UNIVERSITY OF EDUCATION, WINNEBA

EXPLORING HUMAN RIGHTS IN TRADITIONAL CONFLICT RESOLUTION PROCESSES IN GHANA: A STUDY OF AKYEM ABUAKWA TRADITIONAL AREA.

NICHOLAS ASIAMAH-YEBOAH

2015

UNIVERSITY OF EDUCATION, WINNEBA

NICHOLAS ASIAMAH-YEBOAH

(8100230038)

A THESIS IN THE DEPARTMENT OF SOCIAL STUDIES, FACULTY OF SOCIAL SCIENCES, SUBMITTED TO THE SCHOOL OF RESEARCH AND GRADUATE STUDIES, UNIVERSITY OF EDUCATION, WINNEBA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE MASTER OF PHILOSOPHY DEGREE IN HUMAN RIGHTS.

MARCH, 2015

DECLARATION

STUDENT'S DECLARATION

I, Nicholas Asiamah-Yeboah, declare that this Thesis (with the exception of quotations and references contained in published works which have all been identified and duly acknowledged), is entirely my own original work, and it has not been submitted, either in part or whole, for another degree elsewhere,

Signature:,,

Date:,,,

SUPERVISOR'S DECLARATION

I hereby declare that the preparation and presentation of this work was supervised in accordance with the guidelines for supervision of Thesis as laid down by the University of Education, Winneba

Name of Supervisor: Mr Alexander Kaakyire Duku Frempong

Signature:……………………………………….

Date:…………………………………………

ACKNOWLEDGEMENTS

First and foremost, I give thanks to God, the Most High for bringing me this far.

I express my special and profound gratitude, and indebtedness to the supervisor of this thesis, Mr. Alexander Kaakyire Duku Frempong whose meticulousness during the supervision brought a lot of difference that gave this thesis intellectual foundation.

I am also grateful to his Special Assistant; Abdul-Jalilu Ateku. "Jay" thank you very much for your encouragement. Your constant words: "Have you finished the corrections" empowered me greatly to work extra harder that resulted in the final completion of this work.

To all my lecturers in the Department of Social Studies, University of Education, Winneba, I express my sincere gratitude to you for the insightful lectures in various courses you taught me during my graduate course work. These lectures influenced my choice of thesis topic.

I also register my appreciation for the encouragement that Dr. Ofori Bekoe, Head, Social Studies, University of Education, Winneba gave me throughout the period of my study. Other personalities who also deserve commendation are Professor Yao Quashiga and Mr. Charles Denkyi of the University of Education, Winneba for all their support in diverse ways that made it possible for me to complete this programme.

I am equally indebted to the Gyaasehene Barima Amoako Ampim Darko of the Akyem Abuakwa Traditional Council and the State Secretary Mr. Ampofo Duodo for the warm reception they gave the research team.

I salute the arbitration panel members including Baffour Brakwante Agyeman, Alhaji Abubakar Imoro, Torgbui Gborsie, Opanin Oware (Ahwerease), Opanin Afoakwa, Opanin Kwame Owusu, Opanin Oware (Kyebi), Opanin Yeboah (Asikam), Madam Comfort Asiamah, Alhaji Karikari, Opanin Yaw Boakye and Opanin Owusu who took time off their tight schedules to discuss the arbitration procedures and granted me interviews. 'Nananom', all of you deserve tons of gratitude.

I acknowledge the inspiration and support I received from loved ones and their families. My appreciation is extended to Dr. S.K.Gordon Adika and Mr Kwame Asah-Asante of University of Ghana, Legon, Mr. Kwaku Ofori, University of Education, Winneba, Mr David Asante Danso, Koforidua Polythenic and Mr. Paul Antwi Yeboah, Ghana Education Service, Sakumono.

My further appreciation is extended to my colleagues and superiors in the Ghana Police Service, especially DCOP Isaac Ken Yeboah,,Director-General, Legal and Prosecutions, DSP Cephas Arthur, Public Affairs Director, Miss Maame Ama Ankaah-Wilson of the Rapid Deployment Unit and ACP Alex Amponsah Asiamah, Director of Administration at the CID Headquarters, Accra for their support, advice and encouragement.

Last but not the least, I also salute my friends and course mates especially Mr. Joseph Akurungu Abanga and Miss Linda Abbeyquaye who encouraged and assisted me in diverse ways.

May God richly bless all of you.

DEDICATION

This work is dedicated to my parents: Madam Mary Yaa Dede and Mr. Ayaw Seglah whose toil and care has made it possible for me to be educated to this level, and my lovely and caring children: Forson Twumasi and Harriet Dede.Asiamah

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

LIST OF ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS

ACHPR	-	African Court on Human and People's Rights
APRM	-	African Peer Review Mechanism
CC	-	Constitutional Commission
CE	-	Committee of Experts
DAs	-	District Assemblies
DCEs	-	District Chief Executives
DISEC	-	District Security Committee
ECA	-	Economic Commission for Africa
ETF	-	Educational Trust Fund
MLGRD	-	Ministry of Local Government and Rural Development
NA	-	Native Authorities
NDAP	-	National Decentralisation Action Plan
NHC	-	National House of Chiefs
NPP	-	New Patriotic Party
PCL	-	Protective Custody Law
PDA	-	Preventive Detention Act
RHC	-	Regional House of Chiefs

UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UNGA	-	United Nations General Assembly
US	-	United States

ABSTRACT

This study examined whether the traditional courts have adequate mechanisms that promote and protect human rights in the course of settling disputes. This situation offers an avenue for the study of the traditional arbitration systems and human rights promotion and protection.

As a result, this work undertook a study of the situation in the Akyem Abuakwa Traditional Council, Kyebi in the Eastern Region. The study set out to find out whether in the exercise of power and authority during arbitration the dignity and, fundamental human rights and freedoms of people who appeared before the traditional arbitrators were protected and not abused.

Both qualitative and quantitative methods were adapted towards achieving the objectives of the study. Data was collected through interviews, questionnaire and observation of respondents and purposive sampling technique was also used to select respondents. The researcher employed an interview and observational guides to elicit information.

The study established that infractions which have occurred during arbitration were as a result of factors such as the absence of state's oversight responsibility in traditional judicial matters and low level of knowledge of the arbitration panel in techniques, concepts and skills of modern arbitration.

The study revealed that mitigating the infractions existing in the arbitration processes require regular training of the arbitration panel. It was recommended that state should exercise oversight responsibility on the traditional courts through enactment to formalise their activities so that they could operate within the limits of the Constitution of the Republic.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Conflicts in all human societies are as old as those societies themselves. Individuals, groups and societies at large have disputed and competed over resources, which are either tangible like land, money, food, or intangible like power, prestige, influence and identity. Efforts at controlling these resources have often led to fierce fighting with the contesting actors using all means and tactics including eliminating or subjugating their rivals (Coser, 1956).

Human societies, however, have developed their own ways and means of addressing or resolving these conflicts. Available literatures on African political institutions confirm that the nature and causes of conflicts and the conflict resolution mechanisms are deeply ingrained in the culture and history of every society (El-Obaid and Appiagyei-Atua, 1996). Most African political set ups have a dual system of governance composed of the modern state system with its institutions on one hand and the traditional political system that predates colonisation of the continent on the other hand (ibid). The evolution of modern system of governance in Africa is traceable to the colonial rule that started in the nineteenth century through its usage of subtle methods of encroachment on the sovereign will vested in the indigenous people led by their colonial rulers.

Among these methods used were the gradual introduction of the English Common Law in deciding cases and the introduction of tax system aimed at raising revenue to cover the cost of administration in Ghana and Nigeria. (Davies and Dagbanja, 2009).

`In Africa, societies are characterised by fragmentation of various aspects of their political institutions of governance. Overwhelming majorities in most African countries adhere principally to traditional institutions.

However, the post-colonial state essentially emulates Western institutions of governance some of whose salient features are at variance with traditional African cultural values and heritage. These arrangements have contributed to Africa's crisis of state building and governance, particularly at the grassroots (ibid).

The persistence of traditional institutions as a parallel system of governance, which provides some level of refuge for the rural population, often alienated by the state, is also another indication of the failure of the post-colonial state. The right to self-determination of African people or decolonisation represented another landmark in the transformation of African traditional institutions of governance, especially the institution of chieftaincy (ibid).

The abolition of the colonial system of indirect rule left in flux the rule of the upper echelons of chiefs and their relations with the new African state. Many of Africa's nationalists first-generation leaders such as Felix Houphoet-Boigny, Sekou Toure, Leopold Sedar Senghor and Dr. Kwame Nkrumah saw chiefs as functionaries of the colonial state and chieftaincy as an obsolete vestige of the old Africa that had no place in the post-colonial political landscape (Knierzinger, 2010).

The new political elites of Africa saw chiefs as rival political contenders, which increased their self-serving and autocratic tendencies and could therefore not tolerate the existence of any rival political power. This position of the new elites resulted in not only the banning of the opposition political parties, but also the disposition of

chiefs of their bureaucratic positions they held within the indirect rule system of the colonial state (Davies and Dagbanja, 2009).

Attempts were also made to strip chiefs of their authority in the governance set-ups or even abolish chieftaincy. In other cases, efforts to enhance its own legitimacy of the new elites, especially the second generation of African leaders attempted, with varying degrees of success, to co-opt traditional leaders. Nonetheless, the traditional political systems continued to be adhered to, and respected by a large number of people, especially in the rural areas where majority of people reside.

An Economic Commission for Africa study (2005), indicates that chiefs often operate as custodians of customary law and common assets, especially land. They dispense justice, resolve conflicts and enforce contracts. However, chiefs operate largely in an informal setting without a clear definition of their authority.

Even though most countries have realised the resilience of the traditional political institutions, they are yet to identify how to incorporate chieftaincy into their modern governance structure (Asamoah, 2012). In Ghana, as the above exposition on the nexus between chieftaincy and modern state indicates, traditional political systems from colonial times have been involved in local administration in various capacities, ranging from the "indirect rule" system adopted by the British colonial government to the current District Assembly system where chiefs are expected to have a consultative relationship with local government units. The chieftaincy institution has endured in Ghanaian society and it still commands great influence in areas they administer local administration.

Since 1957 when Ghana achieved independence, however, there has been little effective participation of chiefs in decentralisation in Ghana (ibid). Indeed, the nexus between traditional rulers and modern local government set-ups has not been well defined even though the history of local government cannot be written without the institution of chieftaincy. Chiefs participate in local government functions as local development under the Native Authority System during the colonial days.

Similarly, during the post-colonial period, the significant role of chieftaincy in local governance and development has not been in doubt. Chiefs are custodians of natural resources, especially land. They play leading role in fighting for social development of their people; including leadership role in the drive to educate their people; have arbitration and representational roles; guard traditional heritage and sustain traditional norms, values and principles and serve as the bridge between the external community and their people (Arhin, 1985; Ray, 2003a; 2003b).

In 1978, Alex Aidoo, a member of the 1978 Constitutional Commission, while contributing to a debate on chieftaincy argues that the moment one talks about grassroots democracy one is already making overtures to traditional authority, because in Ghana one could not realistically implement successfully a programme of empowerment without the involvement of traditional authorities. This is because:

> You cannot go to any village and start propagating an ideology or political programme or anything in the air, the chiefs are very important if we are going to think about participation of all the people in Government. We have to use them from the grassroots level to the national level (Aidoo, 1978: 48).

As a result, the Constitutional Commission's proposals in 1978 contained recommendations on the importance of traditional authorities states that:

> In spite of certain features which have often given cause for serious concern and the not altogether satisfactory record of some chiefs in national life, we remain convinced that the institution of chieftaincy has an important and indispensable role in the life and government of Ghana, both for the present and for the foreseeable future. We, therefore consider it right and necessary that the institution should be protected and preserved by appropriate constitutional guarantees (Republic of Ghana, 1978: 96).

Summarising the importance of chiefs in Ghana, the Asantehene, Otumfuo Osei Tutu II (2002) succinctly puts it as follows:

> Our predecessors engaged in inter-tribal wars, fighting for conquest over territories and people. Today, the war should be vigorous and intensive against dehumanisation, poverty, marginalisation, ignorance and disease. Chieftaincy must be used to propel economic development through proper lands administration, through facilitating investments in our communities, and through codification of customs and traditions making it impossible for imposters to get enstooled and creating unnecessary situations for litigation.

The National Decentralisation Action Plan, 2003-2005, also recognises that "traditional authorities are important partners in ensuring judicious natural resource management" (MLGRD, 2003:17). Similarly, the Report of the Committee of Experts that drafted the 1992 Constitution of Ghana argues that the institution of chieftaincy at the level of local government has a "more easily perceivable role to play in offering counsel and in mobilising the people for development" (Republic of Ghana, 1991: 150).

Again, political parties in Ghana's Fourth Republic who after elections constitute custodians of modern political power recognise the significant role of the chieftaincy institution as demonstrated in the NPP Manifesto (2000), which recognises the indispensable role of chiefs in local government, and as the symbol of traditional solidarity.

> "Hence our party will support our chiefs and make it possible for them to provide the leadership and focus for local and district development. In this regard, we shall ensure the enhancement and regular, and prompt release of funds due to traditional authorities to enable them to carry out their functions" (NPP, 2000: 40).

Some Ghanaian chiefs have recently widened their frontiers by addressing current problems facing their areas of jurisdiction. Notable among these chiefs are the Asantehene, Otumfuo Osei Tutu II and the Okyenhene, Osagyefo Amoatia Ofori Panin, the Paramount Chief of Akyem Abuakwa traditional area who have initiated and executed projects aimed at promoting local governance and development.

The Asantehene, for example, has established an Educational Trust Fund to cater for basic school, senior high school and tertiary education for brilliant, but needy students. Other chiefs and district assemblies have replicated his Fund.

Again, he has established the Golden Development Holding Company with the objective of promoting the general economic development of Asanteman. This is the result of a partnership between the Asantehene and the World Bank (Boafo-Arthur, 2006).

On the other hand, the Okyehene, now regarded as the foremost environmentalist in Ghana, has led the fight against deforestation and other forms of environmental degradation and to actualise his vision of ensuring environmental sustainability at all times, he has set up the Okyeman Environment Foundation, which has stemmed the tide of the devastation of the Atiwa Forest. He has also contributed to the education on HIV/AIDS and participated in a race organised in connection with HIV/AIDS education – something, which in the past would have attracted destoolment (Boafo-Arthur, 2006).

Despite the involvement of chiefs in playing these new roles, chiefs continue to play significant roles in settling cases between individuals and groups as they had played in the past. The justice delivery system at the local level cannot be discussed without making references to the contributions of chiefs in Ghana. Due to the importance of chiefs in contemporary times, chapter 22 of the 1992 Constitution guarantees the "institution of chieftaincy, together with its traditional councils as established by customary law and usage".

Consequently, there is a constitutional bar on Parliament from enacting any law which (a) confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever; and (b) in any way detracts or derogates from the honour and dignity of the institution of chieftaincy.

In order to avoid any doubts about who a chief is, the 1992 Constitution also defines traditional authorities as a group of people who hail from "appropriate families and lineages and are validly nominated, elected or selected and enstooled, enskinned or installed as chiefs or queen-mothers in accordance with the relevant customary law and usage".

One of the striking features of this Constitution is the provision in Article 276, which states inter alia "A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin".

Nonetheless, this Constitution also points out that a chief may be appointed to any public office for which he is otherwise qualified. These two constitutional provisions have created a vacuum about the extent to which chiefs can or cannot involve themselves in partisan politics. In one breath, a chief is barred from active party

politics while on the other, he can be appointed by a government to hold a public office.

1.2 Statement of the Problem

Most traditional societies in Africa are noted for their flagrant human rights records. These human rights abuses have been the result of traditional belief systems and obnoxious cultural practices and heritage. In most parts of Africa, cultural practices such as female genital mutilation, widowhood rites, twin murder and banishment resulting from fornication or adultery, for example have led to serious breaches of the rights of individuals in the past.

The African concept of human rights is significantly different from that of the modern liberal state in the sense that whereas the notion of rights such as the right to ownership, right to free movement and association, right to worship and right to fair hearing, and trial were guaranteed and protected within the community, these rights were guaranteed and protected to the individual under the modern political system.

This means that actions that violated the sanctity of the community were seriously considered under the traditional system of rights. The right of the community to continue in existence was so important that such acts as the violation of environmental taboos were severely punished. Traditional leaders, including chiefs and priests enforced prescriptions and laws regarding these taboos.

However, with the evolution of the modern state and the growth of individualism, the focus of rights has gradually witnessed a transformation where the rights of the individual have increasingly assumed greater importance. Ghana's post-colonial

Constitutions hatched on liberal political ideology such as those of 1957, 1969 and 1979, all guaranteed the fundamental human rights, even though on some occasions, such rights were palpably abused with the passage of such legislations as the Preventive Detention Act (PDA), in 1958 and the Protective Custody Law (PCL), in the late nineteen sixties.

Indeed, the 1992 Constitution regarded as Ghana's best Constitution that adequately promotes and protects fundamental human rights requires every person's enjoyment of these rights regardless of ethnic, religious, geographical, racial or political affiliation.

The Constitution also requires that all persons irrespective of their status should be treated with dignity and respect under all conditions, such as the right to own property, receive and give information, and for fair hearing and trial which must all be pursued within legal limits.

Ghana has a parallel legal system composed of modern courts system whose jurisdiction and power is limited only by the Constitution and other recognised laws of the country. Beside this set up is the traditional courts system whose functions were to be modified to uphold fundamental human rights of the vulnerable sections of the community and to be in tandem with the modern system of governance.

Constitutionally, at the base of the traditional authority system in Ghana is the Traditional Council consisting mainly of a paramount chief and divisional chiefs.

Its main function is to determine, in accordance with the appropriate customary law and usage, the validity of the nomination, election, selection, installation or deposition

of a person as a chief. In other words, it performs functions similar to those of the National House of Chiefs and Regional House of Chiefs at the paramount level.

Some beliefs of the people such as the efficacy of superstition in changing the destiny of human beings, which are not recognised in modern jurisprudence, traditional courts have become avenues for settling matters relating to superstition. In addition, the number of cases brought before the formal courts for settlement has overwhelmed them, in recent times.

This has increased the significant role of traditional courts in settling disputes among the people. Perhaps the significant contribution of the traditional courts system in Ghana's civil jurisprudence finds expression in Asantehene, Otumfuo Osei Tutu II's address to the Economic Commission for Africa's Fourth African Development Forum under the theme Governance for a Progressing Africa:

> One area where the traditional system of governance has shown tremendous success is in conflict resolution. We have sat in Council with chiefs, sub-chiefs and elders and dispensed justice to the satisfaction of all. Applying the norms of customary law, recognised under the Constitution of Ghana, the king or chief settles all disputes that come before him. In the past five years, following an appeal I made to all concerned, nearly five hundred cases that would otherwise be still sitting in the books of modern law courts and dragging on intractably have been settled amicably before my traditional court. These were land, chieftaincy succession, criminal and civil cases. Peace has returned to communities whose development was halted and families have been re-united in several instances (ECA, 2007).

Despite the important role of the traditional authorities as articulated above, in settling disputes in the various Ghanaian communities, the extent to which these authorities have the requisite mechanisms that will promote, protect and not abuse human rights of the people in their areas of jurisdiction remain unexplored. Using the Akyem

Abuakwa Traditional Council's court as one of the important traditional arbitration systems in Ghana, the study seeks to examine whether traditional systems have mechanisms that promote and protect human rights and if they do, whether they adequately adhere to these mechanisms of enhancing human rights as required by the national and international human rights regime.

1.3 Research Questions

Based on the general issues discussed in the research problem, the following empirical questions will be addressed:

- What conflict resolution mechanism is used by the Akyem Abuakwa Traditional Council?
- What nexus exists between the Akyem Abuakwa conflict resolution mechanism and the formal system of settling disputes?
- How has the Akyem Abuakwa Tradiyional Council Conflict Resolution Mechanism contributed to the promotion of justice in the Akyem Abuakwa Traditional Area?
- How has the Akyem Abuakwa Traditional Council ensured respect for and the protection of human rights of litigating parties who availed themselves of the traditional means of settling disputes?

1.4 Purpose of the Study

The purpose of the study is to investigate the extent to which human rights of persons appearing before the chieftaincy-based court at the Akyem Abuakwa Traditional Council were promoted and protected. That is, whether the rights of parties are protected or abused during the adjudication process.

The study makes recommendations as to how the chieftaincy-based court-system could be strengthened and revamped in order to enable it to meet the international human rights best practices and standards.

1.5 Objectives of the Study

Against the backdrop of the research problem, the following constitute the objectives of the study:

- To identify and discuss the conflict resolution mechanism used by the Akyem Abuakwa Traditional Council and analyse the nexus that exists between the Akyem Abuakwa conflict resolution mechanism and the formal system of settling disputes;
- To examine the effectiveness of the Akyem Abuakwa Traditional Council in the promotion of human rights in Ghana, particularly, aassessing how the Akyem Abuakwa Traditional Council has ensured respect for, and the protection of human rights of litigating parties who availed themselves of the traditional court in settling disputes.

1.6 Hypothesis

The working hypotheses implicit in this study are:

H1: The traditional court system has adequate mechanisms that promote and protect the rights of persons in its arbitration processes.

HO: The traditional court system lacks adequate mechanisms that promote and protect the rights of persons in its arbitration processes.

1.7 Significance of the Study

The relevance of human rights studies, particularly in contemporary African political systems that have witnessed flagrant abuses of human rights cannot be underestimated. There is a symbiotic relation between human rights, good governance and democracy. A striking determinant for successful democratic sustenance is the ability of a democratically elected government to provide good governance which is characterised by the observance and protection of human rights. Thus, the fundamental human rights and freedoms are so basic to good governance that a state cannot claim to be democratic without providing necessary ingredients for human rights realisation.

It is therefore clear that studying human rights in traditional courts which operate alongside modern courts system will bring to the fore the problems being faced by persons appearing before these courts as far as their rights are concerned for prompt attention by the state and the institutions of the state.

1.8 Scope of the Study

There are a number of traditional areas and authorities in Ghana whose cultural values and traditions are peculiar to the people living in that locality. The traditional court systems in Ghana are based on these cultural values and traditions where all persons living in these localities must conduct themselves within the limits of the statutory laws of the country and those of the identifiable restrictions of the traditional area.

The limit of this study, therefore, is the arbitration processes of the Akyem Abuakwa Traditional Council. The study covers both native and non-native residents of Akyem Abuakwa Traditional Area. Historically, Kyebi is known for the role it has played in

the conquest or defeat of other territories during the pre-colonial era and continues to be a historical and political town. Politically, it has been the source or city of authority of the people of Akyem Abuakwa Traditional Area and being the capital of the Abuakwa state, all successive chiefs of Kyebi arbitrate, negotiate and mediate in all criminal, traditional and civil cases during the pre-colonial, and traditional and civil cases during the post-colonial periods respectively.

1.9 Operational Definition

Concept definition is very important in the social science disciplines because in the social sciences words are often interchangeably used. For readers to know what is being referred to in a study of this nature, it is necessary to define certain words or concepts as used. In this study therefore, the key concept that needs clarification is Human Rights.

1.9.1 Human Rights

The study's use of human rights is largely based on the comprehensive explanations of human rights as set forth in the UDHR adopted by the United Nations General Assembly on 10th December 1948. Among these rights are equality and dignity of all persons, the right to personal life and liberty of individuals, freedom from torture or cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest, detention or exile, the right to association, the right to work, the right to legal representation and security of all persons.

It is also based on the three generation of rights postulated by the French human rights advocate Karel Vasak's categorisation of rights into French revolutionary slogans: liberté, égalité and fraternité. The first of these is the concept of liberty, which lays

emphasis on civil and economic rights, and the third of this categorisation is the notion of fraternité based on the kingship and indispensable solidarity of men and women everywhere.

1.10 Organisation of the Study

This research is organised into five (5) chapters.

Chapter one is made up of the introduction, which gives an overview of the importance of traditional authorities and their adjudication processes in Ghana. It also contains the research problem, the research objectives, hypothesis, scope and relevance of the study, among others.

Chapter two reviews literature related to the study and the theoretical matrix within which the study is hinged on.

In Chapter three, the methodology employed in the study is described while the findings are presented and discussed in the fourth chapter.

In Chapter five, a summary of key findings is provided, conclusions are drawn and recommendations to improve human rights are made.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Extensive review of literature in such academic enterprise is very salient as it puts the study in proper perspective. Thus, areas that have not been explored are scrupulously explored so as to give a panoramic view and understanding of the terrain in which such a study traverses. Against this background, the review of literature on human rights promotion and protection in traditional adjudication systems is discussed along the following headings: theoretical underpinnings of Human Rights, the International Human Rights regime, the Concept of Human Rights in Africa, and traditional arbitration in the Akan Traditional Political System and Culture.

2.2 Theoretical Underpinnings of Human Rights

The basis of human rights, in the view of political theorists such as the seventeenth and eighteenth centuries political thinkers like Thomas Hobbes, John Locke and Jean Jacques Rousseau, is natural rights. These political theorists maintain that an individual enters into society with certain inalienable rights and that no government can deny these rights (Ateku, 2009).

From the perspective of these natural rights theorists, the contemporary idea of natural rights grew out of the ancient and medieval philosophy of natural law which holds that people, as creatures of nature and God, should live their lives and organise their society on the basis of rules and precepts laid down by their creator. With the growth of the idea of individualism, especially in the 17th century, natural law doctrines were

transformed to stress the fact that individuals as natural beings have rights that cannot be violated by anyone or by any society.

In his famous work *The Leviathan*, Thomas Hobbes, drew a sharp distinction between right (jus) and law (lax). He argues that since right was coterminous with liberty, and law was restraint, right and law did not only differ from each other but were also opposite. According to Hobbes, in the natural condition of mankind, everyone had the natural right to do anything that was conducive to his or her preservation. There were obligations under the law of nature and a natural right however to preserve oneself. The natural condition of mankind was one of war of each against everyone else, and therefore one of great insecurity. He succinctly sums the state of nature in these words:

> "In such condition, there is no place for industry, because no culture of the earth; no navigation nor use of the commodities that may be imported by sea, no commodious building, no instruments by sea, no instruments of moving, and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society and, the worst of all, continual fear, and danger of violent death, and the life of man, solitary, poor, nasty, brutish and short" (Ebenstein,1969),

It could be deduced from Hobbes conception that reason required men to authorise a sovereign to act on their behalf. All men were obliged to obey this sovereign, provided that he did not threaten their preservation. Some natural-rights theorists such as John Locke and Hugo Grotius, however, find it difficult to accept that rational individuals should give up their natural rights to absolute rulers for the sake of social order.

Locke holds the view that each individual had a responsibility to God to observe the law of nature. Every man was rational in that he could know the law of nature. He argues that God willed the preservation of mankind, and this imposes on everyone the obligation not to harm the lives, health, liberty and possessions of others. In "the state of nature", in the absence of government, everyone had the right to self-defence and to enforce the laws of nature.

He notes further that since everyone was judged in their own cause, they would be partial to themselves, and this would lead to conflict. Rational individuals would therefore agree to live under a government that was entrusted to enforce the law of nature and protect the natural rights of all through the rule of law and to promote the public good (Donnelly, 1989).

Governments that breached this trust, and that systematically and persistently violated the rights of the people, were tyrannical, lost authority to rule, and might be resisted by the people by force if necessary (Ayoob, 2002). Conceivably the most famous formulation of this doctrine is expressed in the writings of the English social contract theorist John Locke who argues that humans were by nature rational and good, and that they carried into political society the same rights they had enjoyed in earlier stages of society, foremost among these rights being freedom of worship, freedom of expression and of assembly, and the right to own property.

The French political philosopher Jean Jacques Rousseau attempts a reconciliation of the natural rights of the individual with the need for social unity and co-operation through the idea of social contract. The views of these natural rights theorists influenced greatly contemporary discourse on human rights. The concept of natural

rights was pervasive in eighteenth century America. Americans perceptions of the tendency of the British government towards tyranny and the fact that they were not represented in that government made it easier to justify resistance (Bailyn, 1992)

Thomas Jefferson, who had studied John Locke and Baron de Montesquieu gives poetic eloquence to the seventeenth century's Declaration of Independence proclaimed by the thirteen American Colonies on July 4, 1776 that:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness - that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed and that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.

A related view on the naturalness of rights is the perspective expressed by Hugo Grotius, a Dutch jurist who was a critical figure in transforming medieval ideas into the modern concept of rights. He argues that the will of God was law, and was known through man's sociability, which was the basis of all other laws of nature. Men, according to him, had natural rights, but these were transformed by society. In his view, the law of nature concerned the maintenance of rights, the subject matter of justice.

In his discussion of Grotius's ideas, Tuck notes "Rights have come to usurp the whole of natural law theory, for the law of nature is simply respect for one another's rights." Tuck points out that everyone should enjoy his rights with the help of the community, which was required to defend our lives, limbs, liberties and property. Morsink contributing to the naturalness of rights also argues that the substitution of the term 'natural rights' by that of 'human rights' may have been to eliminate the

controversial philosophical implications of grounding rights in nature (Morsink, 1999).

The English Bill of Rights (1689), the American Declaration of Independence (1776), the French Declaration of the Rights of Man and the Citizen (1789), the first 10 amendments of the Constitution of the United States (known as the Bill of Rights, 1791), the United Nations' Universal Declaration of Human Rights (1948), the African Charter on Human and People's Rights (1981), and other regional instruments are classic expressions of the natural rights philosophy.

2.3 International Human Rights Regime

One of the most important issues that characterised the geo-politics of the world, particularly following the end of the Second World War and the holocaust, has been the rise of human rights in the vocabulary of states. John Warwick Montgomery succinctly remarks about the saliency of this global issue in his study:

> Contemporary concern for human rights grew directly in reaction to man's inhumanity to man during the Second World War, 'Axis' atrocities, especially the wanton destruction of six million Jews, other religious minorities and political accidents impelled the Allies to conduct war crime trials at Nuremberg and in the eastern theater of war. These trials were significantly designed to punish violations of human dignity (Montgomery, 1986).

A related observation was the closing remarks of Justice Robert H. Jackson of the United States Supreme Court, then Chief Counsel for the US at the Nuremberg trials that the two world wars "have left a legacy of dead which number more than all the armies engaged in any war that made ancient or medieval history", and that of the first half of the century, "no half-century ever witnessed slaughter on such a scale, such cruelties and inhumanities, such as wholesale deportations of the people into slavery,

such annihilations of minorities. The terror of Torquemada pales before the Nazi inquisition" (Montgomery, 1986).

As a result of these atrocities people were searching for common threads that would weave nations together and increase human security for all. It was in this context that a coterie of men and women, largely from the West led by a remarkable American woman, Eleanor Roosevelt were given the mandate to draft the first international articulation of the rights and freedoms of all humanity (Freeman, 2002).

Freeman (2002), however, cautions us not to confuse the nature or motives of those responsible for the declaration with their reasons. The Universal Declaration, according to him, was intended to prevent a repetition of atrocities of the kind that the Nazis had committed. This according to him is expressed particularly in the second paragraph of the preamble, which states that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind' (Freeman, 2002:35).

The result of their efforts - the Universal Declaration of Human Rights - offered a vision of a shared humanity and of shared responsibilities to each other no matter which part of the globe we inhabit, no matter our colour, religion, sex, or livelihood. Sixty years on, the Declaration and its careful balance of individual freedoms, social protection, economic opportunity and duties to community is the one international human rights instrument which all governments have repeatedly affirmed, most recently at the 2005 UN World Summit.

One of the most under-appreciated parts of the human rights story of the past six decades is the extent to which this single text has exerted a moral, political and legal

influence around the world. The Universal Declaration has been a primary source of inspiration for all post-war international legislation in the field of human rights. Its provisions have served as a model for many domestic constitutions and laws, regulations and policies that protect human rights. Most importantly, the Declaration has been a beacon of hope for millions during long years of oppression.

However, this positive assessment obviously needs to be examined. As the International Council on Human Rights Policy, one of the partner organizations realising the importance of rights, has stated in a recent publication:

> As their standing and influence have increased, more powerful actors have also more actively contested human rights. Where formerly they were tolerated because considered marginal, the frequent references made to human rights in the context of North-South relations, and most recently the force of human rights legal criticisms of the conduct of the war on terror have caused many governments to want to restrict or reverse the application of human rights.

Criticism of human rights has become more widespread and explicit, especially in wealthier countries. Opposition and influence have risen together, creating a degree of disorientation. It is important to note that despite the development of international human rights law over the past 60 years, massive rights violations continue today.

Mere having law in the books has not resulted in universal human rights protection. Genocidal crimes were committed in a number of countries across the globe as we witnessed in Rwanda and Guatemala. Widespread discrimination against women and minorities takes place around the globe. Basic standards for work are ignored. Poverty is stirring and trapping many millions, particularly in the developing world. So what are the lessons to be learned for future efforts to protect human rights and what does it all mean for institutions?

The first lesson, perhaps an obvious but often unstated truth, is that because in large areas of the world, great numbers of people remain poor and their governments lack resources as well, as a result, they look primarily to their own local communities for support and assistance. In essence, they cannot claim their rights as envisioned under human rights instruments. Thinking of this in the context of work, the vast majority of the world's workers including the poorest - those most in need of protection - are in the informal sector. This creates an acute practical challenge for governments.

In order to create conditions in which the human rights of very poor or marginalised communities can be protected, governments must find new ways of reaching out to and serving such communities, and human rights organisations must find new ways of winning their trust. The struggle for human rights is inevitably a struggle for power and one that is generally tied to resources. Policies and programmes that address economic and social inequalities are a necessary underpinning for promotion of all human rights. Thus, finding ways of protecting the rights of, and empowering, the most marginalised is in my view one of the key challenges for the future.

Human rights cannot be realised in the absence of effective and accountable institutions. In places where courts are corrupt, over-burdened and inefficient, basic civil rights will be violated and where social ministries are under-resourced, disempowered or lack qualified staff, basic rights to adequate healthcare, education and housing will remain unfulfilled. Institution building and reform is neither easy nor particularly newsworthy. It is, however, essential.

Support for capacity building brings me to a third challenge defining international obligations more concretely. There has been growing acceptance in recent decades of

the need to create forms of legitimate supra-national authority because action taken only at national level will not solve many of the world's complex problems. We know many such problems - including climate change; trade imbalance; the spread of pandemics and new diseases; the illegal trade in weapons and indeed - people; regulation and monitoring of nuclear technology among others.

2.4 The Notion of Human Rights in Africa

Human rights discourse on Africa has rather degenerated into unending debate as to whether human rights actually exists in Africa or not, and if it exists, what is the nature of African human rights or what does it mean to say an African has a right. Whereas some scholars and practitioners of human rights have concentrated on exposing human rights abuses, others engage in explaining the concept of African human rights.

One of these authors observes that, "Human rights discourse has become one of the main 'growth points' of the academic industry in the last 15years or so. The output of literature on human rights in Africa has been enormous in quantity (Shivji, 1989). Making particular reference to the work of human rights monitoring organisations such as Amnesty International and Africa Watch, he argues that much of their literature has been of the expository kind that is exposing human rights violations. He notes that,

> "If the volume of the literature has been quite respectable, one cannot unfortunately say the same about its quality. Much of the literature tends to be repetitive of certain well-established issues and advocates the same lines of argument or propaganda ad infinitum" (ibid).

Attacking the negative projection of African continent in terms of its human rights record, Shivji argues, "the Human Rights Discourse on/and in Africa is intellectually bankrupt, even by the standards of the African Social Science" (ibid), and secondly "Human Rights talk constitutes one of the main elements in the ideological armoury of imperialism in Africa" (Shivji, 1989).

He believes that, concerns with rights in Africa should rather focus on building capacity at both individual and group levels rather than on merely monitoring or exposing human rights violations.

He, however, identifies one significant gap on human rights literature on Africa. That is, there is very little written by Africanists, and even less by Africans themselves on the philosophical and conceptual foundations of human rights in Africa (Shivji, 1989). Putting African human rights into proper context, Shivji as well remarks:

> There is a fair degree of consensus that human rights conceptions embodied in the various instruments are of western origin. Further that even their conceptual framework and philosophical bases have their roots in the specific circumstances of western society. While there is a considerable amount of consensus on the historical genesis of human rights, there is not as much agreement as to the roots of its philosophical basis. Many African and third world writers have argued that the philosophical conception of human rights existed in other cultures as well although some of the western conceptions may not have parallels in the traditional conceptions of human rights in Africa (Shivji, 1989)

While Issa G. Shivji has made it clear the context of African human rights, his opponents have argued vehemently against any suggestion that human rights existed in Africa, and that human rights conceptions per se simply did not exist in the pre-colonial African societies. In their view what are usually considered as African human

rights conceptions by its proponents are nothing more than notions of human dignity and worth which existed in all societies (Shivji, 1989).

This position has however broadened the debate as to "whether human rights are a liberal-democratic concept of western philosophical origin and therefore not universal and therefore cannot be transferred cross-culturally say to Africa" (Hannum, 1989).

Contributing to the debate, S.K.B Asante (ibid) and Rhoda Howard answer in the affirmative. Their argument is based on cultural-specificity that:

> Human rights as conceived in the world are rejected in the Third World and Africa precisely because their philosophical basis is not only different but indeed opposite. Whereas western conceptions are based on the autonomous individual, African conceptions do not know such individualism. In traditional Africa, the human being found his worth within the community to which he related in terms of obligation and duties (Adamantia, 1982).

As one such proponent puts it:

> "Whatever the diversity among third world countries in their traditional belief systems, individuals still perceive themselves in terms of their group intensity. Who and what an individual has been conceptualised in terms of the kingship system, the clan, the tribe, the village, whatever the specific cultural manifestations of the underlying prevailing worldview" (ibid).

The viewpoint of these proponents currently finds expression in the outright rejection of homosexual rights in Africa. Whereas in most societies of the world individual rights to sexual orientations of their choice are not deemed in the context of the society, in Africa, homosexuality is seen as a sin against the entire community.

It is believed that when individuals are allowed to indulge in homosexuality, the wrath of the gods and ancestors would not be visited on only the persons (individuals) involved but the entire society (group rights), hence the actions of Africans to resist attempts by the West to accept homosexuality in Africa. As Issa Shivji notes of the

entire literature relating to human rights in Africa, "in terms of content, there are some dozens or so arguments around which the so-called discussion takes place. Written with the pretense of great profundity, these same arguments are repeated ad nauseam in different forms with little variation and much less substance" (Shivji, 1989).

African nationalism provides the basis for our analysis of human rights in contemporary human rights discourse in Africa. The struggles to end the shackles of colonialism and imperialism led to the proliferation of mass movements and political parties which engaged in the fight against rights abuses in Africa and the plundering of Africa's resources by colonial authorities.

African political elites through the 1945 Pan-African Congress appealed to colonial authorities and the international community to respect the dignity and rights of the colonised people. In the Fifth Pan-African Congress held in Manchester, part of the Declaration read:

> We are determined to be free. We want education. We want the right to earn a decent living; the right to express our thoughts and emotions, to adopt and create forms of beauty. We will fight in every way we can for freedom, democracy and social betterment.

Respect for human rights and fundamental freedoms were considered an important basis for the struggle for independence.

S.K.B. Asante has outlined three international documents that contributed to a favorable environment for human rights: The Charter of the United Nations whose six articles encourage respect for human rights; the *Universal Declaration of Human Rights,* which he describes as providing "a powerful source of inspiration for the founding pattern of African nations"; and the European *Convention for the Protection*

of Human Rights and Fundamental Freedoms," which played a role in shaping the human-rights provisions in the constitutions of various African states.

It is important to note that even though the right to self-determination, which entitles all "peoples" to freely determine their political status and freely pursue their economic, social and cultural development was missing in the vocabulary of the Universal Declaration, these African nationalists used the right to self-determination provided for in the United Nations Charter and the Atlantic Charter to achieve their objectives.

2.5 Traditional Conflict Resolution Processes

Traditional arbitration processes constitute a well-structured, time-proven social system aimed at ensuring reconciliation, maintenance and building social cohesion. In Africa, the methods, processes and rules and regulations are ingrained in the customs and traditions of the people. In the view of Choudree, the saliency of the processes is underpinned in the fact that they strive 'to restore a balance, to settle conflict and eliminate disputes" (Choudree, 1999:1).

Choudree argues further that these traditional processes are rather informal and thus, less intimidating. Those who resort to traditional processes are also more at ease in a familiar environment. This point sharply contrasts the position of others who argue that the traditional courts are intimidating largely because unlike the formal local justice delivery courts or modern courts which are presided over by only one person such as the Magistrate in Ghana, the traditional courts could have as many as 200 arbitrators (Agyekum, 2006; Obeng, 1999).

It is also important to note that the role of chiefs and others such as family heads and elderly persons in the community is not only to resolve conflicts but also to preempt internecine conflicts from showing their ugly heads.

Choudree observes further that group relationships and rights are as important as individual ones as emphasis is on restoring and reconciling groups (Choudree, 1999).

In defining traditional conflict resolution mechanism, Fred-Mensah argues that it is the "capability of social norms and customs to hold members of a group together by effectively setting and facilitating the terms of their relationship and sustainability, and facilitating collective action for achieving mutually beneficial ends" (Fred-Mensah, 2005:1).

Over the years, traditional societies have become the turf for internecine conflicts over land; increasing reliance on formal contracts to regulate relationships and create understanding; and shifts in methods of conflict resolution in that mediation seems to have given way to more confrontational statutory approaches based on formal court procedures (Fred-Mensah, 2005). Despite these, traditional methods of conflict resolution are still considered by most rural folks because it is cheaper to litigate, and also because the traditional methods ensured speedy trial of cases.

Generally speaking, conflict resolution is a complex package involving core actors, supporters, and resolvers, among others, together with the processes and procedures of resolving these conflicts. Primarily, the essence of conflict resolution is galvanising the energies of individuals, families and communities into a formidable whole so that together these disputants and their supporters are better able to iron out their differences or petty squabbles that is tearing them apart and through that they are able

to live peacefully without let or hindrance. In this context, Ndumbe III argues that reconciliation often requires symbolic gestures and associated rituals including exchange of gifts, and slaughter of animals (chickens, goats, sheep, cows) (Ndumbe III, 2001).

In most traditional African societies, strategies to address conflicts involve either preventing or managing or resolving them peacefully when they occurred. The process of addressing conflicts could take the form of spiritual cleansing which in most cases take the centre stage in mitigating crisis.

The spiritual dimension of conflict resolution refers to creating and restoring impaired relationship with God, the spirits, ancestors, family and neighbours as the case might be (Kealotswe, n.d.; Mbiti, 1991).

Conflict resolution therefore is a process of re-uniting the conflicting parties by restoring the lost cordial relationships at the physical. In this context, rituals play an important role in the reconciliation process. In such patch-up, the root causes of conflicts are explored to emphasise shared understanding of the past and present.

Brock–Utne (2001:9) observes that: "The immediate objective of such conflict resolution is to mend the broken or damaged relationship, rectify wrongs, and restore justice". One other important objective of mending the broken relationships is to ensure the full integration of parties into their societies again, and to build a lasting peace and consensus.

Brock-Utne notes further that the objective of conflict resolution, therefore, is to move away "from accusations and counter accusations, to settle hurt feelings and to reach a compromise that may help improve future relationship". The effectiveness of the

process and sustainability of the outcomes, generally, are attributed to such factors as simplicity, participatory nature, adaptable flexibility, complete relevance and comprehensiveness (Brock–Utne, 2001).

Conflict resolution in traditional societies as it is still the case in modern world today, has become very high and the core parties may change from time to time as the situation demands since there is no standard model. Thus, the process is flexible and dynamic and the social setting influences the content.

The social situation of those involved is also important thus, the social surroundings, feedback or to influence the process. The resolution strategy also seeks to build consensus. Often, this requires tactfulness and diplomacy. When agreement is reached, it is shared with all parties including the general community.

Brock-Utne argues that this social perspective on conflict transformation has general advantages including the "shared understanding of the conflict." It also encourages harmony through active participation in the process by all parties (Brock– Utne, 2001:13).

Contributing to conflict resolution in traditional societies, Okrah (2003), opines that traditional societies resolved conflicts through internal and external social controls. He identifies two main ways of traditional conflict resolution processes as being internally or externally driven. The internal social controls, he notes, use processes of deterrence such as personal shame and fear of supernatural powers. External controls according to him rely on sanctions associated with actions taken by others in relation to behaviours that may be approved or disapproved.

According to Murithi, traditional conflict resolution mechanisms are underpinned by the principles of empathy, sharing and co-operation in dealing with common problems, which underline the essence of humanity (Murithi, 2006).

Agreeing with (Brock-Utne, 2001; Okrah, 2003), he argues, that cultural ways of resolving and managing disputes play a vital role in promoting peace and social order in communities.

Again, cultural values and attitudes according to him provide the basis for interaction and the norms by which individuals and communities live. These also promote sharing and equitable distribution of resources, thus promoting a climate for peace.

African cultural principles relate to the very essence of existence and being human and how all humans are inextricably related. Therefore, peacemaking is underscored by the principles of reciprocity, inclusiveness and a sense of shared destiny among people.

It provides a value system for giving and receiving forgiveness. This is because society places greater emphasis on communal life. Therefore, creating and sustaining positive mutual relations are shared tasks involving everyone. It is believed that people including disputants are linked to each other either as perpetrators or victims (Murithi, 2006).

2.6 Conflict Resolution in the Akan Traditional Political System

In his work, *Akan Traditional Arbitration*, Agyekum examines the basic components of the process of settlement, types of offences and language of Akan traditional arbitration. He also considers arbitration and Akan socio-cultural norms and values. In this study, he uses a number of terms or language and style to show the importance of

arbitration in the Akan society (Agyekum, 2006).

Using an Akan adage *ese ne tekrema mpo ko na wowie a, won ara asan asiesie wonntam*, meaning 'even the teeth and the tongue do fight and later settle their differences' he makes his point on the essence of traditional arbitration, particularly among the Akan speaking people of which the Akyem constitute a part.

This exposition implies that conflict is inevitable in any social setting, but it is important that conflict is resolved when it does occur so that it does not result in violence. This is an affirmation that conflict theories assume that societies are more characterised by conflict than by consensus, and consensus building is even a temporal state of affairs that will either return to conflict or be maintained at a great expense (Williams & McShane, 1999).

Stephen Stedman also argues that conflict should not necessarily lead to violence or the destruction of opponents; rather, it is when peaceful mechanisms for addressing competing interests fail that violence is resorted to (Stedman, 1991).

Stedman succinctly describes this in the following words: "Although conflict may turn violent, violence is not an inherent aspect of conflict, but rather a potential form that conflict may take" (Stedman, 1991). Although, all human interactions are necessarily conflicting, an acceptable manner of co-existence rests on the mechanisms for settling these disputes and resolving the differences.

According to Agyekum, the resolution and settlement of disputes outside the contemporary courts without resorting to violence is referred to in Akan as *asennie*, which means 'arbitration'. To him, arbitration is a mechanism for conflict resolution

in politics, business, and religion, among others, being mindful of the concept of facts in social interaction.

He notes further that the most important language styles in Akan arbitration are oratory, persuasive language, use of indirection, proverbs, evidential, honorifics, addresses and euphemisms (Agyekum, 2004b, 2004c).

Arbitration provides the necessary platform or legal technique for resolving disputes whereby conflicting parties agree to submit their dispute to a trusted and detached third party for resolution and the resulting decisions become binding on the litigating parties.

In Akan arbitration, the chief or the family head (and his elders) is the third party that possesses the final authority on the disputants, who must abide by his decisions. There is a mutual trust that the third party will be fair (MacDowell, 1978: 203). Using language to demonstrate the place of arbitration in the Akan traditional set ups, Agyekum points out that in Akan, the phrase *di asem* means 'to engage in a case or to arbitrate'. The word *asennie* is a legally binding resolution of the disagreement between parties. Another meaning of *asennie* he stretches further is 'to eat the case up' by both the legal combatants and the judiciary and this he argues implies going deep into the case and resolving it such that there is nothing left as a dispute (Agyekum, 2006).

On the purpose of arbitration, he explains further that it is to make justice prevail in kinship, tribal or marital relationships, among others. Arbitration is a reconciliation meant to bring about peace and to restore a perfect social equilibrium. In traditional arbitration, the settlement takes the form of a traditional legal ruling based on

evidence confirmed by witnesses.

Agyekum identifies the basic concepts in arbitration to include a case, a complaint, a defence, an offence, a charge, contestants, adjudicators, witnesses, interveners, justice, prayer, rituals and process of settlement. He maintains that arbitration is a traditional legal communicative event manifested by speech behaviour and any ethnographic analysis of arbitration is thus an analysis of a linguistic and communicative event of a people. Arbitration, he argues, is therefore a meta communication, that is, speech and talk about speech events, and there is a meta-awareness of its process and deliberation by the people (Agyekum, 2006).

He identifies further some aphorisms on the Akan arbitration, which are vital in arbitration, and this includes *asembone nti na ahemfie si ho*, meaning 'it is because of injustices that we have the palace'. This means that one of the chief's traditional roles is to arbitrate. He also mentions *maye wo bone a, saman me*, 'if I have offended you, summon me to the elders', and *asem biara nni ho a etuo ato mu da, ne nyin aa yede ano yi ara na eka* , 'there is no case which has been settled with a gun fire, everything is done by word of mouth.'

Summarising the place of language in traditional arbitration, he notes that arbitration is an aspect of the Akan oral traditions, language and culture. Speeches and forms of talk in arbitration he maintains conform to the Akan norms and values of communication, laws, regulations, customs and institutions, and cultural knowledge of the people that is often predictable.

Akan arbitration involves the power, wisdom and might of both the living and the dead. It employs persuasive strategies to avoid further conflict and provide harmony

among disputants (Agyekum, 2003: 372; Ide, 1989: 225).

It is important to note that even though Agyekum (2006) has succinctly discussed in detail the role of arbitration in Akan traditional societies which is also part of the present study, his work did not examine the extent to which the Akan traditional political system promotes and protects human rights in its arbitration, a significant lacuna which this study seeks to fill.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter presents the appropriate research approaches used in the collection, collation and analysis of data for the study. The study appropriated both qualitative and quantitative research methods of inquiry (mixed method), which are all within the social science tradition.

These two approaches allow the researcher to employ both primary and secondary sources of data. The research methodology focused on the two approaches because whereas the qualitative paradigm as a methodological tool seeks a deeper understanding of an established social phenomenon- to examine whether traditional systems contain adequate mechanisms of enhancing human rights in its arbitration processes in particular, quantitative paradigm allows the researcher to float surveys in a mass study since traditional adjudication mechanism involved all manner of persons irrespective of vocation, status, and gender among others coming to resolve their differences, as a result, any significant data necessary for investigating this research problem that would be truly representative must be appropriated. Data from mass survey in this study unearthed the views of the respondents on whether the rights of persons who appeared before the traditional adjudication committee were respected.

The selection of the qualitative research methodology has been reinforced by Twumasi (1986) who explained that:

> Many methods are used in social research to collect data. It is, however, important to note that the selection of a particular method to collect data must be decided upon in the light of one's problem. In making this decision, the

> researcher must keep in mind the type of people he is dealing with, the nature of the social situation, the mood of the social environment and the psychology of the people (Twumasi, 1986)

The choice of this method was informed by the aims of the research and "the nature of the enquiry and type of information required" (Henn et al, 2006).

Moreover, qualitative research strategy was also appropriate because in the view of Berg it "tends to assess meanings, concepts, definitions, characteristics and directions of things whereas quantitative research refers to the counts and measures of things" (Berg, 2007).

The use of qualitative research as a research strategy has also been greatly acknowledged for exploring the dimensions of the social world (Mason, 2002). Qualitative research strategy was more rewarding in the context of this study because it is deeply rooted in the symbolic interactionism tradition where the subjective points of view of participants become the instrument for analysing the world (Bryman, 2008).

In the view of Flick, "the concentration of the subject's points of view and on the meaning they attribute to the experiences and events as well as towards the meaning of objects, activities, and viewpoints, forms a large part of qualitative research" (Flick, 1998).

On quantitative research methods, Nsubuga (2008), contends that quantitative methods (with questionnaire as the main instrument of data collection) tend to be relatively low in cost and time and also to enable a large quantity of relevant data to be obtained and analysed within a limited time.

However, Davies and Ellison (1997), also argue that despite the advantages of quantitative methods, the quantitative method of using the questionnaire may limit the range of possible responses and as such, not delve deep into issues (Nsubuga, 2008).

It is for this reason that Bryman (2001), stresses that mix methods, such as triangulation should be used since they provide greater insights into the phenomenon being studied. In the light of these contentions, this study appropriated the mixed method research approach considering the advantages it gives to the subject under study.

3.2 Research Design

The descriptive case study was used. The descriptive case study research design involves examining a social unit as a whole into detail in order to understand an important part of the cycle of the unit (Anthony Krueger et al 2006).

Descriptive case study blends description of events with the analysis of events (Cohen L, Manion L & Morrison K, 2005, 2006). Case study is concerned with rich and vivid description of events relevant to the case under study and provides chronology of events.

3.3 Data Collection Instrument

In order to address the issue of data gathering under both qualitative and quantitative methodologies outlined above, the researcher settled on in-depth interviews as the main qualitative instrument (See interview guide attached as appendix), textual analysis and observation, as well as questionnaire in the survey. The primary data were collected using questionnaire (Appendix A) and interview guide (Appendix B) from the sampled respondents in the fieldwork. The questionnaire was made up of

both open-ended and closed-ended questions used in the quantitative approach and the interview guide was made up of close-ended questions which assisted the research team in eliciting the desired responses from the respondents.

The uniqueness of the interview guide as an instrument in research methodology has been pointed out by Arskey who argues that interviews have the potential to focus on "understanding the thinking and behaviours of individuals and groups in specific situations" (Arskey, 1999),

Since an interview is a purposive conversation to elicit responses or information, the researcher settled on intensive interviews or in-depth interviews (Wimmer and Dominick, 2006). The importance of interviewing, as confirmed by Bell, is that, reactions to questions, either in facial expressions, the verbal responses (that is the tone or voice) and general posture adopted by the interviewee "can provide information that a written response could conceal." (Bell, 1999).

Interview was considered by this researcher because it was a useful data source which was properly applied that helped unearth unspoken information and provided rich research material for understanding the phenomenon studied. Bell emphasised this assertion, describing interviewing as a unique technique which assists to "put flesh on the bones of responses" (Bell, 1999).

According to Holstein and Gubrium, interviewing is an active engagement between the interviewer and the interviewee. They described interviewing as "a form of interpretive practice involving respondent and interviewer as they articulate on-going interpretive structures, resources and orientations" (Holstein and Gubrium, 1997).

Despite the advantages in the use of interviewing in eliciting responses, scholars, such as Bryman (2008), argue that interviewing remains a strenuous method because it could prove daunting to extract information especially when the interviewee is unwilling to talk no matter how long one stays with the interviewee, holds true.

However, the researcher expertly handled the interviews by adopting the interactional and conversational strategies as well as allowing the interviewees to express themselves freely while the interviewer avoided unnecessary interruptions that largely contributed to unraveling the social phenomenon (Bryman, 2008).

Two field assistants were given detailed orientation on the study's focus and taken through questions in both the interview guide and the questionnaire to ensure that the subject matter of the study as well as the questions were well understood for quality data to be collected.

To ensure that the questions were asked properly, one respondent each in both the survey and interview were piloted in Amasaman in the Ga South Municipal Assembly in the Greater Accra Region by the field assistants in the presence of the researcher before the final field work began. The presence of the researcher afforded him the opportunity to ensure that right questions were asked and to address some other problems, which were not anticipated during the design of the questionnaire and the interview guide.

3.4 Populations and Sample Size

The target population for the interview was drawn from the divisional and sub-chiefs of the Akyem Abuakwa Traditional Council. Scholars on research methods such as

Silverman (2005) explained that qualitative research designs deal with small numbers of sampling data; and are meant to focus on detail instead of scope. The researcher purposively sampled twelve (12) respondents in the qualitative interviews made up of chiefs and some opinion leaders such as Assembly Members. By this, the content of these in-depth interviews granted to this researcher was contextually analysed and empirical inductions and deductions based on which findings were made.

In the mass survey, fifty (50) questionnaires were administered to respondents who were purposively selected from the Akyem Abuakwa Traditional Council largely from Akyem Kyebi, Asiakwa and Apedwa.

3.5 Sampling Technique

Mason broadly defines sampling as "principles and procedures used to identify, choose and gain access to relevant units, which will be used for data generation by any method" (Mason, 1996).

In the opinion of Bryman, it is a technique, which entails "an attempt to establish a good correspondence between research questions and sampling" (Bryman, 2008).

Purposive sampling was the main sampling technique used in the selection of respondents in both elite interviews and in the mass survey because using simple random sampling in the towns and villages visited had the chance of selecting people who had either not witnessed arbitration of the traditional court or people who had never litigated in this court. Since the study's focus was to examine the extent to which the traditional court abuses or promotes or protects human rights, it was imperative to only include people who had witnessed or participated as litigants during the arbitration of the court.

In the qualitative research method, the research team who also sat in the Akyem Abuakwa Traditional Court during arbitration of some cases approached some members of the arbitration panel and requested for an interview to be granted to them. The panel members, being already aware of the presence of the research team during the community entry procedures of writing formally to the Abuakwa State Secretary, were visited in their respective homes where the interviews were granted to the research team.

For respondents in the survey, the research team requested some litigating parties (both plaintiffs and defendants in a case) to respond to some questions on the traditional court in the towns and villages visited within the Akyem Abuakwa Traditional Division. Some other people who had observed the sittings of the traditional court were also included in the survey.

Using simple random sampling technique in the selection of this category of respondents, for example, had a chance of selecting respondents who would not be in the position to provide expert views on the problem being investigated or who had never witnessed or were not litigants at the traditional court, which would have affected the richness of the study.

In employing the purposive sampling technique, the researcher, in the words of Twumasi (1986), "with good calculation and a relevant research strategy," picked the respondents he wanted to be included in his sample. He then, "selected cases" that were judged to "typify the views of the group." (Twumasi, 1986). This technique was also used because the researcher "wished to gain a quick insight into a social phenomenon" (Twumasi, 1986)

For the textual analysis, the researcher implemented the purposive sampling method, regarded as part of the most appropriate method for this study. Purposive sampling, according to Bryman entails "an attempt to establish a good correspondence between research questions and sampling" (Bryman, 2008), that is, sampling on the basis of selecting texts which are relevant to the research questions, and to strengthen the argument or explanation which the researcher will be developing (Mason, 2002).

The purposive sampling method allowed the researcher the flexibility and independence to select respondents suitable for the research questions. However, it must be noted that it has its shortcomings; for example, the tendency to induce researcher subjectivity and sampling bias cannot be discounted.

Questionnaires were administered to fifty (50) respondents drawn from people residing in Akyem Kyebi, Asiakwa and Apedwa all of which were under the jurisdiction of the Akyem Abuakwa Traditional Council.

This particular study sought to interrogate whether traditional systems contain adequate mechanisms of enhancing human rights and operated within the limits of human rights standards as required by the 1992 Constitution and the international human rights regime in its arbitration processes. It was within this context that the researcher purposively selected his respondents who gave vital information about the contributions of traditional authorities' adjudication role and the extent to which human rights of persons appearing before them were adhered to and respected.

3.6 Reliability and Validity of Instrument

Precision and accuracy are important qualities in research measurements. When social researchers construct and evaluate measurements they are mindful of two technical considerations: reliability and validity.

Reliability refers to the degree to which if research is carried out in the same manner it will provide similar results. The goal of reliability is to minimise the errors and biases in a study.

Validity, on the other hand, is concerned with whether the findings are really about what they appear to be about. It is the extent to which data collection method or methods accurately measure what they were intended to measure.

The study employed in-depth interviews, content analysis of documentary sources and data from surveys on the subject investigated. To ensure uniformity of measurement, the researcher used a checklist of questions in the interviews, open and closed-ended questions in the surveys that were scrutinised and ensured that they actually measured the human rights record of the Akyem Abuakwa adjudicating committee. In order that no assumptions or over-generalizations were made, the researcher and his assistants used tape recorders and note pads with which interviewees' responses were recorded which were later transcribed after the interviews for analysis.

3.7 Administration of Instrument

The response to the interview guide came from respondents as outlined under the population and sample size variables of this study. The researcher and his assistants visited the residences of the respondents largely drawn from the three towns namely Akyem Kyebi, Asiakwa and Apedwa.

The research assistants were the interviewers and the subjects; the sampled respondents mainly drawn from the adjudicating committee members including the Chief of Akyem Kyebi, chiefs of Asiakwa and Apedwa respectively and persons who had either once witnessed the adjudication proceedings or were once parties litigating or had ever litigated at the traditional court. Thus, the data collection instrument was not self-administered by the interviewees, but by the interviewers.

3.8 Problems in Collection of Data

I anticipated that in spite of the good rapport, which the researcher established as part of the entry procedures, some disappointments and frustrations in the collection of data from the respondents would be encountered.

Human rights abuses were very rampant, no one wanted to be associated with the abuses and therefore a study to explore human rights of a traditional authority was certainly going to encounter some problems. However, due to the good community entry procedure by the researcher through writing to the Akyem Abuakwa Traditional Council indicating the importance of the research before the beginning of fieldwork as well as the tactfulness and diplomatic engagements with the respondents to elicit responses from the respondents, the fieldwork was executed easily.

It is important to note that a number of towns and villages compose the Akyem Abuakwa Traditional Council, the study sampled views from only three (3) towns and could not cover a lot of places due to limited financial resources and time constraint. Nonetheless, the data collected were utilised with circumspection that ensured that the study did not suffer significantly as to negate the objectives that it set out to achieve.

3.9 Processing and Analysis of Data

The study adopted content analysis to explicate secondary sources on the subject. The written texts were complemented with analysed qualitative and quantitative data that were collected. The purpose primarily was to deepen the other methods.

For analytical purposes, Rosengren argued that it was very essential in dealing with analysed texts because the idea of "correct" interpretation of a text does not arise but rather that one could make some "reasonable interpretations of a text" (Rosengren, 1981). It is important to note that every investigation should have a general analytic strategy, so as to guide the decision regarding what will be analysed and for what reason.

Data analysis involves understanding the data, representing the data and making an interpretation of larger meaning of the data. As a result, for the field data, the Statistical Package for the Social Science (SPSS) software 16.0 version was used to capture data. The data captured was printed out and cross-checked with data on questionnaires to correct errors that may have occurred during the data entry.

The analysis was based on the frequencies, percentages, charts and other summary statistics. Some of the variables were cross-tabulated to enable the researcher to establish some causal relationships between variables that were measured from which significant deductions were made.

3.10 Confidentiality

Deception occurs when participants' understanding of a purpose for a study is different from the purpose the researcher had in mind. The best guarantee of

participants' protection is if nothing in the study is traced to specific individuals or groups. For this reason, it was important that those who decided to participate in the research did not suffer any ill effects for it. To ensure this, the researcher conveyed in writing the purpose of the study to the interviewees. The interview guide and questionnaires were specifically included: soliciting participants' consent to participate, the procedures of data gathering and the voluntary nature of research participation were made known to interviewees.

During the interviewing session, respondents were assured of protection of their confidentiality if they so wished. The researcher was mindful of the fact that in research of this nature some respondents may not like their names to be disclosed. Care was therefore taken not to associate statements and quotations with specific names, particularly where the interviewee did not want himself or herself to be associated with them.

However, the study did not seek to suppress, falsify or invent evidence. Rather it ensured that the ethics of research were strictly adhered to, especially when the subject that was investigated concerned human rights promotion and protection.

CHAPTER FOUR

RESULTS AND ANALYSIS OF DATA

4.1 Introduction

This chapter discusses the results of the study and presents the findings along the following dimensions: demographics of respondents, main functions of chiefs, arbitration processes, and the extent to which the rights of the litigating parties' were respected, among others. This section is a critical discussion of traditional authority system with such empirical data on popular perception on chieftaincy and human rights promotion and protection.

The chapter is based on the qualitative and quantitative methods such as administered questionnaires to fifty (50) respondents drawn from the Akyem Abuakwa Traditional Area, and interviews of the arbitration panel members and observation of the research team during the traditional court's sittings.

4.2 Description of the Research Area: East Akim Municipality

The Akyem Abuakwa Traditional Council is administratively and politically located within the East Akim Municipality. The Municipality is located in the central portion of Eastern Region with a total land area of approximately 725km^2. Six districts all in the Eastern Region of Ghana bound the Municipality. They include Atiwa District to the North, West Akim District to the North- west, Fanteakwa District to the East, New Juaben to the South, Yilo Krobo District to the South-east and Suhum-Kraboa-Coaltar District to the West.

The municipal capital, Kibi or Kyebi is situated about 55km from Koforidua, the capital of the Eastern Region, 105km from Accra, the capital of Ghana, and 179km

from Kumasi, the second largest city of Ghana (Profile, East Akim Municipal Assembly, 2011). The municipality is heterogeneous as people from various socio-cultural and linguistic backgrounds from several regions in the country including the Krobos, Asantes, Akuapems, Ewes and others from the northern regions as well as nationals of neighbouring West African states, co-habit with the Akyems who constitute the majority of the ethnic tribes and are traditionally landowners. Although Kukurantumi is the traditional headquarters of the citizens of the study site, the Okyehene's (paramount chief's) palace is located at Kibi, the municipal capital.

The population in the district is 68% rural and 32% urban (Profile, East Akim Municipal Assembly generated from the East Akim Municipality). Few towns notably Kibi, New Tafo, Old Tafo, Asiakwa, Osiem, Kukurantumi and Apedwa are either urban or peri-urban. Until the recent diversion of the main Accra-Kumasi trunk road from Apedwa to Bunso-Junction, most of these towns except New Tafo, Old Tafo and Osiem were located along the major Accra - Kumasi trunk road. The municipality has a fairly large landmark.

However, the built up areas within the municipality is relatively small, as compared to the developed areas in other parts of the country. The major built up areas within the municipality are New Tafo, Kibi, Kukurantumi, Asiakwa, Asafo, Anyinam and Apedwa.

About 80% of the total active labour force is engaged in economic activities while the remaining 20% are unemployed (Profile, ibid). Majority of the working population are in the agricultural sector, which is practised at subsistence level. Hence, the income level of the work force is low. Agriculture employs about 58% of the total

labour force in the municipality. The commercial sector is also improving in the municipality engaging about 21.5% of the population with the service sector trailing behind with about 11% (Profile, ibid). One of the least sectors in the municipality is the industrial sector employing about 9.5% of the active working population. Mainly small-scale industrialists comprising carpenters, weavers and mechanics dominate the sector.

Environmental conditions in the East Akim Municipality are continuously being influenced by human activities, mining and lumbering activities constitute the two major human activities in the municipality that are currently having deleterious impact on its environment. Mining activity, for instance, contributes significantly to the depletion of the municipality's forest reserves and water bodies.

The Okyehene's launching of a special initiative programme: "save the forest and its wetlands" seems failing in view of the boldness of the illegal miners who continue to flout the mining laws with impunity

The research team in observing economic activities in the municipal capital interacted with these illegal miners popularly called 'galamsey' operators who when the team met wore wellington boots with shovels that had short wooden handles and masonry head pants as if they were masons, but as a matter of fact, these were the instruments used for illegal mining. The consequences of these twin human actions have resulted in the drying of the municipality's wetlands and depletion of arable land and forest at the alarming rate.

4.3 Demographics of Respondents

This section profiles the background of the respondents in the survey in terms of their gender, age distribution, educational level, and their economic activities through their occupations. Where possible, there has been a comparison of these demographic characteristics with the respondents' perception of the adjudication panel's respect for the rights of litigating parties before the panel. Where such comparisons are made, the source of data has been the field data collected by the researcher on the subject investigated.

4.3.1 Age and Gender Composition of Respondents

As shown in table 4.1, out of the total of 50 respondents sampled, 27 and 23 of the sampled representing 56 % and 44 % were males and females respectively.

Table: 4.1

		Age				
		18-25	26-39	40-64	65 years 0r above	Total
Gender	Male	2	17	8	0	27
	Female	8	9	6	0	23
Total		10	26	14	0	50

Source: Field Work- December, 2011.

Of the respondents sampled, 10 representing 20 % were between the ages of 18 and 25 years. The majority of the respondents (26) were in the age brackets of 26-39 constituting 52 % of the total respondents sampled. The next highest of the respondents sampled were 14 (28%) who fell in the 40-64 age brackets.

Of the respondents sampled, 27 were males and 23 were females, representing 54 % and 46 % respectively. The highest number of women sampled 9 (39 %) were in the

26-39 age brackets. The remaining 8 (35%) and 6 (26%), women sampled were in the age brackets of 18-25 and 40-64 respectively.

On the other hand, out of a total of 50 respondents sampled 27 were males, which constitute the majority of the gender group sampled. Unlike the females sampled, of the 27 males sampled majority of them 17 (63%) were in the 26-39 age brackets while 8 (30%), 2 (7%) were in the age brackets of 40-64 and 18-25 respectively.

4.3.2 Educational Levels of Respondents

The educational levels of the respondents were measured at 5 levels namely, no schooling, no formal/informal schooling, primary education (partial or completed), JHS/Middle schooling, and post-secondary schooling (Polytechnic/TTC/University etc.). The findings as in **Table 4.2** indicate no schooling (4%), no formal schooling (12%), primary education (22%), JHS/MSLC (50%), and post-secondary education (12%).

Table: 4.2

Education Level	Frequency	Percent
No Schooling	2	4
No formal/Informal Schooling	6	12
Primary education (partial or completed)	11	22
Junior High School/MSLC education (partial or completed)	25	50
Post-Secondary: Polytechnic, TTC, University etc.	6	12
Total	**50**	**100**

Source: Field Work December, 2011.

4.3.3 Occupation of Respondents

On the issue of the respondents' occupation, the study was not interested in measuring the types of economic activities undertaken by the respondents, but rather in identifying whether respondents were engaged in any economic activities. The findings on the occupation of respondents as illustrated in **Fig. 4.1** include businessman/woman 5 (10%), civil servant 1 (2%), clerical staff 1 (2%), mobile phone credits vendor 1 (2%), farming 12 (24%), cooked food vendor 3(6%), "galamsey" worker 5 (10%), labourer 1(2%), Retired civil/public servant 3(6%), teaching 2(4%), shop attendant 5(1%), student 2(4%), petty trading 6(12%) and 3(6%) of respondents were unemployed.

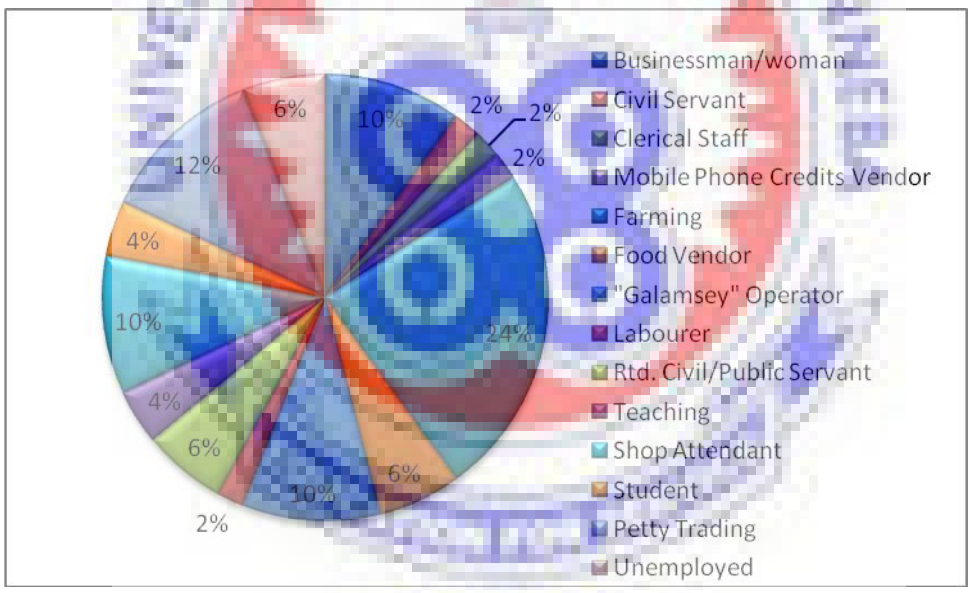


Fig: 4.1

Source: Field Work-December, 2011.

4.4 Location of Respondents

Field work was conducted in three major towns within the Akyem Abuakwa Traditional Council comprising Akyem Kyebi also spelt as "Akim Kibi" where the

seat or palace of Okyehene is located. The traditional court of the Akyem Abuakwa Traditional Council is located at this palace, data was collected at Asiakwa, which is about 10 kilometers from Akyem Kyebi and Apedwa, which is also about 12 kilometers from Kyebi.

Majority of the respondents were drawn from Akyem Kyebi because being the location of the Judicial Committee of the Traditional Council, most people in this town were more likely to observe the proceedings or take their cases to the Judicial Committee than citizens and settlers from other towns. The distribution of respondents based on their location is illustrated in **Fig 4.2**.

Fig : 4.2

Source: Field Work December, 2011.

4.5 Functions of Akyem Abuakwa Traditional Council

The field data as illustrated in **table 4.3** affirm the view expressed by Toulimin and Longbottom (2001) that chiefs have remained of much greater importance in Ghana than elsewhere in West Africa.

This view expressed by Toulimin and Longbottom accords also with the work of Crook et al (2005), who argued that chieftaincy position in Ghana is becoming more competitive than ever before and is attracting the crème of society such as academics, civil servants, businessmen and women and teachers (Brempong, 2001; Otumfuo Osei Tutu II, 2004).

In the Akyem Abuakwa Traditional Division, chiefs are highly visible and their positions and authority arranged hierarchically, from the Okyehene, King of Okyeman at the apex of the traditional division through the divisional chief (ohene) and local chief (odikro) to the clan or family head (abusua panin).

Table: 4.3

Main Functions of Akyem Abuakwa TC	**%**
Dispute Settlement	78
Land Management	68
Ensuring Peace in the traditional area	71
Organizing Communal Labour	55
Celebrating traditional festivals	70
Appeasing the gods and ancestors on behalf of the people (religious)	73

Source: Field Work-December, 2011.

These views expressed above were the results based on 50 respondents in the quantitative study. The discussion largely focused on dispute settlement and the role of chiefs in ensuring peace in the traditional area.

It is important, however, to note that some of these functions such as those related to local development have also become the statutory functions of local government units. Ghana's administrative and political arrangement provide for the District Assemblies (DAs) which are the political and administrative authority in the district that exercises deliberative, legislative and executive functions and supervised all the other government administrative authorities in the district.

In Ghana, the DAs are set up by Legislative Instruments, which provide in specific terms the list of more than 80 duties expected to be undertaken by the DAs. The current local government structure in Chapter 20 of the 1992 Constitution of the Republic of Ghana provides for a non-partisan election of 70% of the members of the DAs, but the District Chief Executives who are the representatives of the President of Ghana are appointed by the President, and the other 30% membership of the DAs are appointed by the President in consultation with traditional authorities and other identifiable bodies in the district.

One of the major challenges of the DAs is the lack of sufficient resources to initiate and execute development programmes. Most DAs continue to rely on the national government for revenue and have not developed any significant local sources of revenue (USAID, 2003). This situation retards local development, as a result, the developments initiated by chiefs such as the Okyehene has increased the respect and recognition of chiefs as important development partners.

Although chiefs in Ghana are not allowed to participate in active politics or elections to parliament (Constitution of Ghana, 1992, article 276), they are represented at the local and national institutions such as the Council of State, Regional Co-coordinating Council and some local government agencies.

A number of issues including the making of bye-laws, sanitation and health, the preparation and approval of building permits, the enforcement of regulations and the application of sanctions for non-compliance to the dictates of these regulations are all the functions of the DAs (Kasanga and Kotey, 2001).

4.6 Role of Traditional Arbitration Systems in Ghana

The overwhelming nature of cases before the modern courts and the need to address these cases and internecine conflicts with alacrity has led to calls for the use of traditional adjudication or arbitration methods of conflict resolution in the quest to ensuring peace in the communities. Traditional courts are popular and often resorted to as they are easily accessible, cheap, fast and comprehensive (Lutz and Linder, 2004).

Crook, et al (2005), seem to be the only researchers who collected empirical qualitative and quantitative data on traditional adjudication systems in Ghana. In their study, dispute settlement ranks first as the main task of the chief (78.1%), which was closely connected to the third ranking ensuring peace in the community (53%).

In response to their hypothetical question whether respondents would go to the chief if they had a land problem, 76.4% of the surveyed people answered in the affirmative. In their survey conducted in some villages and towns around Kumasi, they asked their 677 respondents who they would trust most to settle any problem they might have

concerning their land, respondents most frequently mentioned as 'trusted a lot' were firstly, village chief (62.1%), secondly family heads (61.4%) and thirdly court judges (35.4%).

4.7 Arbitration Procedures at the Akyem Abuakwa Traditional Council

There are various types of traditional courts in Akan, namely the King's, Queen mother's, Village, and family courts. These courts settle cases based on their respective powers and jurisdictions. The criminal cases are settled at the chiefs' courts made up of dignified people and family heads of the village or town with the chief as the chief arbitrator.

Akan traditional courts are hierarchical and pyramidal in nature. The apex is the king's Supreme Court located at the traditional headquarters as Kyebi, Kumasi, Oguaa, Jukwa, Sunyani, Berekum and Akropong (Agyekum, 1996, 2004b). At the Akan traditional state level is the highest court made up of subordinate or wing chiefs and the paramount chief or the king.

In Akyem, the judges of the Akyem Abuakwa Traditional Council court are made up of the Okyehene, the paramount chief, the Abontindomhene, who traditionally is the chief of Kyebi/Kibi, Kyidomhene, Apesomka, Ankobea, and Gyaasehene, together with Adantahene (ewe chief), Zongohene (zongo chief), Miratu and Okuni constitute the permanent membership of this court.

The king's court can handle all manner of cases. However, land and property disputes dominate as the field data indicate. The chieftaincy cases may involve rebellion of certain subjects against the chief or king, disputes on the installation of a new chief or the dethronement of a current chief.

Disputes between two families are adjudicated at the village courts such as those at Asiakwa and Apedwa constituted by the chief and his council of elders. The major cases settled here are land disputes, invectives and violations of the chief's *ntam*, 'reminiscential oath'.

There are similar courts at the shrines of the various deities that try religious cases, as *duabo*, 'imprecation' and *nsedie*, 'self-imprecatory oath' and the failure to pay one's *aboadee*, 'vow', to the deity. Any spiritual offence is lodged at these courts that have a religious panel made up of the elders and custodians of the shrine and *bosom kyeame*, 'the deity's spokesman'. It is important to note that some of these cases settled by these village chiefs are those considered minor.

Similar spiritual cases such as *duabo* 'imprecation' and *nsedie*, 'self-imprecatory oath' and the failure to pay one's *aboadee*, 'vow', to the deity of the land can also be heard before the Okyehene's arbitration team, but the final judgement and forgiveness of sins rests on the divine laws of the deity concerned.

Unlike the contemporary courts, Akyem Abuakwa arbitration has no legal books, gavel, formally trained judges, judge benches, lawyers, witness stand and court registrar's functions are performed by the Akyem Abuakwa State Secretary. The arbitration panel members do not have a distinctive dress; no judges' robes, no judges' wigs and participants are not obliged to wear specific clothing. Arbitration is therefore outside the various ceremonies that call for feasting, dancing and merry-making.

One important and indispensable component of Akyem Abuakwa traditional arbitration is the institution of Okyeame, 'a spokesman'. At the family level, there is

the abusua kyeame, the village chief has an Odikro kyeame such as those who served as intermediary between the research team and the chiefs of Asiakwa and Apedwa, the manhene has manhene or Okyehene's kyeame.

The kyeame is so indispensable that even at a small informal arbitration an ad hoc kyeame is appointed. Such a person should be very eloquent and communicatively competent in the Akan language and well vexed in Akyem culture.

This researcher and his assistants observed the arbitration of the Akyem Abuakwa Traditional Council. The procedures and processes of arbitration of this traditional court is therefore based on the observation of the research team and in-depth interviews granted to the researcher by Mr. Ampofo Duodu, a former employee of the University of Ghana who was the substantive Secretary to the Akyem Abuakwa State at the time of fieldwork and also some permanent and non permanent members of the Arbitration Panel including Torgbi Gborshie, an ewe by ethnicity and represented ewes whose stool title is "Adantahene" of the Okyehene and Alhaji Abubakar Imoro, the Zongo Chief representing people of northern extraction.

The procedure of arbitration starts with a writ of summons containing his/her claims and the reliefs being sought, which is duly filed at the traditional court by the applicant. Some costs are involved in the processing of the writ and the consequent communication to the defendant. A date is set for hearing where the litigating parties were expected to avail themselves before the arbitration panel.

At the time of field work, the Okyehene's palace had a pool of 22 arbitration panel members chosen on the basis of their moral standing in their communities and experience some of whom were permanent and others non-permanent members.

Not all non-permanent members can be called upon to participate in arbitration in a sitting. The right to appoint a non-permanent member to sit on a particular case solely resides in the Okyehene. However, in his absence one of the divisional chiefs could perform his functions of presiding over the arbitration and the appointment of non-permanent members of the arbitration committee.

The permanent members of the arbitration panel include: Gyaasehene, Adantahene (ewe chief), Zongohene (zongo chief), Miratu and Okuni. When the Okyehene is present he presides over the arbitration, but in his absence only the following divisional chiefs can preside: Abontindomhene, who traditionally is the chief of Kyebi/Kibi, Kyidomhene, Apesomkahene, Ankobeahene and Gyaasehene. All the cases that the research team observed were presided over by the Gyaasehene of the Akyem Abuakwa Traditional Council due to the absence of Okyehene who had traveled outside Okyeman.

On the day of arbitration, the chiefs are led by the Chief Linguist who is the carrier of the staff of Okyehene which symbolises the power and authority of Okyeman without which no case can be heard. Upon entry into the courtroom all persons in the room were expected to be on their feet as a sign of respect for the overlord and his chiefs until the panel sit down before the litigants and observers sit down.

Prayer is offered before the cases were mentioned. It is important to note that the prayers necessarily do not have to be traditional such as pouring of libation. In fact, in all the cases observed by the research team Christian prayers were offered by one of the three non-permanent female members of the arbitration panel present.

The parties are called and through the Okyeame (spokesman), the parties are then permitted to pay respect to the arbitration panel through greetings and the panel through the presiding chief also extends their warmest felicitations to the litigating parties.

Fees known as 'summons' fees' are paid by the parties before the commencement of proceedings and at the end of adjudication the guilty party forfeits his/her summons' fees. The payment of this summons fees is an indication that the defendant disagrees with the plaintiff and accepts to litigate.

The plaintiff is asked to narrate his/her version of the case after which the defendant is given the right to cross-examine him/her and when he/she is exhausted he/she prays for the Counselors to also help in the cross-examination.

The witnesses are called to testify before the Counselors who are also cross-examined. The defendant is also given the opportunity to state his/her case and also cross-examined by the plaintiff and the wise Counselors as well as his/her witnesses are also given the opportunity to testify and cross-examined by the plaintiff and the Counselors.

In one of the fresh cases brought before the court observed by the research team where the defendant who though was absent and has sent his village chief (an emissary) to ask for adjournment, the gist of the case as narrated by the plaintiff before the wise Counselors was that the defendant accused him of exhuming corpses from the cemetery for spiritual purposes.

The mere mention of corpses being exhumed at the palace was interpreted by the arbitration panel as 'defiling the palace', which had to be pacified with a ram by the plaintiff even before the case was adjourned.

Pleadings of the plaintiff to the wise Counselors to allow him to provide the ram in the next sitting that he had limited finances to buy a ram was rejected because he was aware of the implications of coming to court.

The pacification of the gods and ancestors also raises issues of the African concept of rights, which are largely based on 'collective or group rights'. The wise Counsellors of the traditional court and the people believed in the capacity of the gods and ancestors visiting epidemic, mayhem and famine on the entire community as a result of the sins committed by the individuals concerned (in this case the plaintiff or the defendant) who in their view had defiled the palace, in order to ensure that the community was safe from deadly disease.

They had a responsibility to save the community through sacrifices that would avert any calamity. Thus, a bigger fine therefore awaited the defendant because since the subject matter of the case was the words which the defendant purportedly said, there was no way such words would escape the mouths of the parties when the defendant finally appears before the wise Counselors of the traditional court for arbitration.

Consequently, the plaintiff provided the ram and the pacifications, through the pouring of libation and slaughtering of the ram, were done in front of the palace of Okyehene in the presence of the research team.

4.8 Disputes and Peace Settlement

Although, traditional courts' judicial functions are not recognised or accorded by the state, and are regarded as mere dispute settlement institutions, these traditional courts do frequently apply customary law which is one of the sources of law in Ghana (Ubink, 2007).

The quantitative data proved that most people used the opportunity provided by the traditional court as avenue to settle their differences and petty squabbles and had confidence in the traditional modes of dispute settlement than the modern court system.

Due to the purposive sampling technique used, the survey included only people who had either witnessed or observed proceedings of the traditional court or people who had ever litigated or were currently litigating in the traditional court. Of the number surveyed, the last time that they witnessed proceedings at the traditional court was not more than one year.

Indeed, whereas 58% of the respondents had witnessed proceedings at the court in less than one month of the survey period, 30% had witnessed traditional court proceedings between one and three months. Only 12% had witnessed proceedings between the past three (3) months and one (1) year as illustrated in the **Table 4.4**.

Table: 4.4

Period	Frequency	Percent
Less than one month	29	58.0
Between one and three months	15	30.0
Between three and six months	3	6.0
Between six and one year	3	6.0
Total	**50**	**100.0**

Source: Field Work-December, 2011.

As indicated by Crook, et al. (2005), dispute settlement ranks first as the primary responsibility of the Akyem Abuakwa Traditional Council. As shown in **table 4.3** of this study, 78% of the respondents mentioned dispute settlement as the main task of the traditional council which is also closely connected to the third ranking of ensuring peace which 71% of respondents ranked as the third most important task undertaken by the traditional authority.

In the in-depth interviews although respondents were aware of the primary responsibility of the state through its decentralised security system as the District Security Council (DISEC) in the maintenance of law and order and the presence of the modern court in the traditional area, most respondents believed that security agencies played important roles in this arena, it can only intercede in physical security of the communities such as armed attacks, shortage of water and health issues, but such security lapses in terms of shortage of water, famine and deadly diseases can be caused by the gods and ancestors who were believed to be invisibly monitoring the affairs of the communities.

Once state security focuses on only what can physically be seen, there was the need for communities to be protected through spiritual intervention, which can only be performed by the traditional authorities, who can also address physical problems at the same time. As to whether which of the available dispute settlement avenues respondents will resort to first in the event that they had a problem that ought to be resolved, respondents mentioned either the traditional court system or a family/prominent person in the community as appropriate avenues to resolve their cases depending on the magnitude of the case.

Most respondents felt that if the issue to be resolved was an issue that could easily be resolved, they preferred solving it at the family level or getting the matter resolved by some respected personalities in the community, but where the case was one involving a curse or invocation of an oracle, for example, it ought certainly to be resolved at the traditional court.

On the whole, respondents ranked the traditional court as the first point of contact. Contrary to the work of Crook et al (2005), whose data indicated that 153 respondents out of 677 who said that they had personally experienced a land dispute, and only 26.1% had turned in the first instance to the chief while 73.9% had initially taken other arbitration options such as the court or family or respected persons, or had the issue sorted out through negotiation with the other party (Crook et al, 2005:22).

However, the position of respondents in the present study is therefore an affirmation of Boafo-Arthur's study which argued that "there are many instances, at the rural level, where societal conflicts are referred, first and foremost to the traditional ruler for arbitration.

In most cases, it is where the parties are not satisfied by the judgement of the traditional arbitration system that the case is taken to court" (Boafo-Arthur, 2001). Only a handful of respondents (24%) affirmed that they would prefer the matter to be resolved by the modern court.

Reason for their preference of modern court is premised on their experiences of the traditional court where the wise Counselors had not shown utmost neutrality expected of them and would prefer their cases to be resolved by the modern court.

4.9 Nature of Dispute either adjudicated or being adjudicated at the Traditional Council.

From the discussions above, it is abundantly clear that traditional authorities constitute an important source of dispute settlement within their respective areas of jurisdiction and they also enjoy the trust and confidence of their people

Investigation was conducted on the nature of cases that were arbitrated upon by the traditional court. Survey data indicate a wide range of disputes including land, adultery, boundary, chieftaincy, debt, inheritance, divorce, invocation of oracle and property with land and adultery being the foremost cases whose arbitration was witnessed by respondents at the traditional court. 24% of respondents witnessed cases involving land and adultery. 10% each witnessed cases involving boundary, chieftaincy, invocation of oracle and property, while the remaining 12% witnessed cases involving debt (4%), divorce (4%) and inheritance (4%) as shown in **Table 4.5.**

Table: 4.5

Nature of Case	Frequency	Percent
Adultery	12	24
Boundary dispute	5	10
Chieftaincy	5	10
Debt	2	4
Divorce	2	4
Inheritance	2	4
Land	12	24
Curse	5	10
Property	5	10
Total	**50**	**100**

Source: Field Work-December, 2011.

All the respondents had asserted that the proceedings they had witnessed were conducted in a manner that was understood by the litigating parties as well as other members of the public who had always thronged to the palace to observe proceedings. 44 (88%) of the respondents affirmed that the litigants who appeared before the adjudication panel had their rights respected while 6 (12%) felt that the rights of the litigating parties were not respected.

Table:4.6: In your view, do you think litigants who appeared before this traditional court have their rights respected?

Column1	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	44	88	88	88
No	6	12	12	12
Total	50	100	100	100

Source: Field Work-December, 2011.

Whether the arbitrators behaved in line with established rules and regulations founded on the principles of respect for fundamental liberties and dignity of all persons as required by the constitution was another key issue measured. Respondents were given the opportunity to assess the performance of the arbitration panel as far as respect for the dignity of litigants was concerned. The attitude of panel members was measured along five areas, namely, not at all satisfied, not satisfied, fairly satisfied, very satisfied and don't know.

The result as presented is based on only the areas ranked which indicate that majority of the respondents felt that utmost respect and dignity was accorded to the litigating parties. 39 (78%) ranked the attitude of the panel members as very satisfactory, 2 (4%) respondents affirmed that the behavior of the panel members towards the parties was not satisfactory, and 9 (18%) said the behaviour of the panel members was fairly satisfactory as shown in **fig. 4.3**.

The following word of Togbui Gborsie, the Adantahene of Akyem Abuakwa Traditional Council shows how the arbitrators perceive respect for human rights:

> We represent the Okyehene; we represent the interest of not only the living in Okyeman, but also the forebears of Okyeman who have handed over this court and its procedures to us. In all our dealings with the people during arbitration, we are mindful of the fact that our people deserve to be respected irrespective of their status whether rich or poor, man or woman, indigene or settler. In fact it was part of building respect for all manner of persons including us the settlers that during the rulership of Nana Ofori Atta I he made my grandfather the chief of the ewe community in Okyeman. We give due respect to all who appear before us, we listen to both sides and cross- examine them and their witnesses before delivering our verdict (Fieldwork, November-December, 2011).

In your view, how will you assess the respect that was accorded/or being accorded the litigating parties by the adjudication panel?

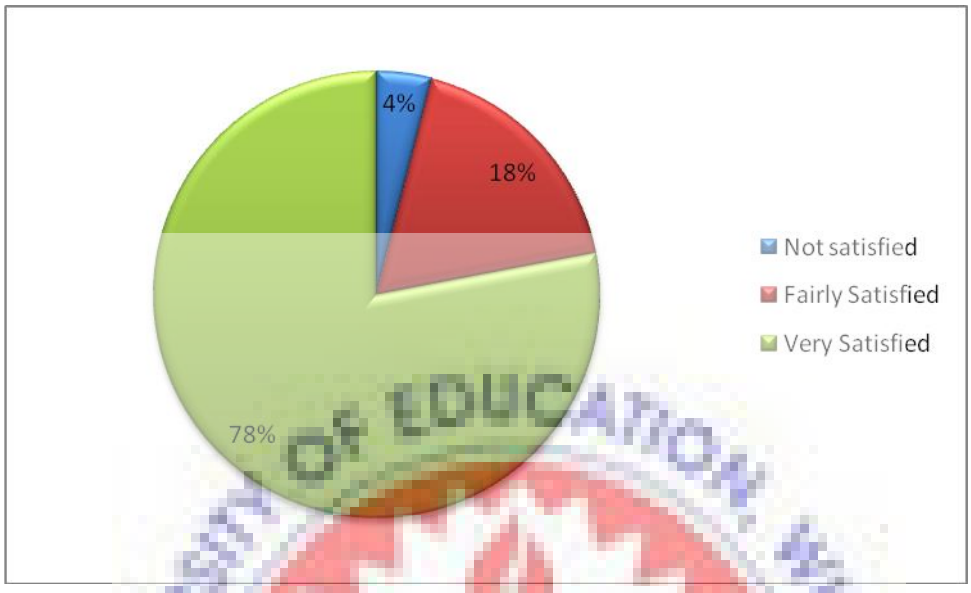


Fig: 4.3
Source: Field Work-December, 2011.

Respondents who ranked either not at all satisfactory or not satisfactory or fairly satisfactory, the reasons they assigned as being responsible for their assessment included use of threats by panel members or very hostile attitude which sometimes is interpreted by audience as going to be the outcome of the verdict, while others also cite insults in some cases by the arbitration panel.

In an interview with one of the litigants he suggested that some of the panel members asked leading questions. His words "My brother, some of the Counselors deliberately ask questions that will suggest to a party either to say 'yes' or 'no' and this I don't think is the right way of resolving disputes. It doesn't show the neutrality expected of wise Counselors they are supposed to be" He succinctly showed his frustration.

Respondents answered questions on degrading treatment of litigants by panel members. Some said that they ever witnessed some degrading treatment, which in their view took the form of insults and mockery particularly in cases involving adultery and theft. If litigants were subjected to some form of degrading treatment they answered question of whether avenues exist for either litigating parties or any community member objected to such treatment, and the outcome of such objection.

Whereas a handful of the respondents who said that they were aware of some objections raised, they conceded that either these objections were indirectly communicated through grapevine or nothing came out of the objections raised as illustrated in **figs 4.4 and 4.5**

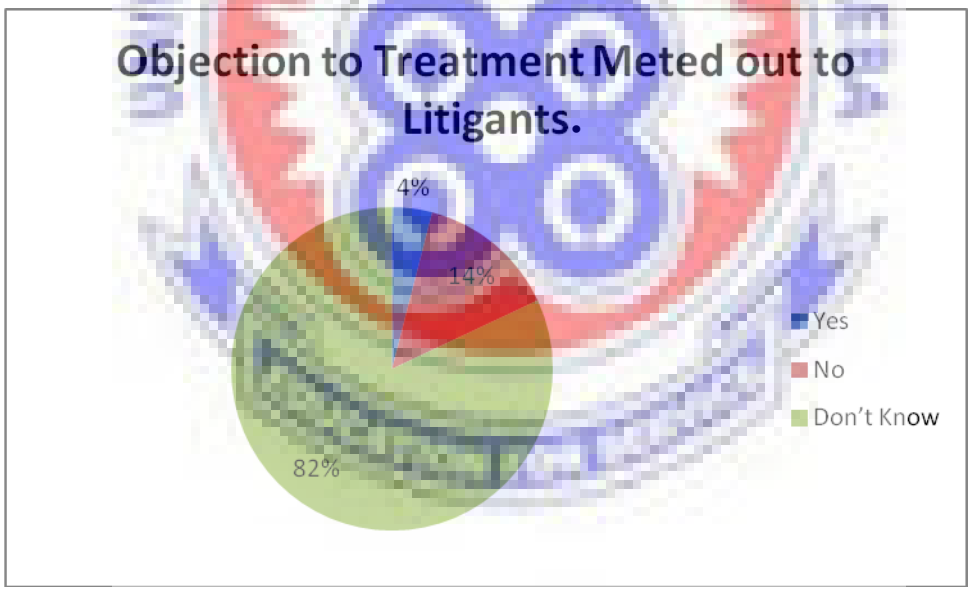


Fig: 4.4
Source: Field Work-December, 2011.

If yes, what was the outcome of the objection to such degrading treatment?

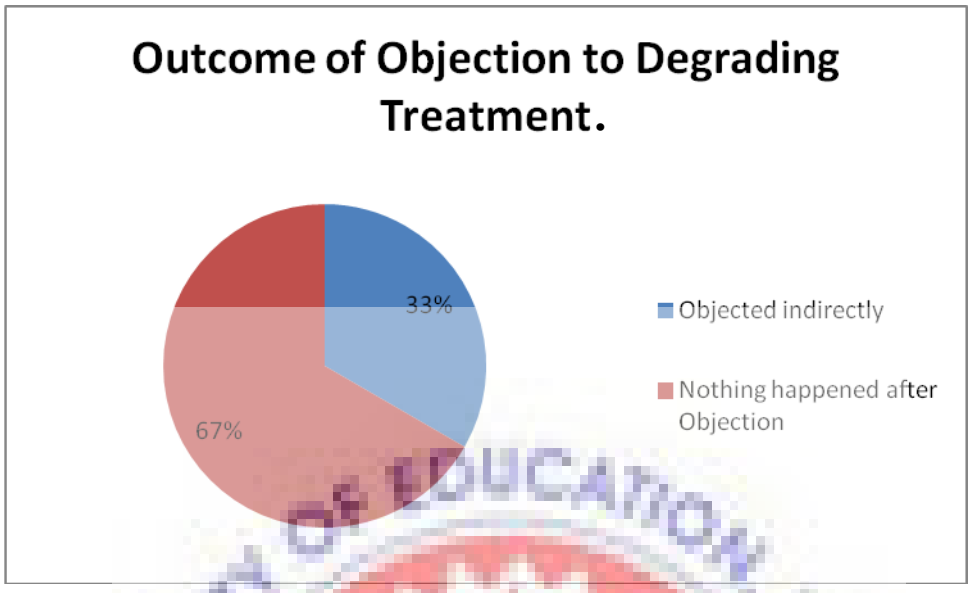


Fig: 4.5
Source: Field Work- December, 2011.

4.10 Discussion of Experiences of Litigants at the Traditional Court

Out of the total of 50 respondents in the survey, 40 (80%) had either their cases resolved at the traditional court or their cases were pending before the traditional court. The remaining 10 (20%) did not personally have their cases resolved at the traditional court. The data as presented were subsequently based on the opinions of respondents who either had their cases resolved at the traditional court or their cases were pending at the court.

Of the 40 (80%) of respondents who either had their cases resolved at the traditional court or pending, 20 (50%) each were plaintiffs and defendants respectively as **figs 4.6 and 4.7** show.

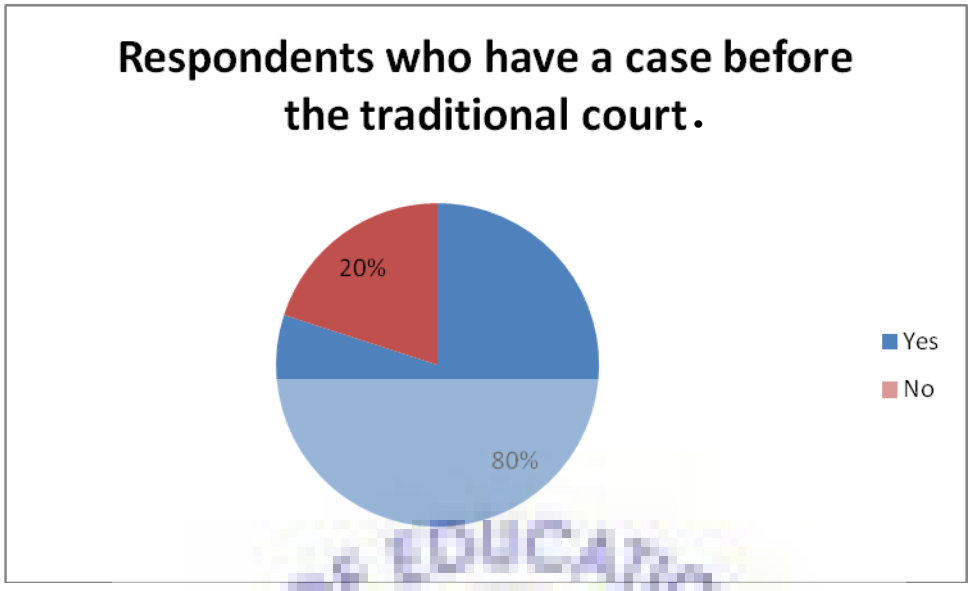


Fig: 4.6
Source: Field Work-December, 2011.

Fig: 4.7
Source: Field Work-December, 2011.

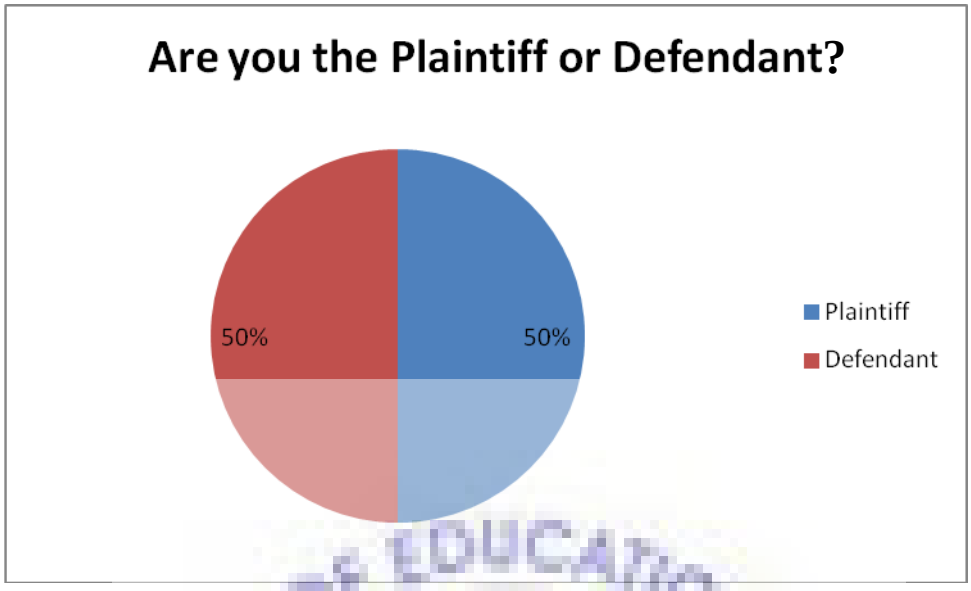


Fig: 4.8
Source: Field Work-December, 2011.

4.11 Nature of Disputes at the Traditional Court: Experiences of Litigants

Majority of respondents 80% had personally litigated or had their cases pending at the traditional courts as either plaintiffs or defendants. The nature of their cases heard at the traditional court is illustrated in **table. 4.7**. The highest number of cases 30% concerned land dispute, which is closely followed by property dispute (15%), and the rest in terms of higher number of csaes before the traditional court include: insult (10%), debt (7.5%), witchcraft accusation (5%), invocation of oracle (5%), sexual harassment (5%), *sikaduro* (spiritual money laundering) (5%), labour dispute (2.5%), prostitution accusation (2.5%) and paternity dispute (2.5%).

Some discussions on the first three is done which will bring out the intricacies of dispute settlements and how respondents perceived the court's capacity to uphold their rights.

Again, land disputes and property disputes have some connections in the sense that property holdings could include land particularly in our study area where the indigenous persons are matrilineal. It will also provide us with basis to examine how rights based on gender distribution played out.

Table:4.7: Would you tell me what your case is/was about?

	Frequency	Percent
Accused of witchcraft	2	5
Adultery	4	10
Debt	3	7.5
Insult	4	10
Land dispute	12	30
Labour dispute	1	2.5
Property dispute	6	15
Invocation of Oracle	2	5
Accused as Prostitute	1	2.5
Sexual Harassment	2	5
Accussation of Spiritual Money Laundering	2	5
Dispute on parenthood of child	1	2.5
Total	**40**	**100**

Source: Field Work-December, 2011.

One of the reasons suggested as being responsible for litigants resorting to traditional systems of arbitration is the speedy trial of cases. The present study established that 70% of the cases were brought before the traditional court at Kyebi in the last three weeks, and 25% of the cases were brought between two (2) and eight (8) months and only 5% of the cases which were land disputes had been pending in the last three (3) years as illustrated in **table.4.8**.

Of all the cases brought before the traditional court in Kyebi, 70% of cases had been amicably resolved. Only 30% of cases brought before the traditional court were pending as **fig.4.9** indicate.

Table:4.8 :For how long has your case been at this court? (Weeks/months/years)

Length of Case	Frequency	Percent
1 week	14	35
2 weeks	10	25
3 weeks	4	10
2 months	4	10
3 months	2	5
6 months	2	5
8 months	2	5
3 years	2	5
Total	**40**	**100**

Source: Field Work-December, 2011.

Fig: 4.9
Source: Field Work-December, 2011.

Majority of the litigants/ respondents in the survey who had appeared before the traditional court between two and five times constituted 65%. The remaining 35% had appeared 5-10 times, 16 times or more. It is important to note that some of these litigants were residents outside Kyebi where the traditional court is located meaning that they had to bear the cost involved in travelling only to litigate at the traditional court.

How many times have you had to attend this court for hearing?

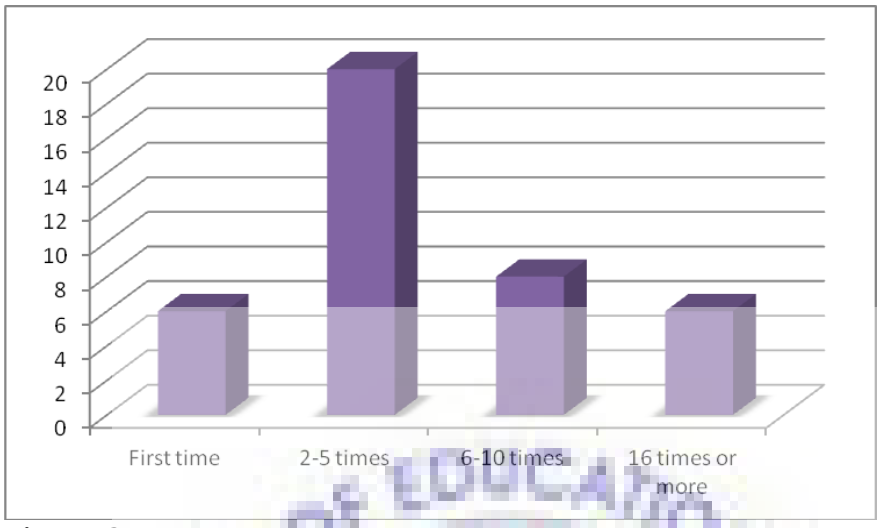


Fig: 4.10
Source: Field Work-December, 2011.

Unlike the modern court system where litigants could engage the services of lawyers, litigants do not have the right to legal representation, which is an affront to the rights guaranteed under the Universal Declaration of Human Rights and the 1992 Constitution of Ghana, which enjoin individuals to engage the services of counsel of their choice. This is due to the fact that the traditional court systems do not use the procedures of the modern courts and also they depended on the customary practices of the people in the area.

Besides, some of the cases brought before the traditional court such as witchcraft accusation, curses and issues bothering on taboos are not founded on modern jurisprudence and therefore can only be heard at the traditional court that uses the customary law of the area as handed to the people from generation to generation.

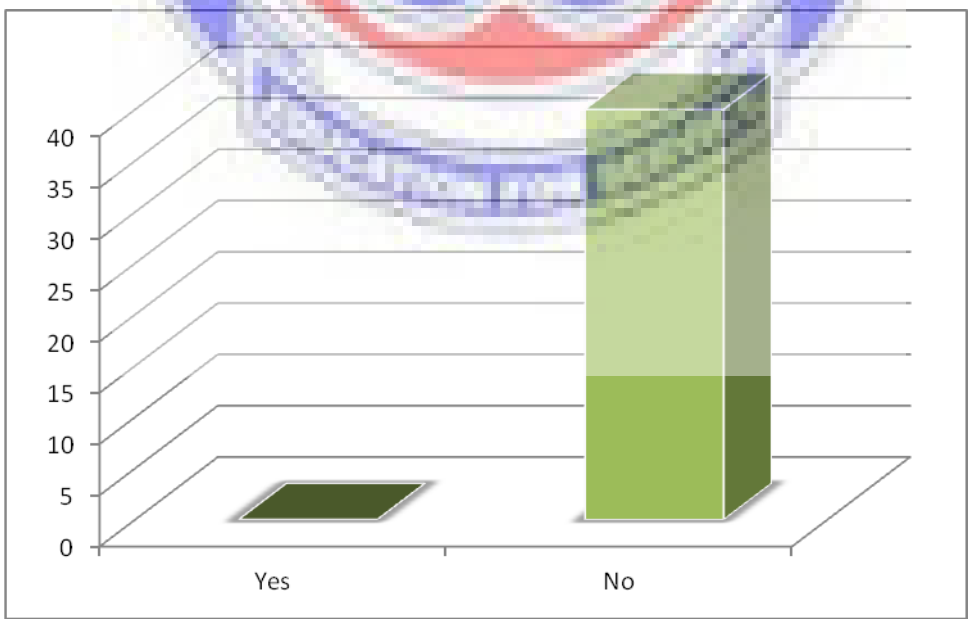
It is also important to stress that the Judicial Committee of the National House of Chiefs deals with some chieftaincy disputes. These chieftaincy disputes fell outside of the Okyehene's court, which was the subject of this study.

Litigants in these chieftaincy disputes could hire the services of lawyers and the procedures were formal and based on customary laws, which are part of the entire Ghanaian legal system.

In an interview with the Akyem Abuakwa State Secretary Mr. Ampofo Duodu indicated that the staff of the Judicial Committee of the House of Chiefs are paid from the state coffers while those of the Okyehene's court are given remuneration out of the fines paid by parties found guilty after arbitration with the Okyehene paying for all other costs such as maintenance of the court.

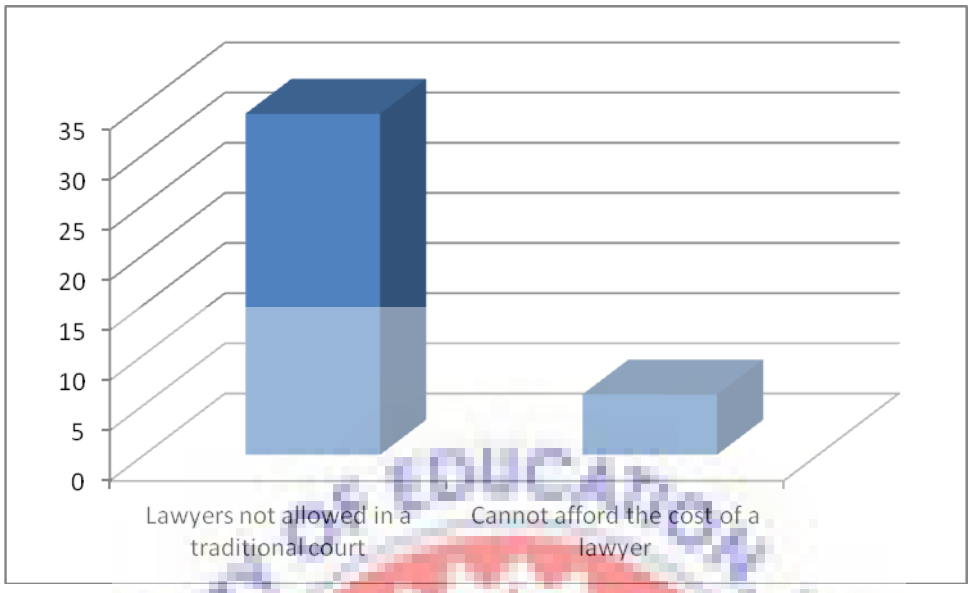
The data as presented in fig **4.11** indicate that none of the litigants had any legal representation. Some of the respondents were not even aware that lawyers were not allowed in the Okyehene's traditional court and said that the reason why they did not hire the services of lawyers was because they cannot afford the services of lawyers as their responses show in **fig 4.12**.

Fig: 4.11: Have you ever engaged the services of a lawyer?



Source: Field Work-December, 2011.

Fig: 4.12: If your answer above is no, why have you not engaged a lawyer?



Source: Field Work-December, 2011.

The study also measured how the proceedings were conducted as to whether respondents heard exactly the information that was being communicated that will allow the respondents to adequately respond to questions either coming from their opponents or from the counsellors. To ensure that litigants heard the questions being posed, the language used was the local dialect that is easily understood and spoken by the parties involved in the arbitration.

In instances where there was language barrier, an interpreter was sought to help in ensuring that the right issues were communicated to the parties. Of all the cases observed by the research team, only one litigant could not adequately expressed himself in the twi language and had to be communicated to in ewe, his native language. 97% of the respondents interviewed said that they understood exactly what went on during the court's proceedings.

Only 3% of respondents said that they did not clearly understand what went on in the courtroom. In an instance where a respondent who said he did not clearly understand what went on was asked whether he asked for clarification from the counsellors, his response was "it was unnecessary because those people had made up their minds about favouring the other person so it was unnecessary." It is important to point out that perhaps this respondent was actually speaking out of anger as he was interviewed immediately after judgement was entered in favour of the other party.

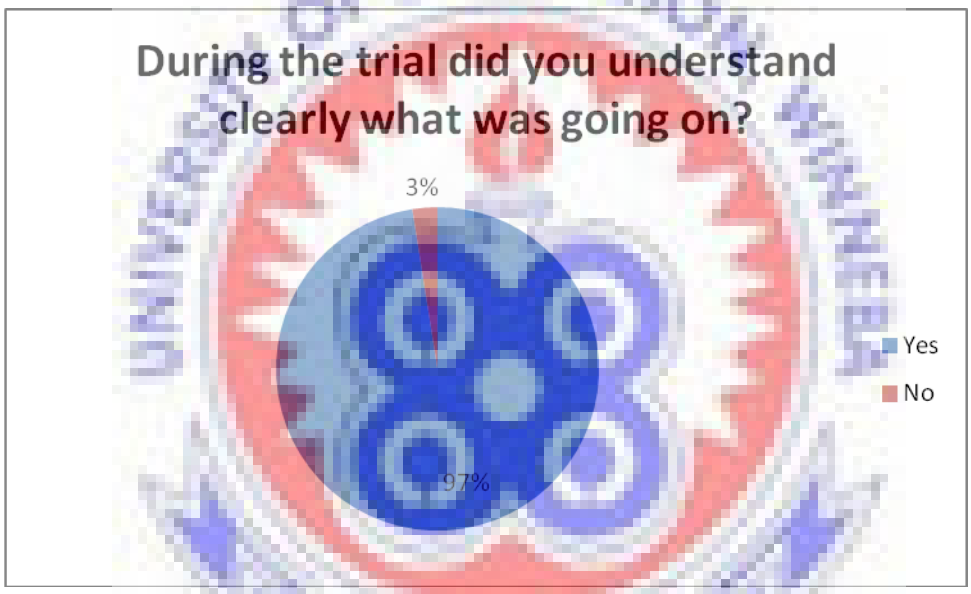


Fig: 4.13
Source: Field Work-December, 2011.

The study also measured whether the adjudicating counsellors subjected the litigants to any form of indignity or disrespect. Throughout the period the researcher was at the court, there was no record of indignity or inhuman or degrading treatment meted out to any person whether litigants or non-litigants who accompanied litigants or had just gone to the traditional court to observe proceedings. Except on some few occasions

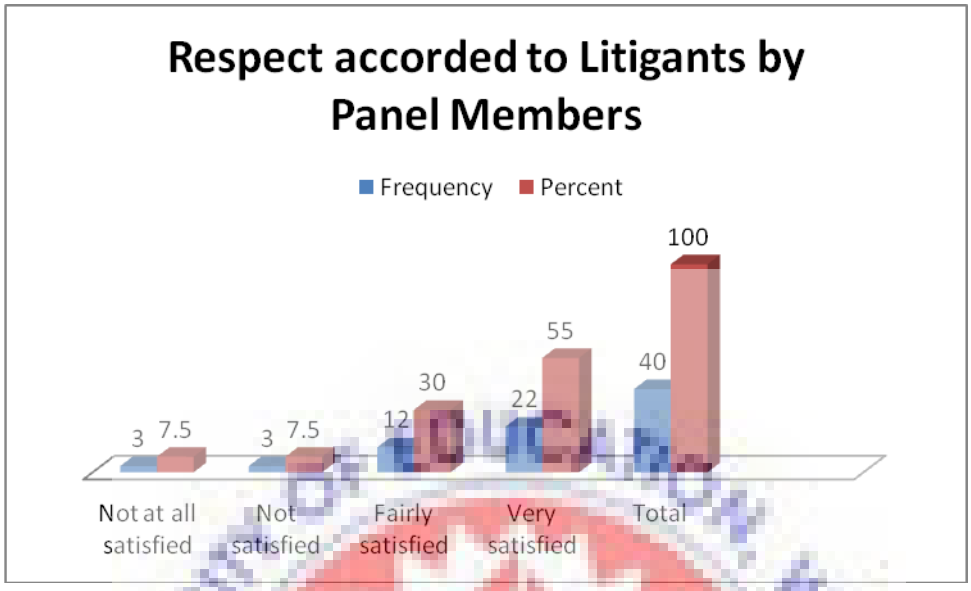
where there were some shouts from the presiding counsellor for a litigant making unnecessary interruptions to keep quiet.

The views in the survey on the litigants indicate that 55% were very satisfied with the respect accorded to them by adjudicating panel. 30% of respondents had affirmed that they were fairly satisfied while 7.5% said that they were not satisfied and not at all satisfied respectively about the respect that was accorded them.

A cross tabulation indicates that most of the litigants who had affirmed this position were those who had lost their cases. For those who felt unsatisfied, some of the reasons they offered were unfriendly environment of the traditional court, such as threats and harsh punishments even though the case was still being tried, shouts on litigants by their opponents to stop expressing themselves were sometimes interpreted as disrespect to panel members that could lead to instant fines such as payment of sheep while the cases were still ongoing and mockery by observers as certain confessions were being made. 60% of respondents were aware of some objections made and 40% were not aware of any of such objections.

Although some of them affirmed that they had suffered some form of indignity, they did not see the need to object to such degrading treatments because nothing will come out of it. For some of them who objected nothing positive came out of their objections.

Fig: 4.14: In your view, how will you assess the respect that was accorded the litigating parties by the adjudicating panel?



Source: Field Work-December, 2011.

Fig: 4.15
Source: Field Work-December, 2011.

Another area of measure was to determine whether litigants who appeared before the traditional court were discriminated against on the basis of either gender or ethnicity or physical make-up. This was informed by the fact that certain category of people were discriminated against by traditional societies on the basis of being women or

their physical conditions. In some traditional set ups physically challenged persons were not welcomed in the palaces of the traditional authorities because of their conditions.

Although no physically challenged persons were part of those whose cases were pending before the traditional court or had been adjudicated upon by the traditional court, the respondents shared their views on whether they have been discriminated against or not on the basis of their gender or ethnicity or physical conditions. 82% of the respondents indicated that they have not been discriminated upon; only 18% said that they have been discriminated against as indicated in **fig. 4.16**.

Fig: 4.16
Source: Field Work-December, 2011.

Opinions were sought from the litigants as to whether in the trials of their cases all the facts were properly considered. Majority views affirmed that the adjudicating panel considered all the facts during the trial. 55% of the respondents were very satisfied about the panel considering all issues during the trial, 22% said they were not satisfied, 15% not at all satisfied and 2% could not tell whether all the facts of their cases were properly considered as shown in **table: 4.9**

Table: 4.9: Overall, how satisfied are you that all the facts of the case were properly considered?

	Frequency	Percent
Not at all satisfied	**6**	**15**
Not satisfied	**10**	**25**
Very satisfied	**22**	**55**
Can't Tell	**2**	**5**
Total	**40**	**100**

Source: Field Work-December, 2011.

Out of a total of 40 people who had their cases either resolved or pending at the traditional court, 28 (70%) had been resolved. The remaining 12 (30%) were still pending to be determined by this court. Out of the 28 cases which had been amicably resolved, judgement went in favour of 16 (57%) of respondents who were interviewed, 10 (36%) of the litigants who were interviewed affirmed that judgement was entered against them and 2 (7%) of respondents said the judgement was a compromised one as shown in **figs 4.17 and 4.18**.

Table: 4.10: Has your case been settled by the traditional court?

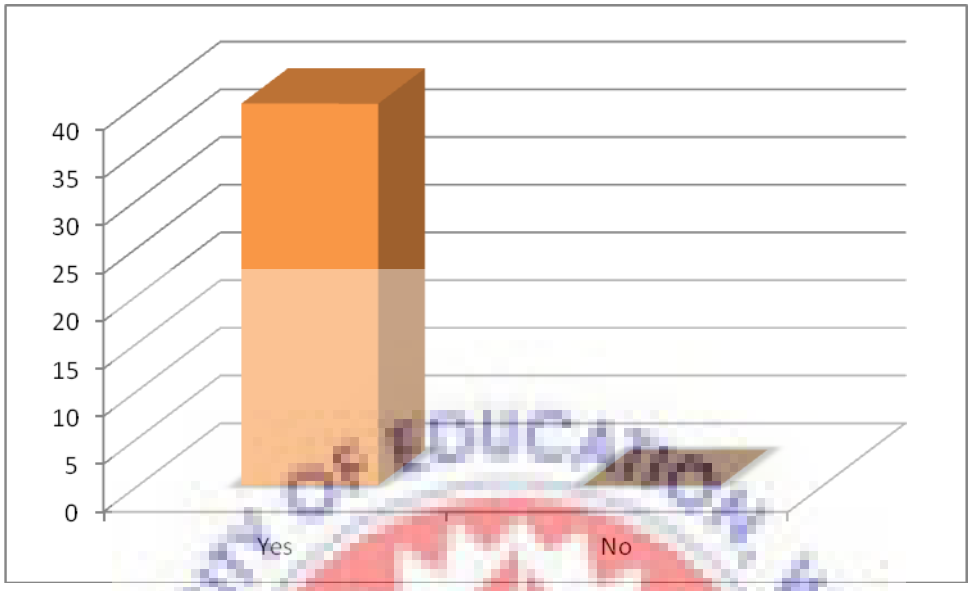
	Frequency	Percent
Yes	**28**	**70**
No	**12**	**30**
Total	**40**	**100**

Source: Field Work-December, 2011.

Fig: 4.17: If yes to Q28, which of the statements below describe the outcome of the case?

Source: Field Work-December, 2011.

Fig: 4.18: Were the reasons for the verdict or decision explained to you and the other party?



Source: Field Work-December, 2011.

On questions aimed at eliciting information on whether the judgement was thoroughly explained to the litigating parties or not, all the respondents indicated that the decisions of the traditional court were given for the parties to know areas they had faulted so that those mistakes were not committed again as illustrated in **fig. 4.18**.

They also shared their opinions on whether the verdict was fair or unfair. 55% of the respondents said the final decision of the wise counsellors was very fair, 8% each said the verdict was not fair and not at all fair rerspectively while 2 (5%) affirmed that the final decision of the panel members was quite fair as imdicated in **fig: 4.19**.

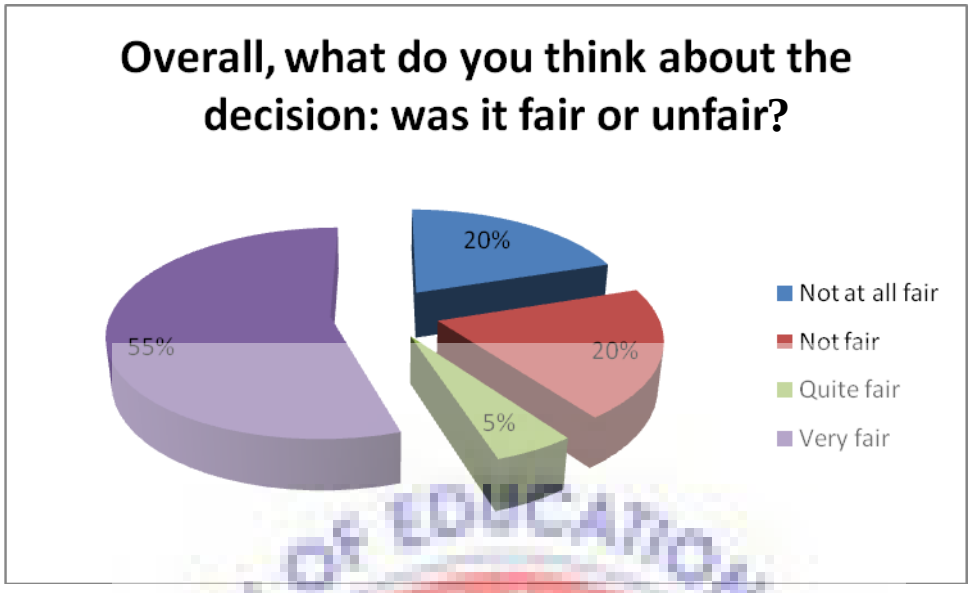


Fig: 4.19

Source: Field Work-December, 2011.

The study also elicited responses on the basis of their assessments of the final decision of the traditional court. 15% of the respondents said their assessment was based on the facts that the guilty parties accepted the verdict and appologised for their acts, 40% of the respondents said that all the facts were considered by the panel members before making their decision, another 15% said that the panel members based their verdict on the evidence brought before them, 15% each said that the panel members were baised and their decision was not based on evidence as illustrated in **fig: 4.20**.

The litigants were also asked whether they felt that taking their cases to the court was neccessary considering all the challenges associated with the litigation. Over 70% of the respondents felt that it was worthy going to the traditional court to have their matter resolved.

This is very important because of all the 40 respondents who answered these questions, half (50%) each was made up of plaintifs and defendants respectively.

It means majority of the respondents made up of both plaintiffs and defendants who appeared before the traditional court believed in the capacity of this court to dispense justice to its people.

A quarter of the respondents (25%) believed it was unnecessary to take their cases to the traditional court for resolution. Only 3% of the respondents said they did not know whether it was worthy taking their case to the traditional court or not as shown in **fig: 4.20**.

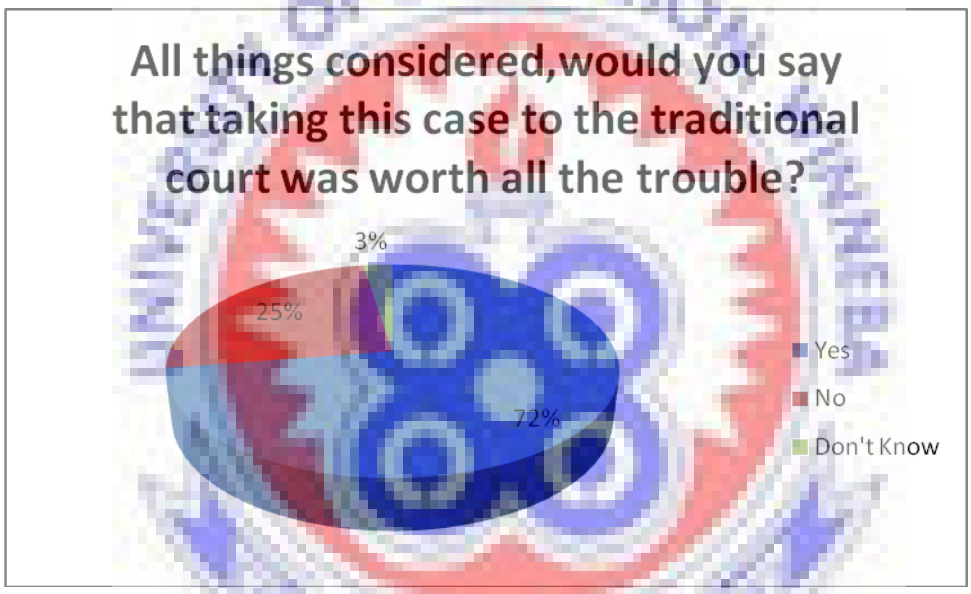


Fig: 4.20
Source: Field Work-December, 2011.

4.12 Land and Property Disputes in Akyem Abuakwa area

Land dispute as indicated in **table 4.7,** was the majority of the cases that they either observed or were litigants themselves constituted 30% followed by dispute over property. In Akyem Abuakwa as in most other traditional areas in Ghana, and elsewhere in Africa, land management is deeply rooted in religious and sacred beliefs.

Land is considered as the foundation of community's existence. There is a belief in most societies, particularly among the Akans that the earth is a sanctuary of the souls of their departed ancestors who commanded the living to use the land judiciously for the departed, the leaving and generations yet unborn.

It is in this spirit that Nana Ofori Atta I, then paramount chief of Akyem Abuakwa said "Land belongs to a vast family of whom many are dead, a few are living and countless hosts are still unborn."

Thus, the living, particularly their chiefs and priests are custodians of the land. Lands are vested in the paramount stool, and the chief holds the land in trust for the whole community and delegate them to sub chiefs and lineages who are all customary trustees and fully recognise the birth rights and interests held by the individual citizens and the communal property rights of the community.

The vesting of authority in chiefs assured equal access of all those with rights to land and ensured that the use of land is regulated to ensure its conservation and sustainability. Indeed, customary land systems ensure security of tenure for individuals, families and communities.

In the colonial times, the Akyem Abuakwa area was a cocoa producing zone of Ghana which attracted a lot of migrant cocoa farmers from other places to take advantage of the growing cocoa economy.

The Akyem Abuakwa area comprises the Atiwa Range, where communities are hemmed in by a forest reserve which is part of the reasons of some disputes relating to land use because of the appropriation of land by the colonial state for the reserve. Land holdings or titles are based on inheritance where the grandparent has the most

access to land by virtue of establishing ownership through land clearance in the early days of cocoa cultivation.

The youth depend on portions of land for their economic activities and this in most cases have led to some problems as the lands were not readily made available to them, creating some family disputes which may develop around elders giving out land or leaving land as an inheritance to labour service, many male youth attempt to get land from other sources appealing to grandparents who have more land than their parents, or entry into contractual sharecrop arrangements with farms outside their families.

Unlike in the past, they no longer have the option of going outclearing their own patch of forest because uncultivated forests outside of the forest reserve, no longer exist. However, the male youth also find family dependency constraining partly because their elders cannot sopport them materially and meet their basic needs in an increasing expensive world.

Family elders guarantee them access to land at the end of the service since land has become scarce in relation to the number of people with rights to land. Others gain their income by hiring themselves out as casual labourers to other farms, engage in gold mining, diamond mining, and carry timber boards for chainsaw operators (many of whom operate illegally).

As a result of these livelihood strategies of the youth, their seniors no longer have access to family labour and have to hire labour. Elders are also selling land. This is sold under the pretext of family grief, but frequently this is a deliberate strategy to destroy family property and recreate land as individual property.

4.13 Gender Dimension of Land Use: Rights of Women in Akyem Abuakwa Division

In the Akyem Abuakwa area, land relations and disputes also have a gender dimension. Many women were concerned about men attempting to pass on land to their own sons at the expense of their daughters.

This has led to women re-defining their rights to land according to a new interpretation of matrilineal inheritance which attempts to exclude men such as brothers, nephews and uncles from matrilineal land. They argued that if land was passed on to male heirs, the men will give portions of the matrilineal land to their wives and children, thus diminishing the matrilineal inheritance of the land which is at the epoch of inheritance of the people in the area.

A more appealing system of inheriting land that is in line with the matrilineage is where the land goes to the women of the lineage, their husbands will help them to develop the land, but it will be inherited by children who are of the matrilineage, and this will rather lead to consolidating matrilineal property. This ideology promotes the role of women as customs of the matrilineage.

In contrast with many contemporary approaches to gender equality which seek to strengthen the rights of wives and children to the property of men, this discourse prefers to strengthen women's direct rights in matrilineal land. Land is seen as an asset through which a woman can gain from hardworking husband and retained rights to land. The in-depth interviews established that most women owned lands which have become the source of their economic livelihood as they engaged in crop farming as most women have plantain, cocoyam and cocoa farms.

4.14 Testing of Hypothesis

The assumptions that were to be tested are in two-fold: the first is that the traditional court has adequate mechanisms that promote and protect the rights of persons in its arbitration processes and the second is that the traditional court system lacks adequate mechanisms that promote and protect the rights of persons in its arbitration processes.

We can test the above hypotheses by considering results in **table 4.3** of this study, 78% of the respondents mentioned dispute settlement as the main task of the traditional council which is also closely connected to the third ranking of ensuring peace which 71% of respondents ranked as the third most important task undertaken by the traditional authority which was also confirmed in the interview with the arbitration panel and some selected chie

The study indicated that most of the respondents preferred taking their cases to the traditional courts because they had confidence in their capacity to deliver firm and fair justice than the modern courts. Moreover, the **fig 4.16** illustrates that 82% of the respondents indicated that they have not been discriminated against; only 18% said that they have been discriminated against.

Interviews with the traditional arbitrators also indicated that the arbitration panel was mindful of the fact that their arbitration processes were founded on the traditional practices which have been bequeathed to them by their forebears. "We have our people at heart; we have a responsibility to protect each and everyone in Okyeman.

Chiefs are revered and respected by their people because they were expected to be good leaders and the absence of these good qualities in the olden days could lead to destoolment of the chief concerned, as a result, we also ensure that we respect the

dignity of our people" as contained in the views of one of the arbitrators on the need to protect and promote the rights of people in the Akyem Abuakwa Traditional area.

From the above discussions, it is evidently clear that the findings appear to support the assertion that traditional court has adequate mechanisms that promote and protect the rights of persons in its arbitration processes.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study examines the extent to which the Akyem Abuakwa Traditional Arbitration Court has adequately protected human rights and fundamental freedoms in its arbitration processes. Thus, the study sought to interrogate the extent to which, in the exercise of power and authority during arbitration, the dignity and rights of people who appeared before the traditional court were protected and not abused.

To achieve this, three main objectives were set out. It identified and discussed the conflict resolution mechanisms used by the Akyem Abuakwa Traditional Council and analysed the nexus between the Akyem Abuakwa Traditional Council's conflict resolution mechanisms and the formal system of settling disputes; it examined the effectiveness of the Akyem Abuakwa Traditional Court in the promotion of human rights within its area of jurisdiction and assessed the extent to which the Akyem Abuakwa Traditional Council Arbitration Court has ensured promotion and protection of human rights of litigating parties who appeared before the traditional court; and last but not the least, it made some recommendations on how to improve the effectiveness of the traditional courts in the promotion and protection of human rights and fundamental freedoms

This thesis used both qualitative and quantitative research methods of inquiry. Both approaches allowed the researcher to use both primary and secondary sources of data. The research methodology was based on the two approaches because whereas the

qualitative paradigm as a methodological tool sought a deeper understanding of an established social phenomenon by examining the extent to which a traditional court adequately adheres to the principle of respect for human rights and fundamental freedoms in its adjudication processes, the qualitative paradigm was complemented by the quantitative method because the latter allows the researcher to float surveys in a mass study because courts whether traditional or modern provide platforms or avenues for all manner of persons irrespective of vocation, status and gender, to have their cases heard and settled.

As a result, these two approaches provided significant data sets necessary for investigating the research problem that proved to be truly representative. The data show the views of the respondents on the relations in terms of the extent to which the rights of people appearing before this traditional court were respected and not abused.

In this concluding chapter, a summary of findings is discussed. On the basis of the analysis of the secondary data complemented by empirical primary data composed of interviews and mass survey on traditional arbitration and human rights protection, and within the scope of the study, conclusions were drawn and recommendations aimed at ensuring adequate protective measures for the rights and dignity of persons appearing before the traditional courts were made.

5.2 Summary of Findings

The notion of human rights is not new to traditional societies of Africa. African chiefs were expected to be good leaders and were expected to protect the people rather than being tyrannical.

In fact, the essence of human rights in traditional African societies was expressed in various forms. For example, the following pre-installation oath for newly elected chief of Ashanti demonstrates how Ghanaians were mindful about their rights:

> We do not want you to abuse us. We do not want you to be miserly; we do not want one who disregards advice, we do not want you to regard us as fools, we do not want autocratic ways, we do not want bullying, we do not like beating. Take the stool. We bless the stool and give it to you. The elders say they give the stool to you (Committee of Experts Report, 1991).

This is an indication that traditional African people were conscious of their rights. They believed they had some rights which their leaders were expected to promote and protect, and that being leaders therefore do not constitute grounds for tyrannical rule.

The study had two working hypotheses:

H1: The traditional court has adequate mechanisms that promote and protect the rights of persons in its arbitration processes.

H0: The traditional court lacks adequate mechanisms that promote and protect the rights of persons in its arbitration processes.

Notwithstanding, some minor infractions on the rights of persons, the empirical data collected affirmed ***H1***, which *states that the traditional court has adequate mechanisms that promote and protect the rights of persons who appeared before it in its arbitration processes.*

This, therefore, means that the assumption ***H0*** *that states that the traditional court system lacks adequate mechanisms that promote and protect the rights of persons who appeared before it in its arbitration processes* has been rejected.

Thus, even though some infractions on the rights of people appearing before the Akyem Abuakwa Traditional court exist, its authority and power is exercised within the limits of respect for human rights and fundamental freedoms. Mitigating the infractions existing in the arbitration processes require regular training of the arbitration panel on modern judicial skills as well as formalising the judicial capacities of traditional authorities so that they work within the limits of the Constitution of the Republic.

The study identified that even though the traditional court has no legal backing as it lacks the constitutional muscle to adjudicate in cases, it enjoys some modicum of respect from the modern courts, particularly the District Magistrate Courts in their traditional areas.

There were instances where modern courts have declined jurisdiction in certain matters and advised parties to go to the traditional court for amicable resolution. In some other cases, some chiefs have gone to withdraw some cases from the modern courts for peaceful settlement by the traditional courts.

Although the Akyem Abuakwa Traditional court's processes are based on the customs and traditions of the people of Akyem, which have been handed over to them by their forebears, these processes have some characteristics that are akin to the modern courts. The traditional court has a secretariat headed by an administrator who ensures that the proceedings were recorded and the recorded proceedings and subsequent judgements are kept for future reference.

The procedures for litigation include; writ of summons by plaintiffs containing the reliefs being sought and the response of the defendant and finally the subsequent

fixing of date for hearing. Statements of claim and defence are however orally made before the arbitration panel on the hearing day.

Membership of this traditional court is not limited to only the Akyems who are the traditional owners of the land. In the quest to ensure fair justice, all the *Okyehenes* who have ascended the stool of *Okyeman* from the period of Nana Sir Ofori Atta I were obliged to ensure the inclusion of at least one 'ewe' and one 'northerner' in their arbitration panels who were supposed to be the chiefs of the *ewes* and *northerners* respectively.

The inclusion of people of other ethnicity ensures trust and confidence in the traditional court because the Akyem Abuakwa Traditional area is heterogeneous and serves as home to a number of people from other traditional areas due to the economic advantages it offers to the migrant community.

Most traditional societies are noted for some barbaric cultural practices that impinge on human rights, such as banishment, twin murder, slavery, and death penalty, among others. The Akyem Abuakwa traditional court even though has no legal basis works within the confines of the Ghanaian Constitution and other relevant Ghanaian laws, therefore these hitherto outmoded cultural practices do not come within the purview of this traditional court.

However, the traditional sanctions that are applied at the end of arbitration by this traditional court have serious debilitating effects on human rights promotion and protection.

Even though this traditional court lacked the necessary legal backing and therefore its decisions or verdict may be ignored, the study uncovered that in its quest to ensure that its decisions were respected, the Akyem Abuakwa Traditional Council could deny the rights of families of people who refuse to abide by the decisions of the court to bury their dead or organise funerals for their departed ones within its jurisdictional area.

Again, it was also found out that in some instances this court necessarily does not wait for parties to bring their cases for arbitration. Depending on the magnitude of a crime committed against the land, the traditional authority can order a person or group of persons to appear before it for violating the norms and values of the traditional area or violating acts that are inimical to the survival of the traditional area, particularly sacrilegious acts or taboos only require a witness of the perpetration of that crime.

It was also clear from the study that some fines were very expensive. This is so because there is no outcome or judgement without the slaughtering of animals such as sheep and pouring of libation to pacify the gods and ancestors. The high cost of animals coupled with high fees of alcohol which normally accompanies the fines has often been difficult for most litigants who could not afford and had to be supported by families because failure to pay often exacerbate the condition of the fined party.

The study also showed that most of the disputes brought before the traditional court were either land or property disputes. This is because apart from the fact that the acquisition of land for the Atiwa Forest reserve has reduced the acreage of land available for use by the citizens, mining in the Akyem Abuakwa Traditional area has

assumed an alarming proportion that not only farmlands have been sold and/or are being sold to mining concessions creating despondency among the youth who can no longer tilt the soil because they do not have access to the land, as even building plots in the towns and villages are being bought by these mining concessions.

The study also established that no arbitration training programmes have been conducted for panel members; as a result, they often rely on experience they have acquired through settling of disputes at family level. This situation could negatively affect human rights because modern arbitration systems are done in a manner that will positively improve human rights of the parties involved, therefore, once these panel members do not have these skills human rights could be unwittingly relegated to the background.

One major challenge of the traditional court is lack of financial resources and competent modern arbitration skills for the panel members. The panel members' selections are based on their experience as family heads or chiefs to the neglect of important modern arbitration training and skill for arbitrators.

According to the wise counsellors interviewed, the only remuneration for them is part of the fines slapped on parties, the guilty parties in particular. This therefore means that the smaller the fines the smaller the remuneration of arbitrators. This is not good because it has the potential of making panel members to dispense justice in a manner that would lead to higher fines so that members are adequately remunerated.

It also came out clearly that traditional adjudication or court systems are not necessarily violators of human rights. In fact, human rights as we know today did actually exist in traditional African communities, they have not been documentarily

expressed as we have today in books but they were expressed in the songs, folklores, dirges and symbols, among others in the language of the people.

Indeed the arbitration panel was also expected to counsel the overlord of Okyeman on ensuring peace and unity so the panel constitutes a force to reckon with when it comes to promotion and protection of human rights during arbitration.

5.3 Conclusion

To conclude, it is important to highlight the following points that the study identified. First and foremost, even though the traditional court of the Akyem Abuakwa Traditional Council has no legal backing, its authority and power is exercised within the limits of the country's Constitution. Traditional courts still remain viable in adjudicating in conflicts, which most people preferred to the modern courts.

Again, despite some modicum of infractions on the rights of people appearing before this traditional court, its processes to a very large extent adequately enhance human rights of persons appearing before it. This court cannot banish people neither can it pass death sentences now as it used to be one of the hallmarks of traditional courts in the past.

Moreover, the traditional court has good working relations with the modern courts which have a constitutional mandate of settling disputes that may arise in the traditional area.

Furthermore, there is no training for arbitration panel that often rely on past experience of settling disputes at family level which they export to the traditional court where new complex cases are brought for peaceful adjudication and this is a

serious deficit in the arbitration panel's capacity to dispense justice in a growing modern community.

Besides, there is no permanent remuneration package for arbitration panel members who only get paid whenever they arbitrate and this poor remuneration has often led to high fines, which have often been very difficult for litigants to pay.

Lastly, the shrinking of farmlands and building plots as a result of mining in the traditional area and the game reserve have led to increase in land and property disputes in the area.

5.4 Recommendations

From the empirical data, it is abundantly clear that human rights issues are very salient in all arbitration systems whether they are modern or traditional. It is therefore important that once the traditional courts were resorted to by the people who believed in their capacity to dispense fair and firm justice, efforts were made to address all bottlenecks that impede the successful implementation of human rights in traditional societies. It is against this background that the following issues raised when adhered to will further improve human rights in traditional arbitration:

- There is the need for legislation that would incorporate traditional adjudication systems into the country's legal jurisprudence. Once traditional courts are allowed to operate there is the need to ensure that the parallel system of settlement of cases composed of modern and traditional are formalised to ensure that all systems work within the limits of the laws of Ghana.

- The panel members should be given regular training and refresher courses on arbitration. These training programmes will enhance their skills in arbitration so that they are better positioned to deliver fair and firm justice.
- A better remuneration system must be adopted for the arbitration panel members. The current practice where the panel members were remunerated based on the fines slapped on litigants has resulted in high fees. In order for the panel members to be better remunerated they may intentionally give high fines so that they themselves were paid better. This has resulted in the high fees in the traditional courts. This study therefore suggests that the traditional arbitrators and the supporting staff should be paid salaries from the consolidated fund.
- A percentage of fines should be kept into the coffers of the traditional authority for the maintenance of the arbitration secretariat and the rest paid into the consolidated fund of the country.
- Modern gadgets such as audio recordings of proceedings, which are being fronted for in the modern courts, should as well be made available and used at the traditional courts.
- The state must deepen its efforts in investing in the people through infrastructural development and create the enabling environment for citizens to engage in productive economic activities so as to improve the living standards of Ghanaians, particularly the young persons living in deprivation and inequality. The illegal mining that is flourishing in the Akyem Abuakwa Traditional area is creating conflicts and required stringent measures such as punishing people involved in these acts that are contributing to high land disputes.

REFERENCES

Adamantia, P. (1982). *Liberal socialist and third world perspectives of human rights: Towards a human rights framework*, New York: Praeger.

Agyekum, K. (2004b). Reminiscential oath taboo in Akan: Language in Society, .33 (3), 317-342.

Agyekum, K. (2004c). Aspects of persuasion in Akan communication", *International Journal of Language and Communication 21*, 63-96.

Agyekum, K. (2006). Akan traditional arbitration: its structure and language, *Journal of Multilingual and Multicultural Development*, 27;5, 359-374

Aidoo, A. K. (1978), Chieftaincy in Republic of Ghana. Proceedings of the constitutional drafting commission held at the Kwame Nkrumah Conference Centre, 7 June 1978.

Anastas, J. W. (1999), *Research design for social work and the human services*, (2nd ed), New York: Columbia University Press.

Arhin, K. (1985). Traditional rule in Ghana: Past and Present Accra::. Sedco:.

Arskey, H. (1999). Interviewing for social scientists, London: Sage Publication.

Asamoah, K. (2012), A qualitative study of chieftaincy and local government in Ghana. *Journal of African Studies and Development*, *4* (3), 90-95.

Ateku, A-J. (2009). *Human rights and Ghana's Fourth Republic*, 1992-2008: An assessment. unpublished Master of Philosophy thesis submitted to the University of Ghana.

Ayoob, M. (2002), Humanitarian intervention and state sovereignty. The *International Journal of Human Rights*, *6* (1), 81-102.

Bailyn, B. (1992).*The ideological origins of the American Revolution*, (Enlarged Edition), Cambridge MA: Harvard University Press.

Bell, J. (1999). *Doing your research project*. Buckingham: Open University Press.

Berg, B. L. (2007). *Qualitative research methods for the social sciences, (6th edition).* London: Pearson.

Boafo-Arthur, K. (2001). Tradition against the state: Confronting chiefs and state authority in Ghana, *African Studies Centre Seminar*, Leiden, May.

Boafo-Arthur, K. (2006), "Chieftaincy in Ghana: Challenges and prospects in the 21st century": In I. Odotei and A. Awedoba (eds.) *Chieftaincy in Ghana: Culture, governance and development* (pp. 145-168). Accra :Sub-Sahara.

Brempong, A. (2001). *Transformation of traditional rule in Ghana (1951-1996)*, Accra: Sedco.

Brock-Utne, B. (2001).*Indigenous conflict resolution in Africa*: A draft presented to seminar on indigenous solutions to conflicts held at University of Oslo, Institute of Education Research, February, 2001.

Bryman, A. (2008). *Social research methods*, New York: Oxford University Press.

Choudree, R, B. G. (1999), "Traditions of conflict resolution in South Africa", *Retrived from* http://www.accord.org.sa/publications/choudree.htm.

Cohen, L. Manion, L. & Morrison, K. (2005, 2006). *Research methods in education*. London: TJ International Ltd.

Coser, L. (1956). *The functions of social conflict*, New York: The Free Press.

Crook, R (2005), "*The role of traditional institutions in political change and development*", CDD/ODI Policy Brief, No.*4*, November, 2005.

Davies, B., & Ellison, L.(Eds), ,(1997). .School leadership for the 21st century.. *The International Journal of Educational Management*, *15*, (5), 238-244.

Davies, J. A, & Dagbanja, D. N. (2009). "The role and functions of customary tort law in Ghana: A cross-cultural perspective" *Arizona Journal of International & Comparative Law*, 26 (2).

Donelly, J, (1989). *Universal human rights in theory and practice*, Ithaca, New York: Cornell University Press, 1989.

Ebenstein, W. (1969). *Great political thinkers:* Plato to the present. Oak Brook, Illinois: Dryden Press Inc.

Economic Commission for Africa (2007), *Relevance of African traditional institutions of governance*, Addis Ababa: ECA.

El-Obaid, E., & Appiagyei-Atua, K**.** (1996), "Human rights in Africa: A new perspective on linking the past to the present" *McGill Law Journal*, *41*, 824-854.

Flick, U. (1998). *An introduction to qualitative research*, London: Sage publication.

Fred-Mensah, B. (2005). Nugormesese: An indigenous basis of social capital in a West African Community: Retrieved from. http://www.worldbank.org/afr/ik/default.htm.

Freeman, M. (2002). Human rights: *An interdisciplinary approach*, Cambridge: Polity Press.

Ghana, Republic of Ghana (1978). *Constitutional commissions proposals*, Tema: Ghana Publishing Corporation.

Ghana, Republic of Ghana (1991). *Report of the committee of experts (constitution) on proposals for a draft constitution of Ghana*. Tema: Ghana Publishing Corporation.

Ghana, Republic of Ghana (1992). *Constitution of the Republic of Ghana*, 1992, Tema: Ghana Publishing Corporation.

Henn, M. Weinstein, M & Foard, N. (2006). A short introduction to social research. London: Sage Publications.

Human Rights Watch Report (1994). Torture in the eighties, London: Human Rights Watch.

Hurst, H. (1989). The Butare colloquium on human rights and economic development in Francophone Africa: A summary and analysis, *Universal Human Rights*, 2, No.2.

Kasanga, K, & Kotey, N. A. (2001). "*Land management in Ghana; building on tradition and modernity"*, London: International Institute for Environment and Development.

Kealotswe, O. N. (nd), "Acceptance and rejection: The traditional healer prophet and his integration of healing methods. Retrieved from http://www.ubrisa.ub.bw/bitstream/handle/10311/352Ikpe.

Knierzinger, J (2010). "*The chiefs of development: local development and local government in Ghana.* Wien: OFSE.

Krueger, A, C. & Sokpe, B. Y. (2006). *A guide to writing successful long essay and thesis.* Cape Coast: YACI Press.

Lutz, G & Linder, W. (2004). "Traditional structures in local governance for local development", Berne: Institute of Political Science, University of Berne.

Mason, J. (1996). Qualitative researching, (1st edition). London: Sage.

Mason, J. (2002). Qualitative researching, (2nd edition). London: Sage publication.

Mbiti, J. S. (1991), Introduction to African religion, Oxford: Heinemann.

Murithi, T. (2006). Practical peace making wisdom from Africa: reflections on Ubuntu.*Journal of Pan African Studies, 1*(4).

Ministry of Local Government and Rural Development (2003), National decentralisation action plan (NDAP): Towards a sector-wide approach for decentralisation implementation in Ghana (2003-2005*)*, Accra: Decentralization Secretariat, MLGRD.

Montgomery, J. W. (1986), *Human rights and dignity*, Zondervan Publishing House.

Morsink, J. (1999). The universal declaration of human rights: Origin, drafting and intent.Philadelphia: University of Pennsylvania Press.

Ndumbe III, P. A. K. (2001). *The spiritual dimensios of conflict prevention and conflict resolution mechanisms in African Countries.* University of Oslo: Institute for Educational Research.

Nsubuga, Y. K. K. (2008). *Analysis of leadership styles and school performance of secondary schools in Uganda.* Retrieved from www.nmmu.ac.za/documents/thesis/YUSUF%20K.K.%20NSUBUGA.pdf.

Otumfuo Osei Tutu II. (2002). Cited in Kojo Yankah, Osei Tutu II: Tradition in modern times, West Africa 29th April-5th May, 2002.

Otumfuo Osei Tutu II, (2004). *Traditional system of governance and the modern state,* Keynote Address, Fourth African Development Forum, Addis Ababa.

Okra, K.. A.. (2003), Toward global conflict resolution: Lessons from the Akan traditional Judicial Systems", Journal of Social Studies Research. Retrieved from http://www.findarticles.com/p/articles/mi_qa3823/is_200310/ai_nq304242.

Osita, C. E. (1984), *Human rights in Africa*: Some selected problems. Lagos: Institute of International Affairs.

Ray, D. I. (2003a). "Chiefs in their Millennium sandals: traditional authority in Ghana – relevance, challenges and prospects" In W. Tettey, K. Puplampu and B. Berman (eds.) *Critical Perspectives on Politics and Socio Economic Development in Ghana*. Brill: Leiden.

Ray, D. I. (2003b). Traditional leadership and rural local governance, in Donald Ray and P.S. Reddy (eds.) *Grassroots governance?: Chiefs in Africa and the Afro-Caribbean.* Calgary: University of Calgary Press.

Robson, C. (1993). Real world research: A research for social scientists and practitioners. London: Blackwell Publishers.

Rosengren, K. E. (1981), Advances in content analysis: Sage annual reviews of Communication Research, London: Sage.

Silverman, D. ed. (1997). Qualitative research: theory, method and practice. London: Sage.

Silverman, D. (2005). Doing qualitative research, London: Sage publication.

Shivji, I. G. (1989), *The concept of human rights in Africa*, London: CODESRIA Book Series.

Stedman, S. J. (1991). "Conflict and conflict resolution: A conceptual framework", in Deng, F., and Zartman, I. W. (eds), *Conflict Resolution in Africa*, Washington DC: The Brookings Institution.

Toulmin, C. & Longbottom, J (2001), "West African land: rights, poverty and growth", London: International Institute for Environment and Development.

Twumasi, P. A. (1986), Social research in rural communities. Accra: Ghana Universities Press.

Ubink, J. M & Manor, K. S, (2008). *Contesting land and custom in Ghana*: state, chief and the citizen, Leiden: Leiden University Press

United States Agency for International Development, (2003), *Country strategic plan 2004-2010: empowering Ghanaians through partnership to build a prosperous nation.* USAID/Ghana.

Wimmer, R. & Dominick, J. (2006). Mass media research: An introduction, (8th Edition). London: Wadsworth.

APPENDIX A

Questionnaire for Litigants and non-litigants: Akyem Abuakwa Traditional Court

Q1. Location of Litigant (Town): ----------

Q2. Personal details [For 2.1 do not read options just tick the category that fits respondent's gender]

1. Sex		**Code**
	Male	1.
	Female	2.
2. **Age**	18-25 years	1
	26-39 years	2
	40-64	3
	65 years and above	4
3. **Educational level**	No formal or informal schooling	0
	Primary education (partial or completed)	1
	Junior High School/MSLC education (partial or completed)	2
	Post-secondary: Polytechnic, TTC, University etc	3
	Refused	88
4. **Occupation (specify)**		

Now let's talk about the cases that come before the Akyem Abuakwa Traditional Court for resolution.

Q3. Have you ever witnessed any case/s involving other people that was/were resolved by this traditional court?

1. Yes [ ] 2. No [**If no skip to Q12**] [ ]
3. Don't Remember [**If no skip to Q12**] [ ]

Q4. If yes, what was the last time you witnessed proceedings brought before this court?

1. Less than one month [ ]
2. Between one and three months [ ]

3. Between three and six months [ ]
4. Between six and one year [ ]
5. One year and above [ ]

Q5. In the last time that you observed proceedings at this court. Would you tell me what the case was about?

Q6. During the trial did you understand clearly what was going on?

1. Yes [ ] 2. No [ ] 3. To some extent [ ]

Q7. In your view, how will you assess the respect that was/or being accorded to the litigating parties by the adjudicating panel?

Not at all satisfied	1
Not satisfied	2
Fairly satisfied	3
Very satisfied	4
Don't know	9

Q8. If you choose 1 or 2 or 3, would you share with me some of the treatment meted out to the litigating parties or party you think was degrading?

Q9. Has any person in the community objected to this treatment that you are aware of?

1. Yes [ ] 2. No. [ ]

Q10. If yes, what was the outcome of the objection to such degrading treatment?

Q11. In your view, do you think litigants who appeared before this traditional court have their rights respected?

1. Yes [ ] 2. No [ ] 3. Don't know [ ]

Q12. Now let's talk about your case. Are you the plaintiff or defendant? [Tick only one category]

	Code
The Plaintiff	1
The Defendant	2

Q13. Would you tell me what your case is/was about?

Q14. For how long has your case been at this court? (Weeks/months/years etc) ----------

Q15. How many times have you had to attend this court for a hearing? (Do not read out options just tick the category that fits respondent's answer)

	Code
This is my first time	1.
2 – 5 times	2.
6 – 10 times	3.
11 – 15 times	4.
16 times or more	5.

Q17. Have you engaged the services of a lawyer?

1. Yes [ ] No [ ]

Q17. If your answer above is no, why have you not engaged a lawyer?

1. Lawyers not allowed in a traditional court [ ]
2. Cannot afford the cost of a lawyer [ ]
3. Considering engaging one [ ]
4. Other (specify) ----------

Q18. As your case has been adjourned more than once, what were the main reasons for the adjournments?

1. I could not turn up
2. The other party did not turn up
3. My lawyer or other party's lawyer didn't turn up
4. Witnesses didn't turn up
5. Documents/evidence required
6. Other (specify) ----------

Q19. During the trial did you understand clearly what was going on?

2. Yes [ ] 2. No [ ] 3. To some extent [ ]

Q20. In your view, how will you assess the respect that was accorded to the litigating parties by the adjudicating panel?

Not at all satisfied	1
Not satisfied	2
Fairly satisfied	3
Very satisfied	4
Don't know	9

Q21. If you were/are not satisfied with the treatment given you or the other party, would you share with me some of the treatment meted out to you or the other litigating party you think was degrading?

Q22. Have you or the other litigating party objected to this treatment that you are aware of?

2. Yes [ ] 2. No. [ ]

Q23. Explain your answer. [What was the outcome of the objection to such degrading treatment if you objected?]

Q24. Do you think you have been discriminated against during trial on the basis of your gender/ethnicity/physical make up etc?

1. Yes [ ] 2. No [ ]

Q25. Explain your answer if your response is *Yes*?

Q26. Overall, how satisfied are you that all the facts of the case were heard and properly considered? [Read out options. Only one option to be chosen]

	Code
Not at all satisfied	1.
Not satisfied	2.
Very satisfied	3.
Don't know [Do not read]	9.

Q27. Has your case been settled by the traditional court? 1. Yes [ ] 2. No [ ]

Q28. If yes to Q22, which of the statements below describe the outcome of the case?

Judgement was given in my favour [1]

Judgement was given in favour of the other party [2]

Judgement was a compromise [3]

Q29. Were the reasons for the verdict or decision explained to you and the other party?

1. Yes [ ] 2. No [ ]

Q30. **Overall, what do you think about the decision: was it fair or unfair** [Do not read options. Probe for strength and tick the category that fits respondent's answer]

	Code
Not at all fair	1.
Not fair	2.
Quite fair	3.
Very fair	4.
Not Applicable [Do not read]	5.
Don't know	9

Q31. What are the reasons for your answer?

--

Q32. All things considered, would you say that taking this case to the traditional court was worth all the trouble?

1. Yes [ ] 2. No [ ] 9. Don't know [ ]

Q33. What are your reasons for the above answer?

APPENDIX B

Interview Guide

I am a Master of Philosophy student in Human Rights at the University of Education, Winneba writing on a thesis titled: Exploring Human Rights in Traditional Conflict Resolution Processes in Ghana: A Study of Akyem Abuakwa Traditional Area. You have been purposively selected to provide your views on this important academic exercise because of your knowledge about the operation of this court. You are assured of utmost confidentiality. Your honest and truthful answers will add value to this study. Thank you for accepting to contribute to this academic exercise.

Q1..(a) Do you have a permanent arbitration panel or they are changed regularly?

(b) How do you set up the panel for arbitration process?

(c) Who appoints them?

(d) How are they remunerated?

(e) Who are they responsible to?

Q2. What principles and assumptions underlie this traditional court system?

Q3. What are the processes involved in the settlement?

Q4. Which types of cases are brought before this traditional court for arbitration?

Q5. During arbitration, what do you look for before delivering judgement?

Q6. How do you protect or respect the rights of litigants who appear before this court?

Q7. Are you given regular training/refresher courses on arbitration, particularly on the need to respect the rights of litigating parties?

Q8. When was the last time you had this type of training, if any and which organisation conducted/sponsored this training?

Q9. What challenges do you face in your arbitration functions and also in protecting the rights of the parties who appear before you?

Q10. (a) What recommendations would you make to improve traditional arbitration systems in the country?

(b) What do you think should be done to improve the rights of litigants who appear before this court?

APPENDIX C

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. Oversight and interpretation of the Charter is the task of the African Commission on Human and Peoples' Rights, which was set up in 1987 and is now headquartered in Banjul, Gambia. A protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created. The protocol came into effect on 25 January 2005.

PREAMBLE

The African States members of the Organisation of African Unity, parties to the present Convention entitled "African Charter on Human and Peoples' Rights

Recalling decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of "a preliminary draft on an African Charter on Human and Peoples' Rights, providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organisation of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

Re-affirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to co-ordinate and intensify their

co-operation and efforts to achieve a better life for the peoples of Africa and to promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilisation, which should inspire and characterise their reflection on the concept of human and peoples' rights;

Recognising on the one hand, that fundamental human rights stem from the attitudes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples' rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religious or political opinions;

Re-affirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa;

HAVE AGREED AS FOLLOWS:

PART I: RIGHTS AND DUTIES

CHAPTER I: HUMAN AND PEOPLES' RIGHTS

ARTICLE 1

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

ARTICLE 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

ARTICLE 3

1. Every individual shall be equal before the law
2. Every individual shall be entitled to equal protection of the law

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:
    1. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;
    2. The right to be presumed innocent until proved guilty by a competent court or tribunal;
    3. The right to defence, including the right to be defended by counsel of his choice;
    4. The right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission that did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

ARTICLE 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

ARTICLE 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

ARTICLE 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

ARTICLE 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country.

   This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

ARTICLE 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

ARTICLE 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

ARTICLE 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

ARTICLE 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

ARTICLE 17

1. Every individual shall have the right to education
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State.

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State, which shall take care of its physical health and moral.

2. The State shall have the duty to assist the family, which is the custodian of morals and traditional values recognised by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

ARTICLE 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

ARTICLE 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.
3. All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

ARTICLE 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it
2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.
4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

ARTICLE 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

ARTICLE 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and re-affirmed by that of the Organisation of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, State Parties to the present Charter shall ensure that:
    1. Any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State Party to the present Charter;
    2. Their territories shall not be used as bases for subversive or terrorist activities against the people of any other State Party to the present Charter.

ARTICLE 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

ARTICLE 25

State Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

ARTICLE 26

State Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

CHAPTER II: DUTIES

ARTICLE 27

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

ARTICLE 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

ARTICLE 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need.
2. To serve his national community by placing his physical and intellectual abilities at its service;

3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

PART II: MEASURES OF SAFEGUARD

CHAPTER I

ESTABLISHMENT AND ORGANISATION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

ARTICLE 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organisation of African Unity to promote human and peoples' rights and ensure their protection in Africa.

ARTICLE 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons shaving legal experience.
2. The members of the Commission shall serve in their personal capacity.

ARTICLE 32

The Commission shall not include more than one national of the same State.

ARTICLE 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the State Parties to the present Charter.

ARTICLE 34

Each State Party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the State Parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

ARTICLE 35

1. The Secretary General of he Organisation of African Unity shall invite State Parties to the present Charter at least four months before the elections to nominate candidates;
2. The Secretary General of the Organisation of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections;

ARTICLE 36

The members of the Commission shall be elected for a six-year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

ARTICLE 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organisation of African Unity shall draw lots to decide the names of those members referred to in Article 36.

ARTICLE 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

ARTICLE 39

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary General of the Organisation of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organisation of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term, unless the period is less than six months.

ARTICLE 40

Every member of the Commission shall be in office until the date his successor assumes office.

ARTICLE 41

The Secretary General of the Organisation of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organisation of African Unity shall bear cost of the staff and services.

ARTICLE 42

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

ARTICLE 43

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organisation of African Unity.

ARTICLE 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organisation of African Unity.

CHAPTER II

MANDATE OF THE COMMISSION

ARTICLE 45

The functions of the Commission shall be:

1. To promote human and peoples' rights and in particular:
    1 To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to Governments.
    2 To formulae and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation.
    3 Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organisation recognised by the OAU.
4. Perform any other tasks, which may be entrusted to it by the Assembly of Heads of State and Government

CHAPTER III

PROCEDURE OF THE COMMISSION

ARTICLE 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organisation of African Unity or any other person capable of enlightening it.

COMMUNICATION FROM STATES

ARTICLE 47

If a State Party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This Communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the Communication, the State to which the Communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible, relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

ARTICLE 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

ARTICLE 49

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organisation of African unity and the State concerned.

ARTICLE 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

ARTICLE 51

1. The Commission may ask the State concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

ARTICLE 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.

ARTICLE 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

ARTICLE 54

The Commission shall submit to each Ordinary Session of the Assembly of Heads of State and Government a report on its activities.

ARTICLE 55

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of State Parties to the present Charter and transmit them to Members of the Commission, who shall indicate which Communications should be considered by the Commission.
2. The Commission shall consider a Communication if a simple majority of its members so decides.

ARTICLE 56

Communications relating to Human and Peoples' rights referred to in Article 55 received by the Commission shall be considered if they:

1. Indicate their authors even if the latter requests anonymity,
2. Are compatible with the Charter of the Organisation of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity,
4. Are not based exclusively on news disseminated through the mass media,

5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
7. Do not deal with cases, which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Or- ganisation of African Unity or the provisions of the present Charter.

ARTICLE 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the States concerned by the Chairman of the Commission.

ARTICLE 58

1. When it appears after deliberations of the Commission that one or more Communications apparently relate to special cases that reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

ARTICLE 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide.
2. However the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

CHAPTER IV

APPLICABLE PRINCIPLES

ARTICLE 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members.

ARTICLE 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by Member States of the Organisation of

African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognised by African States as well as legal precedents and doctrine.

ARTICLE 62

Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.

ARTICLE 63

1. The present Charter shall be open to signature, ratification or adherence of the Member States of the Organisation of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organisation of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the Member States of the Organisation of African Unity.

PART III

GENERAL PROVISIONS

ARTICLE 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organisation of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organisation within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

ARTICLE 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of the instrument of ratification or adherence.

ARTICLE 66

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

ARTICLE 67

The Secretary General of the Organisation of African Unity shall inform members of the Organisation of the deposit of each instrument of ratification or adherence.

ARTICLE 68

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary General of the Organisation of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the State Parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the State Parties. It shall come into force for each State, which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

Adopted by the Eighteenth Assembly of Heads of State and Government,

June 1981 - Nairobi, Kenya