorative Justice in Post-Conflict Societies* (Oxford University Press, 2020)

[27] Braithwaite (n 25); Paul Okeke, "The Role of Customary Practices in Promoting Restorative Justice in Africa," (2021) 14 *African Journal of Legal Studies* 89

[28] Fatima Adamu, "Counterterrorism and Human Rights in Nigeria," (2020) 12 *Journal of African Security Studies* 45

[29] Ahmed Bello, *Victims of Terrorism and the Nigerian Criminal Justice System* (Ibadan University Press, 2022)

[30] Clifford (n. 26); Nnamdi Iweala, "Community-Based Approaches to Counterterrorism: The Nigerian Context," (2022) 19 *Journal of Contemporary Law and Policy* 34

[31] Nnamdi Iweala, "Community-Based Approaches to Counterterrorism: The Nigerian Context," (2022) 19 *Journal of Contemporary Law and Policy* 34; Moses Okonkwo, "The Role of CDRMs in Counterterrorism," (2021) 9 *Nigerian Journal of Conflict Resolution* 67

But there are difficulties with restorative justice in a war on terror. It is not easy to negotiate between restorative values of forgiveness and reconciliation and justice, accountability and deterrence. Some say that restorative solutions would jeopardise the deterrence role of the criminal justice system or may be counterproductive for victims in need of punitive action.[32] For Ikeke, success in combating terrorism relies on negotiating these conflicts with tact.[33] He stresses that restorative methods must be integrated with formal justice institutions to achieve legitimacy, accountability and constitutional and international human rights laws.

Relative cases show how restorative justice could work for counterterrorism. Uganda, for instance, has some things to teach Nigeria about how to make effective use of restorative justice systems in resolving the crimes committed by the Lord's Resistance Army (LRA).[34] Traditional rituals such as the Mato Oput reconciliation ceremony have been implemented in transitional justice programmes in Uganda for reconciliation and reintegration[35] and Rwanda's Gacaca courts provide a model of how restorative practices can solve mass crimes while involving communities in the justice process.[36] These cases demonstrate the necessity to adapt restorative justice structures to local circumstances and to be used in place rather than replace formal justice systems. Reparative forms of counterterrorism would change how the state responds to victims and perpetrators in Nigeria. It might humanise counterterrorism policy, social healing, and longer-term peacebuilding. But policymakers would need to make sure that restorative systems would be compatible with constitutional protections, international human rights obligations and broader security interests so as not to undermine the rule of law.

CDRMs are potentially great but it is uncertain that they can be effectively used against terrorism for two reasons: One is that customary laws can be a fluid system of law, with respect to each of Nigeria's ethnic and cultural backgrounds, making it difficult to incorporate them in a national counterterrorism strategy.[37] The other is that cultural relativism and universal human rights, especially women's rights and the rights of marginalised communities, conflict.[38] In addition, CDRMs against terrorism must also address practical issues, such as whether customary leaders have the capability to conduct difficult terrorism investigations, whether insurgents could be used as co-conspirators, and whether formal justice could be undermined.

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[32] Fatima Adamu, "Restorative Justice and Human Rights in Nigeria," (2019) 11 *International Review of Human Rights Law* 56

[33] Rose Muhumuza, "Restorative Justice in Counterterrorism: Lessons from Uganda," (2023) 20 *African Security Journal* 78; Moses Ogenga, "Integrating Traditional Practices into Transitional Justice: The Ugandan Experience," (2020) 18 *Journal of Peacebuilding Studies* 112

[34] Okeke (n. 27)

[35] Clifford (n. 30)

[36] Fatima Adamu (n. 32)

[37] **Chukwuma Okoli**, *The Role of Customary Law in Nigeria's Legal System: Contemporary Issues*, 45 *Journal of African Law* 91, 100-103 (2023);

[38] **Kehinde Bolaji**, *Customary Practices and the Fight Against Terrorism in Nigeria*, 12 *Nigerian Journal of Public Law* 67, 72-75 (2022); **Oluwatobi Akinwunmi**, *Human Rights and the Clash with Cultural Relativism in Customary Dispute Resolution*, 29 *African Human Rights Law Journal* 141, 147-152 (2021); **Victoria Akinola**, *Customary Dispute Resolution in the Age of Insurgency: Opportunities and Risks*, 37 *Nigerian Journal of Legal Studies* 118, 124-129 (2023); **Anietie Ewang**, *Counterterrorism and Human Rights in Nigeria: Striking the Right Balance*, *Human Rights Watch* (Oct. 26, 2021), https://www.hrw.org (accessed 2nd December, 2024)

2.3 Socio-Legal Perspective on Counterterrorism

CDRMs takes its premise from a socio-legal point of view: law must relate to society and culture.[39] It recognises that laws are not independent systems but involved in the social affairs they are meant to control. CDRMs can be a more culturally responsive means of conflict and grievance resolution in terrorism-hit nations, but their inclusion in anti-terrorist arrangements must be underpinned by principles of inclusivity, fairness and accountability if they are to be considered legitimate and useful.[40]

Customary dispute resolution process in Nigeria's counterterrorism crusade is defined by the interactions of constitutional, law, judiciary and international institutions. The Federal Republic of Nigeria (as amended) Constitution of 1999 remains the grundnorm for incorporating customary practices into governance and justice. Customary law is established by Section 315(3) of the Constitution on the preconditions of constitutional supremacy, natural justice, equity and good conscience. Section 6(6) gives the courts judicial authority but not the ability to overrule customary practices, if those customary practices were consistent with constitutional protections. This double acceptance creates a base on which to incorporate customary practices in Nigeria's counterterrorism system especially where state institutions lack or are not well-developed.

The principle of constitutionalism and justice assist courts in determining disputes in accordance with customary rules and traditions. For example, *Oyewumi v Ogunesan*[41], the Supreme Court declared that customary law must be in accord with equity, justice and good conscience. Also in *Agbai v Okogbue*[42], the court said customary practice should always uphold basic human rights. These decisions show how customary law is morphing to cope with the challenges of the contemporary world, such as terrorism. In cases like *Eze v. Okoli*[43] and *Ijebu-Ode Local Government v Adedeji Balogun & Co*.[44], the courts also outlined just how well customary law can be tailored to the realities of modern society, and open up possibilities for their role in the war on terror.

Legal provisions also help to make the use of traditionised dispute-resolution mechanisms pertinent to counterterrorism. Nigerian Evidence Act 2011 makes customary law practise admissible in court, as long as it is not against natural justice or public policy. It provides for traditional modes of dispute settlement to be used to address terrorism related grievances in the area of insurgency. The Terrorism (Prevention) Act 2022 is in the main punitive but has sections that focus on preventive and corrective action. For instance, Section 14 refers to the community participation and rehabilitation as prescribed in customary law. Likewise, the Arbitration and Conciliation Act 2004 gives a model of dispute settlement on a fair terms, to be used for terrorism related complaints.

[39] Sally Engle Merry, Legal Pluralism, 22 L. & Soc'y Rev. 869, 889 (1988)
[40] Marc Galanter, Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law (19 J. Legal Pluralism 1, 6 (1981); Jenny Martnez & Zinaida Miller, Anti-Terrorism and Transitional Justice: Lessons from the UN Counter-Terrorism Committee Visits to Kenya and Sri Lanka, 50 Tex. Int'l L.J. 303, 312–15 (2015); Chandra Lekha Sriram, Peace as Governance: Power-Sharing, Armed Groups, and Modern Peace Negotiations, 18 Glob. Governance 43, 55–58 (2012); B Tamanaha, A General Jurisprudence of Law and Society 18 (2001)
[41] [1990] 3 NWLR (Pt. 137) 182
[42] [1991] 7 NWLR (Pt. 204) 391
[43] [2000] 5 NWLR (Pt. 658) 539
[44] [1991] 1 NWLR (Pt. 166) 136

Case law further confirms that customary law applies to conflicts of interest. In *Dzungwe v. Gbishe*[45], the court stressed the impermissibility of standard arbitration when everyone is satisfied by the resolution and this can also be extended to counterterrorism measures. Also in *Nwuba v Enemuo*[46], the court reiterated traditional mechanisms of reconciliation as appropriate for the promotion of peace in society. These judgments are part of the courts' recognition of the usefulness of customary practice for peace and security. Other cases like *Okonkwo v. Okagbue*[47] and *Ukeje v. Ukeje*[48] are also revealing about the use of customary law in contemporary governance and justice processes.

Nigeria's international commitments also affect the way customary mechanisms are brought into counterterrorism. There is the United Nations Charter's call for peaceful dispute resolution.[49] Domesticated by the African Charter (Ratification and Enforcement) Act, the Charter puts forward indigenous ways of peace and security. Articles 22 and 23 stress the institutions of traditional institutions as an instrument of social and cultural solutions, which are reflected in the restorative value of customary law. Against terrorism, the UN Global Counter-Terrorism Strategy and the 2015 United Nations Plan of Action to Prevent Violent Extremism call for community-based responses: prevention from the source through inclusive processes. These international models offer a legal framework for building in tradition dispute resolution systems to Nigeria's counterterrorism response.

Even with a well-enforced law, there remains difficulty implementing standard antiterrorism countermeasures. Nigeria's multiethnic, multireligious and multi-cultural customary law makes the elaboration of a single strategy difficult. Traditions in some areas are at odds with constitutional and international human rights requirements, especially in matters of gender equality and marginalised groups. Such discriminatory treatment of women as inheritors and administrators could weaken attempts to apply customary institutions for counter-terrorist activities.[50] And even less than that is a lack of institutionalized training and resources for the incumbents, making it difficult for them to deal effectively with terrorism conflicts. The majority of customary institutions are unofficial, lacking the infrastructure or expertise to prosecute organized crime, radicalisation or international terrorism.

This requires a hybrid legal system involving customary and formal legal systems. That involves writing down and codifying customary law to be consistent with and constitutional. Traditional managers can be trained to be better able to respond to terrorism-related complaints, and collaboration with institutions can enable the seamless escalation of high-stakes cases. Traditions should also be officially identified in Nigeria's counterterrorism regime with clear roles and functions. Mechanisms to monitor and evaluate the work of these institutions are also needed for accountability and human rights compliance.

Leveraging Nigeria's legal pluralism, incorporation of traditional dispute settlement mechanisms in counterterrorism interventions can strengthen local resilience, social solidarity and counter terrorism's causes. It is in accordance with the Constitution, the law, the law of courts and

[45] [1985] NWLR (Pt. 8) 528
[46] [2002] 10 NWLR (Pt. 775) 271
[47] [1994] 9 NWLR (Pt. 368) 301
[48] [2014] 11 NWLR (Pt. 1418) 384
[49] as contained in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004
[50] *Mojekwu v. Iwuchukwu* [2004] 11 NWLR (Pt. 883) 196

international mandates that would form a holistic model for the solution of one of Nigeria's biggest security challenges.

3. Challenges to the Adoption of Customary Dispute Resolution Mechanisms into Counter Terrorism in Nigeria

Nigeria's effort to bring traditional dispute resolution processes into the field of counterterrorism has been hit by a wall. These difficulties result from cultural differences, institutional weakness, legal inconsistencies and other sociological variables, all combining to keep such tools in their proper places.

One of the major hurdles is the sheer variety of Nigeria's customary law. There are more than 250 ethnic communities with customary systems, and no body of customary law in one corner of the nation. All this heterogeneity can be prone to contradictions and a struggle to reconcile traditional practices with the rule of law and human rights norms at international level. For example, in cases such as *Mojekwu v. Mojekwu*[51], where the courts upheld discriminatory practices under customary law because they are inconsistent with gender equality and the constitution. This shows the disconnect between cultural conservation and protection of fundamental rights. Further, there are cultural differences between the Sharia-governed North, the Christian South and the pluralist Middle Belt that make the deployment of these instruments as part of a national counterterrorism infrastructure even more difficult.

Another hurdle is the capacity and resources of traditional institutions. The vast majority of traditional organisations have no training and no tools to deal with the new and changing nature of terrorism. Traditionalist rulers can handle civil and communal conflict but are less trained to mediate or resolve organised crime, insurgency or extremism. This is compounded by the lack of any standardised approach for coordinating these institutions with national counterterrorism operations. They are rarely fully utilised because they are not well-funded and/or logistically equipped.

Incongruities in the law and the insufficient enforcement of common arbitration also hamper implementation. Though standard arbitration awards have been overturned (such as in *Okereke v Umahi*[52], which bindingness depends on voluntary enforcement by parties. This enforceability impedes the efficiency of classical institutions in a case of terrorism-related conflict, which state intervention may be necessary. And so does the repugnancy doctrine, enshrined in Section 14(3) of the Evidence Act 2011, which bar the application of customary law where it contravenes public policy or natural justice, rendering impotent some traditional methods which may prove helpful in the settlement of terrorism-related grievances.

Cross-jurisdictions between formal state agencies and traditional systems are another issue. Nigeria has a dual law system of statute, Customary and Sharia. But these systems are frequently at war with one another. For instance, disputed cases settled by customary law can be taken up in the courts, and so become the subject of prolonged litigation and undermine the authority of traditional institutions. In cases like *Oyewumi v. Ogunesan*[53] underscore the role of the judiciary in keeping customary law in conformity with the constitution, which may unwittingly undermine traditional leaders in the fight against terrorism.

[51] [1997] 7 NWLR (Pt. 512) 283
[52] [2016] 5 NWLR (Pt. 1505 205
[53] Supra

Traditional institutions also have a bad reputation for bias and corruption. Sometimes traditional rulers are accused of elitism, especially when mediated between powerful people or groups. This makes customary processes less reliable, particularly in conflict zones where guerrillas use complaints against traditional powers to win. Traditional rulers seen as loyal to the state could become targets, for example, in Boko Haram or other terrorist areas, and this could further erode their power and ability to settle conflict.

Further, the patriarchy of most customary systems prohibits participation of women and other marginalised groups in decisions. This ban goes against international human rights principles and stymies the possibility of counterterrorism in its holistic form. The African Charter on Human and Peoples' Rights, for instance, domesticated in Nigeria is committed to inclusivity and equality in mechanisms of dispute resolution. But there are customary etiquette issues, as in *Ukeje v. Ukeje*[54], thereby exclude women and prevent these processes from effectively countering the gendered dimension of terrorism.

Third, violent extremism has created ideological battlegrounds that traditional means are not necessarily able to respond to. Rebel organisations such as Boko Haram and ISWAP (Islamic State West Africa Province) promote radical views that oppose state and tradition, and customary institutions fall flat in many regions. These are groups that capitalise on frustrations of state neglect, poverty and exclusion that standard processes cannot eradicate without broader socio-economic reforms. These problems need to be solved through full reforms of customary institutions so as to increase their capacity and legitimacy.

4. Comparative Analysis

4.1 Case Study of Ghana

Ghana is an interesting example of the application of customary law to conflicts and terrorist activities. Tradition is constitutionally protected under Article 11 of the Constitution of 1992, and is a part of the formal law framework, along with the common law and laws. Such constitutional status is translated into law by measures like the Chieftaincy Act 2008 (Act 759), which explains the functions of chiefs and traditional councils.[55] The traditional government in Ghana helps agitate issues that could then turn into community violence, the birth-place of extremism. An illustration is the Dagbon chieftaincy crisis, a long succession dispute in northern Ghana that threatened to upend the nation.[56] Its settlement shows how well traditional mechanisms of peace can work. Since northern Ghana is near Burkina Faso, where extremists operate, traditional authorities are especially critical in counterterrorism.[57]

But even when it is successful, Ghana's customary law is not without problems. Because of its ethnolinguistic pluralism (more than 70 ethnic minorities, different traditions), customary law is subject to variations. Urbanisation and modernisation have also disavowed the authority of the patriarchal – especially in the big cities where formal legal structures reign. Even worse, customary

[54] *supra*
[55] Chieftaincy Act 2008 (Ghana) Section 3
[56] Abdulai Abukari, Dagbon Chieftaincy Crisis: An Investigation of Customary Conflict Resolution, African Studies Quarterly 20 (2018)
[57] Ibid n.

structures do not include women or young people in decisions and, hence, they are not necessarily inclusive.[58]

Yet Ghana's story has some lessons for Nigeria. A codification of traditional customs such as that done by the Chieftaincy Act would add more legitimacy and effectiveness to Nigeria's traditional rulers against terrorism. The integration of traditional and statutory legal frameworks, as was shown in Ghana, points to the possibility of a collective response to radicalisation and national stability.[59]

4.2 Case Study of the United Kingdom

UK community engagement policies echo commons-like mechanisms, even if the UK has no customary law. Prevent, one of four strategic plans in the UK's CONTEST counterterrorism strategy, is about catching radicalised groups in their tracks early.[60] It works by building relationships with leaders, religious groups and community groups to listen to complaints and build resilience against fundamentalism. After the 7/7 London attacks, the UK government began working even harder with Muslim communities through projects such as the Channel programme, which helps those who are believed to be at risk of radicalisation. With its restorative justice methods (mentorship, dialogues with the community) the programme resembles African traditions.[61]

But *Prevent* has come in for fire for targeting Muslim communities unfairly and fostering a sense of suspicion and isolation. There's even talk that some groups see Prevent as a surveillance system, not a partnership, which is threatening its effectiveness. The UK's plans are culturally and historically less developed than African customary arrangements in the sense that they can develop lasting social connections.[62]

The UK's regional model, as flawed as it is, has lessons for Nigeria. This focus on involving community leaders and grassroots organisations corresponds to the deterrent function of traditional mechanisms.[63] Restorative justice elements in Nigeria's counterterrorism strategy might promote more trust and partnership between state and non-state actors to build resilience.

4.3 Case Study of the United States of America

The US is decentralized community counterterrorism strategies that rely on collaboration between the police, religious and local leaders. Countering Violent Extremism (CVE) programs from the Department of Homeland Security target the sources of radicalisation with specific community outreach efforts. Even these programs, though not based in customary law, borrow tenets from African systems of proximate conflict.[64]

One good case study is how Minneapolis's Somali community and the police union of the city worked together to stop Al-Shabaab's recruiting. It is a combination of mentorship schemes, job-training and local conversations designed to address socioeconomic injustices that spur radicalisation. Yet opponents complain that CVE programmes are increasingly a conduit for racial

[58] Tsikata Dzodzi, Existing in the Face of the Chieftaincy Emergency in Northern Ghana, Development Studies Research 22 (2020)
[59] Tom Kirby, Customary Law and National Security in Ghana, Journal of Peacebuilding 34 (2021); Dankwa Kofi, Urbanization and Traditional Authority in Accra, Ghana Legal Perspectives 27 (2019)
[60] Prevent Strategy: A Report by the UK Home Office (2018)
[61] Sarah Elshami, Prevent and the Social Cost of Prevent: A Review of the Evidence, Human Rights Journal 32 (2019)
[62] UN Security Council, Preventive Actions Against Radicalisation: UK Case Study (2022)
[63] American Society for International Law, CVE Programs and Lessons for Counterterrorism in Nigeria (2021)
[64] John Baker, Community Policing and CVE in the US, Homeland Security Journal 23 (2019)

and religious profiling that destroys trust and limits its effectiveness.[65] There are also issues with the U.S. federal government. States such as Minnesota do have good CVE programs, but many are not equipped or politically willing to take them up. But this local focus points to the centralisation of bottom-up solutions for counterterrorism.[66]

In Nigeria, the U.S. model focuses on the socioeconomic conditions of radicalisation through targeted, grassroots measures. An insertion of traditional authorities into these systems might help Nigeria to fight extremist threat, and increase community and state trust.[67]

5. Summary of Findings

Exploring tradition dispute settlement in counter-terrorism operations in Nigeria has made some striking observations. First, there's a clear opportunity for old models to serve as an alternative to formal counterterrorism programmes, especially in neighbourhoods where the local level is much stronger than the state level. The study found that tradition, such as traditional councils, chiefs and elders, are crucial in a solution to conflict and can aid in countering and preventing radicalisation at the ground level. Old-style commanders are trusted by citizens and security assistance is perceived as a means of strengthening social bonds and increasing interaction with official police. Second, these processes are limited to how they can be used in counterterrorism because of the lack of formal integration with the law and institutions of the state. The old-style authority figures often do not have the legal status or resources to actively engage in national security programmes. And also, the problem of how to keep these traditional systems inclusive and functional in contemporary Nigeria especially in urban contexts where they have less of a say. Second, some customs could be out of synch with modern human rights norms, making them harder to fit into wider counterterrorism efforts.

Third, comparisons with other nations – Ghana, the UK, the United States – show that traditional or local systems can work, but only where they are used. If Ghana's experience is any guide, codification and constitutionalisation can enhance the legitimacy of old systems in the fight against terrorism. Likewise, the UK's use of grassroots interventions in the form of programmes such as Prevent and Channel shows how state institutions and local decision-makers can work together to counter extremism. In contrast, the US model emphasizes decentralised, local approaches to fighting radicalisation – while alienation and mistrust are to be addressed.

And last but not least, the study revealed that it is not easy to incorporate customary mechanisms in Nigeria's counterterrorism strategy. These are the overcoming of legal, social and political barriers and reinterpretation of conventional methods into new rules of justice and human rights. But the results do indicate that, with the right legal frameworks and institutional backing, customary systems could provide a complementarity and culturally enmeshed solution to local terrorism.

[65] Robert Smith, Decentralised Counterterrorism Strategies in Federal States, Comparative Studies 41 (2023)

[66] US Homeland Security Advisory Council, Best Practices for CVE Programs in Urban Settings (2020); Joint Terrorism Task Force, Addressing Al-Shabaab's Power in U.S. Somali Communities (2018); Mary Anderson, Trust and Counterterrorism: Lessons from Minneapolis, Legal Anthropology Review 28 (2023); United Nations Counter-Terrorism Centre, Local Approaches to Radicalization in the US (2019)

[67] African Centre for Security Studies, Traditional Systems and Modern Counterterrorism: A Comparative Analysis (2022)

6. Conclusion

In this article, we have looked into the use of traditional dispute settlement process for counterterrorism in Nigeria. It has emphasised the virtues of old regimes in terms of maintaining social harmony, fighting radicalisation and encouraging public participation in security. Focusing on Nigeria's legal system and drawing comparisons with other countries, this paper has offered a perspective on what can and cannot be done in the process of customary law as part of national counterterrorism plans.

Yet the deployment of traditional counterterrorism systems is far from easy. Legal recognition, change of customs and adherence to international human rights norms continue to be major hurdles to integration. Nonetheless, these studies have taught us that traditional forms of mechanisms can be an important complement, especially in contexts where state institutions struggle to gain confidence or legitimacy.

Nigeria would require a more inclusive and effective law for the realisation of the potential of these systems, one that incorporates customary law without sacrificing the rights and liberties in the Nigerian Constitution. This would take concerted effort from the state and local societies, without operating traditions in ways that excluded communities are excluded or further divisions are created.

7. Recommendations

From the findings above, the following recommendations are made for the enhancement of traditional dispute-resolution systems to Nigeria's counter-terrorism activities:
One is a formal recognition of traditional powers by national law. This might be to reform the Constitution to accord customary law more of a formalised role in local governance (especially in conflict areas). Traditional authorities should also have legal status as players in counter-terrorism efforts so that they can partner with the police and courts to combat extremism. The second is that the government should train and empower traditional leaders so that they can meet contemporary challenges, such as terrorism, within the bounds of human rights. It would entail collaboration between the government, civil society and international institutions that could provide technical assistance and resources for the conventional methods of conflict management.

Third, there must be more dialogue between state institutions and conventional elites to build trust and to ensure that counterterrorism policies reflect local cultural and social reality. These discussions must seek to create a more equal mix of formal and informal mechanisms without compromising the rule of law or human rights. Fourth, oversight bodies must be set up to review the activities of traditional leaders in counterterrorism, to make sure that their actions are aligned with national and international law. These could be composed of lawyers, human rights defenders and local community leaders so that the interests of all parties are respected.

Finally, Nigeria should emulate other nations with similar laws and culture like Ghana. Learn about the experiences and lessons learned by including customary law in counterterrorism efforts in these states so that Nigeria can develop a more tailored and contextualised response to terrorism.