The Role of Traditional Rulers in Grassroots Administration of Justice in Nigeria in a Changing World

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ABSTRACT

This Article interrogates traditional rulers' role in Nigeria's grassroots administration of justice, given the absence any mention under the Constitution of the Federal Republic of Nigeria 1999. Although subnational laws, including Edo State's Traditional Rulers and Chiefs Law, provide for their appointment and recognition, their place in the legal system remains contested. The article clarifies key concepts—administration of justice, traditional ruler, custom, and customary arbitration—and contrasts Nigerian traditional rulers' limited, ethnically bounded authority with European monarchs' legally defined functions. It traces the legislative, executive, and judicial powers, including criminal jurisdiction, exercised by traditional rulers and elders' councils in pre-colonial societies such as Esanland, the Oyo Empire, and the Northern emirates. It then examines the colonial curtailment of these powers and the post-independence abolition of customary criminal jurisdiction, illustrated by *Udokwu v. Onugha* and *Aoko v. Fagbemi* and reflected in section 36(12) of the Constitution, which prohibits unwritten customary criminal law. The article argues that traditional rulers retain informal civil jurisdiction through customary arbitration. Drawing on *Awonusi v. Awonusi* and *Okere v. Nwoke*, it explains that courts recognise such arbitration as binding when parties submit voluntarily and the applicable custom satisfies the repugnancy, incompatibility, and public policy tests. Traditional councils also play a crucial role in justice administration through their advisory functions, particularly in maintaining law and order, although persistent local poverty and insecurity have diminished their influence. The article concludes that traditional rulers fill a significant gap by providing accessible, affordable, and timely dispute resolution for rural communities underserved by formal courts, despite lacking express constitutional recognition and remaining subject to judicial review. This is significant considering the large population of rural dwellers they serve. It recommends statutory and constitutional empowerment to strengthen or enhance their contribution to grassroots administration of justice thereby promoting peace and development.

Keywords: administration of justice, resolution of conflicts, traditional rulers, local government, customary arbitration.

INTRODUCTION

Finding a role for traditional rulers, particularly in Nigeria has always been a recurring debate.[1] The debate has become more accentuated in the light of absence of clear constitutional prescriptions on what roles traditional rulers should play in a modern democracy even though there is a legal framework for the appointment and recognition of traditional rulers in Nigeria under subnational laws. This debate becomes more apposite if we are to assess the impact of traditional rulers on the socio-political and economic development of any nation. The Article attempts to contribute to that debate by assessing their roles particularly in grassroots administration of justice and its concomitant impact in conflict resolution. In doing this, this paper is divided into several segments. The first segment is the introduction, next is clarification of

[1] Rose Nakayi, 'The Role of Local Council Courts and Traditional Institutions in Resolving Land Disputes in Post-Conflict Northern Uganda' (2013) 7 *Malawi LJ* 119; Alliyu Abdulsalam *et al,* 'Roles of Traditional Rulers in Conflict Resolution for Sustainable Democracy in Nigeria' (2020) XXIII(1) *Nigerian Journal of Social Sciences* 51; Lagos Tasks Traditional Rulers on Conflict Resolution, Communal Peace,' *Vanguard,* August 26, 2021, www. vanguardngr.com/2021/08/lagos-tasks-traditional-rulers-on-conflict-resolution-communal-peace/ accessed on 10th April 2022.

concepts, the third segment is set in pre-colonial times, the fourth segment discusses the validity of customary law, the fifth segment discusses the validity of customary arbitration, the sixth segment attempts to align Roscoe Pounds principles of administration of justice with grassroots administration of justice, the seventh segment suggests the role traditional rulers can play in a changing world and the eight segment is the conclusion.

CLARIFICATION OF CONCEPTS

Administration of Justice

Administration of Justice (AOJ) is incapable of a precise definition. It describes a whole system of legal and institutional framework established to enforce the laws in a country. It will involve all persons and institutions that are stakeholders in administering the law such as the Constitution, courts, the legislature, the police, correctional centres, the ministries of justice, other special intervention agencies such as the Legal Aid Council, the Public Complaints Commission, Human Rights Commission etc. AOJ can only be realized with these factors working as a system under the umbrella of a modern state. Indeed, it has been defined as 'the maintenance of right within a political community by means of the physical force of the state; the state's application of the sanction of force to the rule of right'[2] Technically speaking and within the context of the meaning proffered here, TR have no role to play in justice administration and are not involved in any of the agencies identified above in the delivery of justice. As we shall see later, and despite the exclusionary meaning ascribed to the term, it shall become clear that at an informal level, TR are actively involved in administration of justice. Roscoe Pound has identified eight key principles in AOJ.[3] Simply put, Pound argues that a legal system built for a simple, rural, individualistic society must be reformed to meet the social, economic and administrative demands of crowded, diverse modern cities. However, within the context of this Article, the reverse is the case here. How does Nigeria's modern system of administration of justice characterized by constitutionally established courts accommodate the rural and traditional system of AOJ that revolves around the king?

In a rapidly changing world, regulated by modern constitutions where there is freedom of movement guaranteed by virtually all constitutions of the world, it is expected that these eight elements will be dealt with at the local level and in grassroots administration of justice.

[2]Bryan A. Garner (ed.), *Black's Law Dictionary,* (11th ed., West Publishing Co., 2019)

[3]Roscoe Pound, Administration of Justice in the Modern City' (1913) 26 *Harvard Law Review* 302 at 310-311. These eight principles are (1) to work out a system of legal administration of justice which will secure the social interest in the moral and social life of every individual under the circumstances of the modern city, upon the basis of rules and principles devised primarily to protect the interest in general security, in the security of acquisitions and the security of transactions, at a time when these were best protected by securing individual interests of substance; (2) to organize the administration of justice so that there may be an efficient machine to dispose of the great volume of litigation in the modern city, to enforce the great mass of police regulation required by the conditions of urban life, and make the criminal law effective to secure social interests; (3) to make adequate provision for petty litigation in communities where there is a huge volume of such litigation which must be dealt with adequately on pain of grievous denial of justice; (4) to apply and enforce law in a community where furnishing a guide to the individual conscience is not enough, where it is often of more importance to enforce rules vigorously but intelligently than to insure that the rules made are the best possible, where, in other words, law requires sanction and must do much of the work of morals; (5) to apply and enforce law in a heterogeneous community, divided into classes with divergent interests, which understand each other none too well, containing elements hostile to government and order, containing elements ignorant of our institutions, on the one hand unable to understand our tender ness of individual liberty and on the other hand suspicious of authority and of magistrates; (6) to administer punitive justice in a community where the defective, the degenerate of decadent stocks, and the ignorant or enfeebled victim of severe economic pressure are exposed to temptations and afforded opportunities beyond anything our fathers could. have conceived, where the professional criminal and the promoter and the victim of commercialized vice must be reckoned with, - and this upon the basis of legal principles worked out for the occasional criminal, the criminal of passion, and the rough virile vice of a vigorous stock that lived out of doors; (7) to administer justice in relations of family life, where conditions of crowded urban life and economic pressure threaten the security of the social institutions of marriage and the family; and (8) to unshackle administration from the bonds imposed when men who had little experience of popular government and much experience of royal government, in their desire to have a government of laws and not of men, sought to make law do the work of administration.

Traditional Ruler (TR)

A traditional (TR) ruler is statutorily defined. Within the Constitution of the Federal Republic of Nigeria, 1999 (as amended), traditional rulers are under the authority of the subnational units or states. They are not mentioned in any of the two Legislative Lists and as such, matters concerning them are residual matters within the exclusive control of the States. In Edo State for example, matters concerning TRs are regulated by the *Traditional Rulers and Chiefs Law.*[4] Section 2 of that law defines a TR as the head of an ethnic unit or clan who is for the time being the holder of the highest traditional authority within the ethnic unit or clan and whose title is recognized as a traditional ruler title by the Government of the State. Throughout Nigeria, they go by different appellations, but the important thing is that such a person is the head of the ethnic group or clan and is recognized as such by the State Government.

The concept of TRs refers to persons by virtue of heredity or people with proven track records who are nominated, appointed, and installed in line with the provisions of their native laws and customs.[5] It has been asserted that TRs hold the key to the success or failure in any political administration in Nigeria because they operate at the grassroots of the society and interact closely with people in their daily activities.[6]

In Europe, TR appear to enjoy higher prestige than their Nigerian Counterparts because very often, such countries are nation states or monolithic in nature with the traditional ruler as the head of the only ethnic group. Consequently, they are seen as the head of the nation. For instance, what you have in Britain is a constitutional monarchy with the queen as the Head of State while the ability to make and pass legislation resides with an elected Parliament. Although her role is largely ceremonial, she continues to play an important part in the life of the nation. She is also the focus of national identity, unity, and pride.[7] The Spanish Constitution of the 1978 re-established Spain as a constitutional monarchy. The Constitution affirmed the role of the King of Spain as the living personification and embodiment of the Spanish State and a symbol of Spain's enduring unity and permanence and is also invested as the "arbitrator and the moderator" of Spanish state institutions.[8] Constitutionally, the king is the head of state and commander-in-chief of the Spanish Armed Forces.[9]In Netherlands, the King represents the Kingdom of the Netherlands at home and abroad. Besides his formal duties, the King works in the interests of the inhabitants of the Kingdom. As head of state, it is the King's task to unify, represent and encourage the people.[10]

These comparisons have been drawn to show that whereas in Nigeria, the influence of TRs is largely limited to their ethnic enclaves due to the multi-ethnic, heterogenous nature of the modern Nigerian state with over 250 ethnic nations[11] with each one having a TR, their European counterparts have defined constitutional roles they play since the countries they represent are largely nation-states. Historically, they are intertwined with the history of their countries.

Custom, Culture and Tradition

By virtue of section 258 of the Evidence Act 2011, custom means a rule which in a particular district, has

[4]No. 16 of 1979. Other states have similar laws.
[5] W Wadama, Post- colonial Conflict in Africa: A study of Richard Ali's City of Memories (2013) 2 (4) *International Journal of Arts and Humanities*, 310.
[6] SA Abdullahi, 'Youth Deviance and Traditional Authority in Kano Metropolitan: Some Issues in Chieftaincy and Security in Nigeria 40th Anniversary of the Emirship of HRH; Alhaji (Dr.), Ado Bayero, cited in AA Abdulsalam *et al*, 'Roles of Traditional Rulers in Conflict Resolution for Sustainable Democracy in Nigeria' (2020) XXIII (1) *Nigerian Journal of Social Sciences* 51.
[7]'The Role of the Monarchy' available at https://www.royal.uk/role-monarchy accessed on 10th April 2022
[8] Title II, Article 56, subsection (1) of the Spanish Constitution
[9]*Ibid.*
[10]https://www.royal-house.nl/members-royal-house/king-willem-alexander/position-and-role-as-head-of-state accessed on 10th April 2022.
[11]https://naijabiography.com/nigeria-250-ethnic-groups-see-list/ accessed on 10th April 2022.*The Vanguard* Newspaper identified 371 ethnic groups in Nigeria. See 'Full List of all 371 Tribes in Nigeria, States and where they Originate,"https://www.vanguardngr.com/2017/05/full-list-of-all-371-tribes-in-nigeria-states-where-they-originate/ accessed on 10th April 2022.

from long usage obtained the force of law.[12] The essence of custom is in its uninterrupted practice, acceptability and habit of compliance by the people.[13] It is a mirror of accepted usage.[14]It is the organic or living law of an indigenous people of Nigeria regulating their lives and transactions. It is organic in the sense that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It goes further and imports justice to the lives of all those subject to it.[15] Flowing from these definitions, customs will vary from place to place. This is important because one of the functions mostly attributed to TRs rulers, even though not statutorily provided for is that they are the custodians of the customs of the people. The closest to a statutory prescription is the provision of section 47 (e) of the *Traditional Rulers and Chiefs Law* of Edo State[16] which states that one of the functions of a traditional council, which is headed by a traditional ruler, is to give support for arts and culture.

The limited role ascribed to TRs has not always been so but the result of the emergence of the modern state. Historically, TRs were very powerful, exercising powers of life and death. It is these days of yore that will be discussed in the next segment of this paper.

In modern day vocabulary, the word 'culture' has been generally interchanged with the words 'custom' and 'tradition.' 'Culture' is the beliefs, customs, practices and social behaviour of a particular nation or people. It could also be defined as a particular set of attitudes that characterizes a group of people.[17]'Tradition' is a long-established action or pattern of behaviour in a community; often one that has been handed down from generation to generation. Conceptually, these three words, (custom, culture and tradition) connotes the same thing in that they refer to shared beliefs and practices of a particular group of people.[18]Despite the judicial pronouncement of customary law as 'organic or living law,' of an indigenous people,[19] its application has always been determined by its validity which is, *inter alia,* subject to the crucible of English notions of 'natural justice, equity and good conscience.' The origin of the phrase can be traced to English law which over the years has filtered into our administration of justice. This filtration has largely been achieved through a process of assimilation or imposition of English principles of law in the administration of justice in Nigeria.

Customary Arbitration

'Customary arbitration' is the arbitration or resolution of disputes founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chiefs or elders of their community and the agreement to be bound by such decision or freedom to resile from it where unfavourable.[20] The intention of customary arbitration is to amicably resolve disputes in line with local customary laws and practices. It is the body of customary arbitrators. Its proceedings and decisions are those of a non-judicial body, that is, a body not vested with judicial powers by virtue of section 6 of the Constitution of the Federal Republic of Nigeria 1999.[21] It has existed since long before colonial courts. It sits outside the statutory arbitration regime and does not depend on a written arbitration agreement.

[12]*Umeadi v. Chibunze* [2020] 10 NWLR (Part 1733) 405 (SC)
[13]*Ebere v. Onyenge* [2000] 2 NWLR (Part 643) 62 (CA).
[14]*Zaiden v. Mohosen* (1973) 11 S.C 1
[15]*Ajagungbade III v. Ogunsesun* [1990] 3 NWLR (Part 136) 182 at 207 (SC)
[16] A subnational state in Nigeria.
[17]*Encarta Dictionaries* (electronic edition). See also E.M Kirkpatrick(ed.), *Chambers 20th Century Dictionary*
[18]Asbjorn Eide's definition adumbrates the three meanings stated above. From his view, cultural rights derive from the word 'culture,' an overworked concept with little semantic precision. At one level, culture can be identified with the accumulated material heritage of mankind, either as a whole or as part of human groups, including but not limited to monuments and artefacts. A second understanding of culture is that of a process of artistic and scientific creation. A third meaning is to understand culture as the sum of material and spiritual activities and products of a given social group which distinguishes it from other similar groups. See Asbjorn Eide, 'Cultural Rights as Individual Human Rights' in Asbjorn Eide *et al* (ed.) *Economic, Social and Cultural Rights* (London, Martinus Nijhoff Publishers 1995) at 120.
[19]*Zaiden v. Mohosen*(supra).
[20]*Awonusi & Anor. v. Awonusi* [2007] All FWLR 1642 (CA) following the Supreme Court decision in *Raphael Agu v. Ozurumba Ikewibe* [1993] 3 NWLR (Part 180) 385 at 407 (SC).
[21] *Okereke v. Nwankwo* [2003] 9 NWLR (Part 826) 592 (SC).

JURISDICTION OF TRADITIONAL RULERS IN HISTORICAL CONTEXT

In pre-colonial times in Esanland, Edo State, South-South Nigeria, the administration of justice began at the village level with the Elders' Council. The Council combined both executive and judicial functions. Okojie[22] recounts that the Edion had the power to try and award appropriate punishments in practically all disputes and crimes except for capital offences such as murder, evils of witchcraft and land disputes which were passed up to the Onojie in Eguare for decision. Usually, the *Edion* held their meetings at *Okoughele*, at the centre of the village square where the crime was investigated and all those concerned were given a fair hearing. This judicial system hinged mainly on evidence rather than proof and it was the parties to the cases that would present their cases without requiring the services of any smart person. The *Edion* then moved away to confer, and, on their return, their spokesman gave their decision. The final decision might be followed by a fine or seizure of a goat or the guilty person might be ordered to swear on a given juju to convince the elders of his innocence. Special crimes had special ways of being dealt with and punishments also differed. Thus, the Council had both civil and criminal jurisdiction. As it pertains to their criminal jurisdiction, the Council could try such offences which included adultery, incest, witchcraft, etc. the punishment which the Council could impose varied from seizures, ostracism to banishment. In the exercise of its jurisdiction, the Council applied the prevailing customary law.

In the western part of Nigeria, largely populated by the *Yorubas*, the traditional system of administration was through a TR known by different titles, depending on the town or community. Such TR wielded the power of life and death. An example is the Oyo empire where the *Alaafin* (King) was variously described as the 'Lord of the World of Life,' 'Owner of the Land' and 'Companion of gods.' The words of the *Alaafin* were law, and his orders were carried out without demur. The respect accorded the *Alaafin* derived from the concept of sacred kingship among the Yoruba. He was regarded as the principal worshipper and supplicator for the community.[23] However, Anifowoshe asserts that the power of Yoruba kings was controlled by custom and circumscribed by relevant organs (like the *Oyo Mesi* and the *Ogboni Society* in the old Oyo empire) unlike the despotic emirates of Northern Nigeria.

In the North, the Native Authority system was one method of justice administration. The Native Authorities combined both legislative and judicial functions and were headed by Emirs. The Native Authority Law of 1954[24] gave the native authority the power to make orders regulating the holding of public meetings and processions. The appointment, promotion, remuneration and dismissal of members of the Native Courts depended on the Native Authorities whose members comprised of the Chief, his loyalists and some elected members.[25] The courts had powers of imprisonment. The partisanship of the courts in favour of the party in power at the regional level, coupled with the legal costs of an action in the appeal court, made the courts lose credibility before a significant number of people.

However, since independence, the criminal jurisdiction of TRs adumbrated earlier has been eliminated. For instance, section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 has abolished customary criminal law. It states that subject as otherwise provided by the Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law. A written law refers to an Act of the National Assembly or a law of a state, any subsidiary legislation or instrument under the provisions of any law. Two cases illustrate the abolition of customary criminal law. In *Udokwu v Onugha & Anor.,*[26]the appellant was convicted for 'invoking and binding *juju*' over the respondents on their communal land. The District Court found the appellant guilty and sentenced him to a fine of £50 or two months imprisonment and he was also ordered to release the respondents from the juju within six days from the date of judgment. The appellant appealed to the County Court Grade "A" which discharged and acquitted him. On further appeal to the Magistrate's court by the respondent, the court reversed the decision of the County Court and restored the judgment of the District Court. Again, the appellant appealed to the High

[22] CG Okojie, *Esan Native Laws and Customs with Ethnographic Studies of the Esan People* (Lagos, Ilupeju Press Ltd. 1994) at 95.
[23] R Anifowoshe, *Violence and Politics in Nigeria, the Tiv and Yoruba Experience* (Enugu, NOK Publishers Ltd. 1982) at 92-102.
[24] N.R.L, No. 4 of 1954, ss. 37, 41 and 47.
[25] Anifowoshe, *op cit.*
[26] [1963] ANLR (Reprint) 546.

Court. The High Court set aside the decision of the Magistrate's Court and restored that of the County Court. The High Court held that the conviction of the appellant was in violation of his right as guaranteed under section 21 subsection (10) of the Nigeria (Constitution), Order-in-Council, L.N No. 159 of 1960, chapter III since the offence was neither defined nor the penalty prescribed in a written law. In the second case of *Aoko v. Fagbemi & Anor.*[27] The High Court quashed the conviction of the Appellant by a customary court for the offence of 'committing adultery by living with another man without judicial separation' which was not provided for in any written law and therefore also violated section 21 subsection (10) of the 1960 Constitution. The authorities support the view earlier expressed that since independence, the jurisdiction of TR to try customary criminal law offences had been taken away because such customary offences are not in written form. But traditional institutions still retain some form of limited jurisdiction in civil matters though not formerly incorporated in our legal system.

VALIDITY OF CUSTOMARY LAW

As alluded to above, TRs retain some form of jurisdiction in the administration of justice in some civil matters even though such jurisdiction is not formerly incorporated in our legal system. Such jurisdiction is often restricted to customary law because TRs are generally regarded as the custodians of our customs and tradition. However, a pre-condition for the exercise of that jurisdiction is that such custom must pass the validity tests. It is only then that the custom is regarded as customary law to be applied by the courts. This section shall attempt to discuss the validity tests to decipher the scope of the jurisdiction of TR in grassroots administration of justice. The validity of customary law is subject to the following: the repugnancy test, the incompatibility test and the public policy test.[28]

The repugnancy test states that for a custom to be accepted, it must not be repugnant to natural justice, equity and good conscience. What is meant by this phrase cannot be generally standardized. For instance, if the custom is regarded to be barbarous or uncivilized,[29] it will fail the repugnancy test. Similarly, a custom that denies female inheritance in favour of an uncle will also fail the repugnancy test and will therefore be invalidated by the courts[30] or a custom that allows a woman to marry a dead man.[31] The facts of each case will determine whether the test, when applied, succeeds or fails.

The incompatibility test requires that the application of a particular custom must not be inconsistent with any written law for the time being in force.[32]

The third test is the public policy test. So, a custom that is regarded as against public policy will be held to be invalid. It is unclear as to the parameters of public policy[33] but a custom that allows two women to marry each other will not be enforced on the ground that it is contrary to public policy.[34]

The jurisdiction of TRs in grassroots administration of justice normally entails the application of customs in arriving at a decision. This is normally done by the TR sitting with his Council of Chiefs. As earlier mentioned, the application of the custom must pass the validity tests for the custom to be valid and be applied

[27] [1961] 2 All NLR 400.
[28] See AO Obilade, *The Nigerian Legal System* (Ibadan, Spectrum Books Ltd. 2007); JO Asein, *Introduction to Nigerian Legal System* (2nd ed., Lagos, Ababa Press Ltd., 2005).
[29] *Eshugbayi Eleko v. Officer Administering the Government of Nigeria* [1931] A.C 662 at 673.
[30] *Ukeje v Ukeje* [2014] 11 NWLR (Part 1418) 384 (SC)*; Asika v. Atuanya* [2008] 17 NWLR (Part 117) 484 (CA)
[31] *Okonkwo v Okagbue & Ors.* [1994] 9 NWLR (Part 368) 301 (SC).
[32] See for instance, section 15 of the High Court Law of Edo State
[33] In the English case of Egerton v Brownlow [1853] 10 Eng. Rep. 359 at 437 (HL), the House of Lords, which was till 2009, the highest court of appeal, opined that public policy is an extremely vague term which may be interpreted in various ways. This might lead to uncertainty when applied to decision of legal rights. The Court stated further that 'public policy' is understood as 'political experience' or that which is best for the common good of the country. In fact, and as far back as 1824, Burrough J in the case of *Richardson v. Mellish* [1824] 2 Bing. 228, Burrough J, in his judgment which has now become famous on the meaning of public policy, opined that 'public policy' is a very unruly horse, and when you get astride, you never know where it will carry you. It may lead you from sound law and is never argued but when all other points fail.' However, a general guide on what constitutes public policy is that any act is against public policy if it has an element of illegality or if it is injurious to the state or its citizens.
[34] *Meribe v Egbu* [1976] 3 S.C 23; *Agbai & Ors. v. Okogbue* [1991] 7 NWLR (Part 204) 391 (SC).

by the courts. The resolution of disputes by TR is what in law is referred to as customary arbitration. This is the focus of our discussion in the next segment.

VALIDITY OF CUSTOMARY ARBITRATION

Traditional rulers in Customary Arbitration have had a tremendous impact in grassroots administration of justice. Customary arbitration entails the submission of the parties to the jurisdiction of TRs to have their disputes investigated with a view to having them resolved. It is a form of Alternative Dispute Resolution. One major advantage of customary arbitration is that it is not only cost effective; it also reduces conflicts in the community while sustaining the spirit of communalism in the community. In addition, customary arbitration saves time because the proceedings are conducted in a summary manner contrary to the tedious and expensive process of litigation in the courts. The significance of customary arbitration is that the outcome is sanctioned by the court. Thus, when parties voluntarily submit to arbitration before the elders' council or go on appeal against the decision of the elders' council, to the King-in-Council, the decision reached before such a panel will be binding even if challenged in court.

However, such decision must be based on customary law otherwise, the customary arbitral body will lack jurisdiction to entertain the matter and any decision subsequently reached without jurisdiction will be a nullity. In the case of *Awonusi v. Awonusi,*[35] the appellants initiated customary proceedings before the *Ewusi* palace in Ogun State in a dispute regarding their family land. The dispute was heard and determined by the *Ewusi-in-Council,* a traditional customary arbitrator. The appellants thereafter refused to abide by the Council. The respondent then instituted an action in the High Court of Justice, Ogun State, Shagamu Judicial Division, claiming various orders and declaration and was successful. Aggrieved by the decision of the Court, the appellant appealed to the Court of Appeal, Ibadan Division. One of the issues which the court had to consider was whether a party who voluntarily submitted to customary arbitration could resile from its outcome. The court held that the customary arbitration was binding on the appellant more so when he was the one that initiated it. In the case of *Okere v. Nwoke*,[36] the Court of Appeal held that customary arbitration is the prevailing practice of arbitral process of arbitration governed by rules of customary law. The practice of chiefs and elders of the community settling disputes between members of their community is recognized by the Nigerian Legal System and is not in conflict with the exercise of judicial powers enshrined in the Constitution. Thus, through the process of customary arbitration or conflict resolution, TRs are involved in grassroots administration of justice. In all, in most cases, customary arbitration in Nigeria involves two stages, first before the elders' council at the Quarters and second on appeal to the king's court. At the King's Court, there is always the tendency to adopt the decision of the elders' council. Adopting such decisions will invariably defeat the essence of the appeal to the King, which is to review the decision of the elders' council and eliminate the perceived injustice in the decision of the council.

Whatever the case may be, and from the cases considered in this section, a valid customary arbitration will involve the elements enumerated below.

1. The parties voluntarily submitted the dispute to the arbitrators.
2. They agreed, expressly or by implication, that the decision would be accepted as final and binding.
3. The arbitration followed the customs of the parties or their trade or business.
4. The arbitrators reached a decision and published their award.
5. The parties accepted the decision when it was made.

ALIGNING ROSCOE POUND'S PRINCIPLES OF ADMINISTRATION OF JUSTICE

As earlier summerised, Roscoe Pound's eight principles of administration of justice may be synthesized as follows: a legal system built for a simple, rural, individualistic society must be reformed to meet the social,

[35] *supra*
[36] [1991] 8 NWLR (Part 209) 317 (CA)

economic and administrative demands of crowded, diverse modern cities. However, within the context of this Article, the reverse is the case here. How does Nigeria's modern system of administration of justice characterized by constitutionally established courts, the security agencies, human rights commission etc., accommodate the rural and traditional system of justice administration that revolves around a king or traditional ruler beyond the realm of customary arbitration? According to the World Bank's estimate, the rural population of Nigeria in 2024 amounted to 104 635 961.[37] Majority of this number prefer to have their disputes resolved through TR. Some reasons can be adduced for this. First is the historical connection going back to pre-colonial times and which is rooted in custom. Second is the lack of access to the formal system of justice due to remoteness of the courts. Third is the cost of obtaining formal justice.

Given these reasons, integrating traditional rulers into grassroots administration of justice in a formal and constitutionally recognized way becomes a matter of pragmatism.

What Role for Traditional Rulers in Grassroots Administration of Justice in Nigeria in a Changing World?

We have shown that before Nigeria attained political independence, particularly in pre-colonial times, TRs exercised legislative, executive, and judicial powers. These powers were considerably whittled down over time due to colonial intervention and with independence, the powers became virtually non-existent as the concept of citizenship with rights and duties displaced the concept of subjects. While citizens owe their allegiance to the State or Country, subjects, before the emergence of the modern state, owed their allegiance to the King. Allegiance to the king under a constitutional democracy is now merely ceremonial rather than being a matter of constitutional imperative. The concept of a Republic, which Nigeria became is antithetical to a king with subjects in the strict legal sense. This perhaps explains the near absence of roles for traditional rulers in Nigeria. However, and as posed by another scholar, what mechanisms did traditional rulers use to cushion the escalation of crisis in the pre – colonial Nigeria? Have these mechanisms been enshrined in the Nigerian constitutions? Were they (traditional rulers) given constitutionally backed roles in the post-colonial Nigeria, even till the present 1999 constitution?[38] As earlier noted, TRs wielded legislative, executive and judicial powers in pre-colonial times which have now disappeared. That mechanism no longer exists and at best their roles can be reduced to two as things currently stand to wit: customary arbitration or conflict resolution and giving advice to constitutionally recognized structures within the state. This latter role emanates from local or subnational legislation.

For instance, under section 45 of the *Traditional Rulers and Chiefs Law* of Edo State, Traditional Councils are established for every local government in the State. The Council is headed by a president who is a traditional ruler in the local government area. Other members are other traditional rulers in the local government area and the Chairman of the Local Government Council. The functions of a Traditional Council are enumerated in section 47 and they are:

(a) To formulate general proposals by way of giving advice to the local government or to all local governments in its area;
(b) where applicable, to harmonise the activities of such local governments through discussion of problems affecting them generally and by giving advice and guidance thereon to such local governments;
(c) where applicable, to coordinate development plans of such local governments by joint discussion and advice;
(d) where requested by the local governments in the area, to assist in the assessment of rates in consultation with such local government or local governments in the area and their subsequent collection;
(e) to give support for arts and culture;
(f) to assist in the maintenance of law and order;
(g) to advise on any matter referred to it by the State or Federal Government;

[37] World Bank, 'Rural Population: Nigeria' available at https://statbase.org/data/nga-rural-population/ accessed on 16th October 2026.
[38] O Olusola & A Aisha, 'Traditional Rulers and Conflict Resolution: An Evaluation of Pre- and Post-Colonial Nigeria (2013) 3 *Research on Humanities and Social Sciences* (No. 21) 120 at 121.

(h) to make representations or express opinions to the State Government or any other organization on behalf of the local government, or as the case may require, on behalf of all local governments in its area collectively on any matter of concern to the area as a whole whether or not such a matter is within the legislative competence of any local government or local governments;
(i) to advise on questions relating to chieftaincy matters and control of traditional titles.

These functions are quite detailed and suggest that traditional councils could play a role in grassroots AOJ within the context of the wider definition of AOJ adumbrated above and beyond the narrow confines of customary arbitration, even though the functions may not be specific on that point. However, as custodians of customary law, there may be constitutional validation for the assertion that within the wider context, TRs have a wider role to play in grassroots AOJ. Given its historical trajectory, it is a power that has been exercised over the years starting from pre-colonial times even though it currently lacks any constitutionally defined substance. It is therefore assumed by the community has part of the customary law of the people. In any case, it has been impliedly validated by the Constitution. Consequently, in the case of *Okere v. Nwoke,*[39] the Court of Appeal held that by virtue of the Constitution, customary law is an existing law and so, customary law, which included customary arbitration, was saved by the Constitution. However, the validity of customary arbitration is subject to several limitations including the acceptance of the award and the submission of the parties to the arbitration.

In the definition of terms, the author gave a broad definition of administration of justice as involving an interplay of legislative, executive and judicial actions in the attainment of justice. The expression is therefore not confined to judicial or quasi-judicial proceedings in its broad sense. Consequently, the functions of traditional councils as enumerated above assumed added significance in that they have a pivotal role to play in grassroots administration of justice in the light of the nature of their functions. For example, the functions in (a)-(d) are all related to general administration. Function (f) is particularly relevant in the maintenance of law and order which is directly related to administration of justice. It is doubtful whether any appreciable impact has been made in this regard given the general state of insecurity in the land. This then provokes the question whether the Traditional Councils have actively been playing their overall roles in grassroots AOJ. Given the fact that the functions of the Councils are merely advisory, it may be that the advice of the traditional councils has largely gone unheeded. The point being made here is that the traditional councils, if properly harnessed, can be deployed as veritable means of grassroots administration of justice with telling impact in all facets of grassroots administration of justice and socio-economic life of the people. There is therefore the urgent need to strengthen the councils as veritable tools of justice administration by, for example, elevating their recognition and functions under the existing subnational legislation as constitutional imperatives. The subnational Governments must remove whatever impediments that may be, that is impeding the effectiveness of the Traditional Councils in grassroots administration of justice. Obviously, the impact of the Traditional Councils is not being felt otherwise, the incidents of insecurity,[40] lack of basic infrastructure, crushing poverty,[41] unabating unemployment which are prominent at the grassroots would not arise. TRs can play a dominant role in addressing these challenges. This is principally borne out by the growing recognition that capable democratic States must be grounded on indigenous social values and contexts, while adapting to changing realities. This will require among other actions, aligning and harmonizing traditional governance institutions with the modern State.[42] It is time traditional rulers are statutorily empowered to effectively contribute to the peace and progress of the country given their closeness to the grassroots and consequently, their importance in grassroots administration of justice. A starting point is using the Traditional Rulers and Chiefs Laws enacted virtually by all subnational governments as a vehicle for such empowerment. Ultimately,

[39] supra
[40] For instance, in a survey conducted by the National Bureau of Statistics, between May 2023 and April 2024, incidents of kidnapping were found to be 2,235,954 which is within a space of 12 months. See https://nannews.ng/kidnapping-incidence-estimated-at-2.2m-cases-nbs retrieved on 16th October 2026
[41] A study conducted in 2023 show that 40.1% of Nigerians lived below the national poverty line. See 'Nigeria Poverty Statistics' available at https://worldmetric.org/nigeria-povery-statistics/ accessed on 16th October 2026. This rose to 63% in 2025 which is the equivalent of 140 million people. See 'Nigeria's Poverty Rate Climbs to 63% Despite Easing Inflation-World Bank,' *Vanguard, available* at https://allafrica.com/stories/202604100079.html retrieved on 16th October 2026.
[42] O Olusola & A Aisha, *op. cit.*

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such empowerment may be expanded and consolidated by making it a constitutional imperative through the recognition of traditional councils as one of the section 197(1) of the Constitution of the Federal Republic of Nigeria 1999 state institutions with their functions elaborately spelt out as was done to other section 197(1) state institutions.

CONCLUSION

Administration of justice has been the province of constitutionally established courts under section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as altered). Notwithstanding, Traditional Rulers play an important role in this regard even though they lack specific constitutional validation. Thus, through the process of customary arbitration, they have been able to 'step into the gap' at least in enthroning social justice. Nevertheless, their role, just like in any other institution of state, is subject to judicial review and lacks the same judicial power vested in the constitutionally recognized courts. This is not unusual given the Republican status of Nigeria. But it must be pointed out that the important role they play is underscored by the fact that they have been able to serve communities in the rural areas in a timely manner that lack access to formal justice either due to their remoteness to the courts, or due to lack of the financial wherewithal of the parties. Perhaps this last point represents their most significant contribution to grassroots administration of justice in a changing world. More can however be done. Integrating the traditional councils set up by subnational laws into the Constitution as one of section 197(1) of the Constitution of the Federal Republic of Nigeria 1999 state institutions and incorporating their functions under the laws as constitutional imperatives will have a profound impact on grassroots administration of justice. The recommendation may be justified that a large section of the population who live in the rural areas prefer traditional or grassroots system of justice administration.