An Evaluation of Dispute Resolution under Rwanda's Gacaca Court and AFCFTA: Lesson for Nigeria

Bukar Jamri, *PhD*

Orcid ID: https://orcid.org/0009-0005-0782-0137

Department of Sociology, Yobe State University, Damaturu, Yobe State, Nigeria

Abstract

The aim of this paper is to review the method of conflict resolution adopted in the Gacaca, and evaluate the method(s) used, including success/failure and other relevant issues. The paper adopted functionalist theory in order to explain Gacaca and African Continental Free Trade Area Agreement (AfCFTA). Methodologically, the paper adopted desk review by using secondary data from body of literature relevant to the problem under study. From the critical assessment of the situation and exploratory factors that influenced the process of dispute resolution, the paper finds that Rwanda adopted a model centered on criminal prosecution, while other countries responded to conflict similar to Rwandan using alternatives to widespread prosecutions and Nigeria can reflect on it to introduce an alternative dispute resolution mechanism to address various crises bedeviling the country. The paper concluded that from farmers-herdsmen conflict, through religious extremism to Biafra secession agitation, these mechanisms are important to Nigerian government to employ traditional and alternative dispute resolution strategies to maintain peaceful coexistence between various ethnic groups and achieve sustainable peace in the country and sub-region. However, the paper postulates that neither Gacaca nor AfCFTA is perfect, therefore it recommended that Nigeria should not take Gacaca as the model to follow religiously, but should introduce an indigenous legal mechanism as an Alternative Dispute Resolution(ADR) to suit the country's unique culture, geography and history.

Keywords: Gacaca Court, AfCFTA, Rwanda; Nigeria, Dispute Resolution.

Introduction

Peace and conflict are two obverse sides of the same coin, although mere existence of peace does not mean absence of conflict. Conflict is a clash of interest arising from inter-relationship-interpersonally, at local and international levels. Since man cannot live in isolation, the relationship with other fellow humans can generate tension, disagreements and misunderstanding due to struggle for scarce resources – economic resources, political power and socio-cultural resources, including ethnicity. Thus, the reasons for the conflict may be as a result of cheating, ethnocentrism, or struggle for a beneficial goal. The disagreement or misunderstanding can occur in form of revolution, war or genocide. To transform the climate of a society from conflict and turmoil to peace, various methods of conflict resolution are adopted by the contending or belligerent parties, often with intervening parties, to resolve the conflict though conciliation, mediation, arbitration, negotiation or compromise. Conflicts are also settled through litigation in courts, such as International Criminal Court (ICC).

Different types of conflicts have taken place around the world, but this paper is anchored on the Rwanda genocide which took place in 1994. The rationale for taking the Rwanda's genocide is that most of the countries emerging from genocide, violence or dictatorship have recognised the inherent limitation of post-conflict criminal prosecutions. In such cases, transitioning societies often decide that criminal trials cannot address the wide scope of the crimes committed during the

conflict, bring the large number of criminals to justice, or enhance the country's ability for reconciliation. As a result, these societies in transition chose to prosecute only the most senior perpetrators of past violence, and create alternative justice mechanisms such as truth commissions or lustration programmes to address the crimes committed by lower-level actors (Le Mon., 2007). However, the Rwanda's response to the mass atrocities is different.

Rwanda adopted a model centered on criminal prosecution, while other countries responded to conflict similar to Rwandan using alternatives to widespread prosecutions. In her case, the Rwandan government took a traditional mechanism, known as *Gacaca*, and transformed it into a system of informal criminal courts (Le Mon., 2007). By institutionalizing Gacaca, the Rwandan government has created one of the most ambitious transitional justice projects ever seen in the world (Rettig, 2008). Gacaca court is a traditional community-based justice system that was greatly modified by the Rwandan Government to address crimes of genocide that took place in the country. However, Gacaca has generated a lot of controversies, and some scholars have argued that its contribution to post-conflict reconciliation is unclear (Rettig, 2008).

Gacaca court is only applicable to the Rwanda's conflict resolution, but some continental protocols also exist. For the purpose of this paper, African Continental Free Trade Area (AfCFTA) will be reviewed because it affects Nigeria. AfCFTA reserves all provisions on dispute resolution administration and procedure for the Protocol on Rules and Procedures on the Settlement of Disputes (Onyebuchi & Iluezi-Ogbaudu, 2019). The Disputes Protocol is under the agreement and it establishes a Dispute Settlement Body (DSB) composed of representatives of State Parties, among which is from Nigeria (Onyebuchi & Iluezi-Ogbaudu, 2019).

In view of the above, this article will review the method of conflict resolution adopted in the Gacaca court, as well as that AfTFTA and evaluate the methods used, and explain their applicability to Nigeria, a country bedeviled with several crises needing immediate dispute resolution action.

Methodology

Methodologically, the study adopts desk review. The source of data was therefore secondary data, including textbooks, journal articles, internet materials, conference proceedings, magazines, newspapers and seminar papers. The above materials formed the body of literature from which the researcher gathered relevant information on the problem under study, covering topics like Gacaca court, conflict and dispute resolution, and AFCFTA in relation to Nigeria.

Conceptual Clarifications

Dispute Resolution: To comprehensively define dispute, a clear dividing line between dispute and conflict should be drawn because the two terms are similar but sometimes treated differently, thus generating controversies amongst scholars (Alaloul, Hasaniyah & Tayeh, 2018). Conflict is seen as a discrepancy between two or more independent parties whose interests and goals are perceived to be incompatible. A dispute, on the other hand, is a controversy that must be settled beyond the level of the contending parties. Conflict is the perceived discrepancy of interest which can be managed, possibly to the point of preventing them to become disputes. Disputes require resolution and therefore, are associated with distinct justiciable issues. The resolution process may lend itself to third-party intervention (Alaloul *et al*. 2018)

According to Manning (2010), the concept of "conflict resolution" is also open to many interpretations. On one hand, conflict resolution can be regarded as any process that resolves or ends conflict via methods which can include violence or warfare. Alternatively, it can be viewed as a non-violent process that manages conflict through compromise, or through the assistance of a third party who either facilitates or imposes a settlement or resolution. Conflict resolution processes are many and varied and can be seen on a continuum ranging from collaborative, participatory, informal, non-binding processes(such as mediation, conciliation, third party negotiation) to adversarial, fact-oriented, legally binding and imposed decisions that arise from institutions such as the courts and tribunals (Boulle, 1996). Typically, non-adversarial practices such as mediation, negotiation, arbitration and conciliation are practices which have been associated with conflict resolution or alternate dispute resolution (ADR) procedures rather than adversarial institutions such as courts and tribunals where a settlement is imposed on the disputants by an external authority (Boulle, 1996).

Although disputes takes place in all organizations and societies, constructively dealing with it can enable the organizations and societies to achieve ultimate objectives, save human lives and resources, avoid financial exposure, and protect the collective interest of group members. In contrast, failing to effectively resolve a dispute can negatively impact the group's existence and risks damaging internal and external relationships and morale (Lovells, 2019).

Gacaca Court: Gacaca is a local, participatory legal mechanism launched to blend punitive and restorative justice based on a traditional form of dispute resolution. In more than nine thousand communities throughout Rwanda, panels of elected lay judges known as *Inyangamugayo* ("those who detest dishonesty" in Kinyarwanda) preside over genocide trials in the same cities, towns, and villages where the crimes were committed. Designed to ease the massive backlog of genocide suspects crowding Rwanda's prisons, the trials take place one day each week in local stadiums, emptied markets, forest clearings, schoolyards, and other areas that can accommodate what is intended to be a community event (Rettig, 2008). The aim of these tribunals is at once daunting and inspiring: punish *génocidaires*, release the innocent, provide reparations, establish the truth, promote reconciliation between the Hutu and the Tutsi, and heal a nation torn apart by genocide and civil war in 1994.

As observed by Le Mon (2007), before the Rwandan genocide, Gacaca was an avenue of alternative dispute resolution. It was a community-based informal arbitration convened by the parties to a civil dispute. Its legitimacy was founded upon the willing participation of the contending parties and the community. The parties involved chose a respected person to serve as a neutral arbiter to the settlement of the dispute, and the outcome was limited to resolution of the minor dispute at hand. The goal of Gacaca court was to achieve a settlement that was accepted by both parties to the dispute, and the restoration of tranquility within the community.

AFCFTA: the African Continental Free Trade Area Agreement (AfCFTA) is a continental agreement. It is meant to foster economic development amongst member states and unity across Africa. AfCFTA reserves all provisions on dispute resolution administration and procedure for the Protocol on Rules and Procedures on the Settlement of Disputes. The Disputes Protocol establishes a Dispute Settlement Body (DSB) composed of representatives of State Parties, and sets out the framework for the resolution of disputes under the agreement and its other Protocols on Trade in Goods and Trade in Services (Onyebuchi &Iluezi-Ogbaudu, 2019). The Disputes Protocol broadly provides for four (4) methods of dispute resolution, namely: amicable settlement through

consultation; amicable settlement through good offices, mediation and conciliation; dispute settlement body; and panel (Onyebuchi &Iluezi-Ogbaudu, 2019).

Apart from a strategy for dispute resolution in the continent, AfCFTA contributes in agricultural transformation and advancement in Africa in order to promote food security and competitiveness through the improvement of regional value chain in the informal economic sector and investments in marketing infrastructure. This is because easy access to regional importation of food products can help countries achieve food security (Price Waterhouse Cooper, 2020).

Theoretical Framework

To understand and explain dispute resolution using Gacaca court and AfCFTA, thepaper adopted one of the two major perspectives in Sociology: *functionalism*. Functionalism sees society as a system of interconnected parts. These parts or institutions contribute to the survival and smooth functioning of the entire social system. The works of eminent Sociologists (Herbert Spencer, Emile Durkheim, Auguste Comte, Talcott Parsons) contributed immensely to the development of Functionalism as a theoretical perspective in Sociology. The relevance and applicability of the functionalist theory as it applies to this work is that if there is no mechanism for resolving dispute in the society, there will be normlessness and conflict will finish off the entire society. In this context, Gacaca forms one of the traditional sub-systems created to resolve disputes and it served its function because constituting it has generated peace in Rwanda, though there were few criticisms to the efficacy of this traditional court compared with AfCFTA which is more systematic. This article also criticizes the function of Gacaca from the lens of functionalist theory, because it is rudimentary and not well organized like AfCFTA which led to continuous grievance after the prosecutions. But this does not make AfCFTA a perfect conflict resolution mechanism. This is why there are larger structures like International Criminal Court (ICC) in Hague.

The Case of Rwanda's Gacaca Courts

From April to July 1994, Rwanda's ethnic Tutsis were targeted for extinction in a genocide that had been planned for years (Le Mon, 2007). Not only Tutsis, even Hutus who publicly declared they hold a moderate stance on ethnicity were murdered. Within 100 days, about one million Rwandans were killed by their neighbours, friends, families and fellow citizens in the most devastating act of collective violence recorded in the recent history (Joireman & Corey, 2004). These one million people comprised approximately 14% of Rwanda's 7.5 million inhabitants, a rate of killing 2,800 times higher than U.S. homicide rate of 5 per 100,000 (Brehm, Uggen, & Gasanabo, 2014). Although government top officials were the major orchestrators and planners of the genocide, it has also been documented that priests, doctors, nurses, judges, and even human rights activists were also involved in the violence (Brehm*et al*. 2014).

In addition to massive killings, tens of thousands of Rwandan women were raped and hundreds of thousands of Rwandans were internally displaced or forced to become refugees, seeking asylum from other countries. Thus, the Rwandan genocide was more than ethnic oppression, political instability and murder; it was also a horrific rotation in continuing cycles of ethnic violence that have constituted Rwandan history since independence (Joireman & Corey, 2004). Different calibers of people were suspected of taking part in the massive killings, because the state authorities have estimated that more than 761,000 persons, or slightly less than half the adult male Hutu population of Rwanda in 1994, ultimately would be accused of crimes related to the genocide (Le Mon, 2007).

Like other countries emerging from periods of atrocity or repression, the Rwanda's government had numerous goals after the violence subsided, such as rebuilding the country, establishing a historical record of the genocide, ensuring that those who committed crimes did not escape with impunity, imparting to the survivors and victims of the genocide that justice has been done, and reintegrating the vast numbers of perpetrators into their communities without provoking retributive violence against them (Le Mon, 2007). Like many transitioning societies, however, Rwanda's courts were in shambles and it became obvious that prosecution and imprisonment of all perpetrators seemed an impossible task. But while many other countries responded to similar dilemmas by devising alternatives to widespread prosecutions, Rwanda embraced a model centered on criminal prosecution. To overcome its institutional and the logistical challenges, the Rwandan government transformed a traditional mechanism known as Gacaca into a system of informal criminal courts (Le Mon, 2007).

Through public opinion surveys, trial observations, and interviews, Rettig (2008) studied how Gacaca has shaped interethnic relations in one Rwandan community. Rettig found that the Gacaca court which was established to try perpetrators of the1994 genocide bear sharp contrast to this traditional Rwandan conciliation institution for which they are named. Gacaca courts are state-sanctioned criminal tribunals created by statute whose legitimacy is derived from their status as governmental institutions. Their stated functions are to punish crimes committed during the genocide, establish a truthful history of that period, eliminate a "culture of impunity" within Rwanda, and reconcile Rwandans with each other. Their mandate empowers them as the courts of first instance for cases ranging from theft or destruction of property through homicide. Judges for Gacaca courts are chosen by community election; they are given minimal training in criminal law, serve without pay, and may impose sentences ranging up to30 years' imprisonment. Each adult Rwandan not accused of involvement in crimes during the genocide is tasked with taking part in the Gacaca court proceedings as a type of co-prosecutor and witness (Le Mon, 2007).

Dispute Resolution under the AFCFTA

The case of Gacaca is peculiar to Rwanda. However, there are continental strategies of dispute resolution. In this section, the African Continental Free Trade Area Agreement (AfCFTA) will be reviewed. At the 12th Extraordinary Session of the Assembly of the African Union held on Sunday, 7th July 2019, President Muhammadu Buhari signed the AfCFTA on behalf of the Federal Republic of Nigeria. The agreement reserves all provisions on dispute resolution administration and procedure for the Protocol on Rules and Procedures on the Settlement of Disputes ("Disputes Protocol"); one of the protocols issued under the agreement (Onyebuchi & Iluezi-Ogbaudu, 2019). The Disputes Protocol establishes a Dispute Settlement Body (DSB) composed of representatives of State Parties, and sets out the framework for the resolution of disputes under the agreement and its other Protocols on Trade in Goods and Trade in Services. As accounted by Onyebuchi and Iluezi-Ogbaudu (2019), the Disputes Protocol broadly provides for four (4) methods of dispute resolution:

(a) Amicable Settlement through Consultation:

As a mandatory first step, the Disputes Protocol required parties to, upon declaration of a dispute, attempt amicable settlement of same through consultation. This process is to be activated by a Request for Consultation made by the Complaining Party to the Contravening Party. The Complaining Party is mandated to notify the DSB of this request. State Parties are to ensure good faith participation in process. These consultations are confidential and are without prejudice to the

rights of either party in further proceedings. The Contravening Party is expected to reply the request within 10 days of receipt and enter into consultation within 30 days. Unless agreed by the disputing parties, consultations will terminate within 60 days of receipt of the request for consultation, after which, the Complaining Party may refer the matter to the DSB and request the establishment of a Panel. It is important to note that the Protocols allow for sufficiently interested Third-Party States to join in the consultations and that the timelines are abridged where the dispute between parties involves perishable goods.

(b) Amicable Settlement through Good Offices, Mediation and Conciliation

Article 8 of the Disputes Protocol allows disputing parties to, at any time, voluntarily institute good offices, conciliation and mediation processes. The Protocols provide that these processes may be terminated at any time at the instance of any party to the dispute. Where either of these processes is initiated after a request for consultations is received, the Complaining Party is mandated to allow a period of 60 days from the receipt before seeking redress at the DSB. However, should both parties agree that this process has failed to settle their dispute, they may refer to the DSB before the 60-dayperiod elapses. Either of these processes may be facilitated by the Head of the Secretariat and if the disputing parties agree, these processes may continue while the DSB process proceeds. The DSB must, however, be notified of either of the foregoing.

(c) Dispute Settlement Body:

The settlement of disputes the Dispute Resolution Body may involve at least two bodies; the Panel and the Appellate Body. The process involves the delegation of adjudicatory powers to an independent panel of three (3) persons set up by the Body or, where parties are dissatisfied with the Panel's findings, to a further panel of 3persons selected out of a pool of 7 persons who form the Appellate Body. These bodies are constituted once a dispute arises for consideration at their respective levels. It must be noted that both bodies are mandated to, in executing their functions, interpret the agreement in accordance with the customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties, 1969. These processes can, however, only be activated where parties have failed to settle the dispute during consultations. The following paragraph swill consider the DSB and its role in resolving disputes under the Agreement through its subordinate bodies.

d) Panel:

The Panel established by the DSB considers submissions of the respective parties to the dispute and makes its findings. These findings are in relation to the rights and obligations of the disputing parties under the agreement and are to be submitted in a report to the parties and to the DSB for adoption. The findings shall include findings of facts, applicability of the relevant provisions, the basic rationale behind any findings and the recommendations it makes. It must be noted, however that, prior to the issuance of this report, the Panel is expected to consult "widely and regularly" with the parties to afford them an adequate opportunity to develop a mutually satisfactory solution.

Conclusion and Recommendations

The paper reviewed the method of conflict resolution adopted in the Gacaca court in Rwanda and that AfTFTA at the African continental level. It also critically evaluated the methods used to address disputes at the national and continental levels. By institutionalizing Gacaca, the Rwandan government has launched one of the most ambitious transitional justice projects the world has ever

seen and Nigeria can reflect on it to introduce an alternative dispute resolution mechanism to address various crises bedeviling the country. From farmers-herdsmen conflict, through religious extremism to Biafra secession agitation, these mechanisms are important to the Nigerian government to employ traditional and alternative dispute resolution strategies to maintain peaceful coexistence between various ethnic groups and achieve sustainable peace in the country and sub-region.

However, it should be noted that neither Gacaca nor AfCFTA is perfect, therefore Nigeria should not take Gacaca as the model, but should introduce an indigenous legal mechanism as an ADR to suit the country's unique culture, geography and history. This is because Gacaca was reintroduced to achieve mass dispensation of justice for mass oppression, which might still be understatement. Gacaca was successful in bringing majority of the perpetrators to justice and it was more successful in the prosecution of the perpetrators more than the International Criminal Tribunal for Rwanda (ICTR), which is regarded as the first international tribunal created to prosecute the human right violators. However, Gacaca has deepened the conflict, led to widespread resentment and exacerbated the ethnic disunity that initially fuelled the genocide. There were also reports of half-truths, perjuries, lies, and undue and unjustifiable silence where something should be said. All these problems have been the setback of Gacaca courts and their contribution to justice and reconciliation on the genocide. In other words, Gacaca was later surrounded by controversies, which make itsmethod of conflict resolution technique subject to debate. In view of these weaknesses, the paper makes the following recommendations:

1. Given the weaknesses of the Gacaca court, Rwandan Government should identify these flaws like perjury and the disunity it generated and address them because grievance amongst dissatisfied population can last for generations to come. If there is no remedial action, victims and their children and grand-children would continue to hold grudges and this can ember another conflict in the future;
2. If Nigeria is to come up with a conflict resolution mechanism similar to Gacaca, it should not be entirely local without blending it with modern conflict resolution techniques because each of modern and traditional conflict resolution systems has its strengths and weaknesses. The blend of both modern and traditional will provide some semblance of perfection;
3. For an effective alternative justice dispensation to conflict in Nigeria, there should be indigenous ADR that can fit the country's unique experiences like cultural diversity, history and geographical variations, because one system of traditional dispute resolution may not synonymously work in the northern and the southern parts of Nigeria;
4. Fighting corruption is a criterion for a successful implementation of indigenous justice system in Nigeria. In other words, if the cancer of corruption is not fought, the chances of successful conflict resolution through the ADR proposed by this paper may become a mere mirage;
5. Lastly, there must be germane relationship between the traditional conflict resolution mechanism and the formal judicial system in Nigeria, because the former is a mere extension of the latter, just like Shariah or customary courts and magistrate and/or court of appeal in the country.

References

Alaloul, W. S., Hasaniyah, M. W. &Tayeh, S. A. (2018). "A comprehensive review of disputes prevention and resolution in construction projects". *MATEC Web of Conferences 270*, 05012.https://doi.org/10.1051/matecconf/201927005012

Boulle, L. (1996). *Mediation: Principles, Process and Practice*. Sydney: Butterworth.

Brehm, H. N., Uggen, C. and Gasanabo, J. D. (2014). Genocide, Justice, and Rwanda's Gacaca Courts. *Journal of Contemporary Criminal Justice, 30* (3): 333–352. DOI: 10.1177/1043986214536660.

Price Waterhouse Cooper (2020). "Current state of Nigeria agriculture and agribusiness sector." AfCFTA Workshop. Price Waterhouse Cooper (Pwc).

Joireman, S. F. and Corey, A. (2004). Retributive Justice: The Gacaca Process in Rwanda. *Political Science FacultyPublications*. 114.http://scholarship.richmond.edu/polisci-faculty-publications/114.

Le Mon, C. L.(2007). 'Rwanda's Troubled Gacaca Courts', Shearman & Sterling LLP.

Lovells, H. (2019).*Implementing an effective dispute resolution strategy which promotes the use of ADR*. New York.www.hoganlovells.com

Manning, C. (2010). Defining Conflict Resolution. Retrieved from: www.bullzip.com (Accessed on: 21/04/2022).

Mukhtar, J.I. & Abdullahi, S.A. (2022).Security-development nexus: A review of Nigeria's security challenges. *Journal of Contemporary Sociological Issues, 2* (1). 18-39.

Onyebuchi, A. &Iluezi-Ogbaudu, E. (2019). Mechanisms for settlement of disputes under the African Continental Free Trade Area Agreement. Strachan Partners. 7th July, 2019.

Rettig,A. (2008).'Gacaca: Truth, Justice, and Reconciliation in Post-conflict Rwanda?'*African Studies Review, 51*(3): 25-50. *DOI: 10.1353/arw.0.0091*

Ritzer, G. (2011). *Sociological theory* (8th Edition). New York: McGrawHill.