UNIVERSITY OF EDUCATION, WINNEBA

LEGAL PLURALISM, CONFLICT RESOLUTION, AND HUMAN RIGHTS: AN EXPLORATION OF THE TRADITIONAL CONFLICT RESOLUTION APPROACH OF THE NABDAM OF GHANA

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DECLARATIONS

Student's Declaration

I, **David Naya Zuure,** 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 has not been submitted, either in part or in whole, for another degree elsewhere.

Signature: …….

Date: …….

Supervisors' Declaration

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

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DEDICATION

This work is dedicated to my lovely family: my dear wife; Abigail Opoku and our cherished sons; Yensom Panti Zuure and Yenbon Zuure.

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ACRONYMS AND LOCAL WORDS

ICESCR	International Covenant on Economic Social and Cultural Rights
UN	United Nations
ADR	Alternative Dispute Resolution
PC	Paramount Chief
DC	Divisional Chief
PCE	Paramount Chief Elder
DCE	Divisional Chief Elder
PCD	Paramount Chief Disputant
DCD	Divisional Chief Disputant
Tengnaab	Divisional Chief
Nakaat	Paramount Chief
Nabil	Sub-Divisional Chief
Yidaan	Family Head
Yizugudaan	Head of Clan
Kabongnaab	Elder in a palace in charge of external relations
Kpaana	Elders in charge of a palace
Bihenaab	Elder in a palace in charge of the youth
Aduu	Linguist
Botobirik	Royal errand person
Saam	Fine
Odikro	Settlement Leader among the Akan of Ghana
Omanhene	Paramount Chief among the Akan of Ghana
Ohene	Divisional Chief among the Akan of Ghana

ABSTRACT

This study sought to examine how the Nabdam traditional approach to conflict resolution using chiefs and elders protects and or abuses the human rights of disputants when they are employing it to resolve their interpersonal conflicts. The study was anchored on the social interpretivist/constructivist philosophical viewpoint and the qualitative research paradigm. The design was a case study and involved a sample of thirty (30) persons consisting of five (5) chiefs, ten (10) elders, and fifteen (15) disputants drawn from five traditional areas in the Nabdam District employing the census, lottery, convenient, and purposive sampling methods. The instruments of structured interview, focused-group discussion, group discussion and observation were employed to gather the needed data from the respondents. The data obtained from the administration of the instruments was analyzed thematically in line with the research questions. Some key findings from the study included that the Nabdam traditional approach to conflict resolution; has a well-structured procedure, is administered by only males, greatly protects and respects the human rights of disputants, and has prospects into the future due to geographical and financial accessibilities as well as familiarity reasons. A major conclusion drawn from the study was that the Nabdam area is a legal pluralistic society but with a higher inclination to the traditional approach to conflicts resolution for their interpersonal conflict settlement even in a modern era. It was therefore recommended that various measures should be put in place by governmental institutions and agencies as well as Non-Governmental Organizations (NGOs) to make the Nabdam traditional approach to conflict resolution adequately protect the rights of disputants.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Legal pluralism, defined as the existence and operation of more than one legal system in a single political unit (Santos, 2002), is a practical reality in a large number of countries in the world, but most notably in the post-colonial states of Africa. The newly-independent states strive to preserve their cultural heritage reflected in their customary law and institutions, and at the same time, attempt to function as modern constitutional states (Hinz, 2007). The Constitutions of many of these African states, therefore, recognize legal pluralism in their states by preserving a role for customary law alongside the modern legal system. But few of these states have found a functional and effective way of implementing legal pluralism with regard to defining the relationships between the plural institutions.

Many African societies are faced with different forms of conflict, including ethnic, land, chieftaincy, marital and inter-personal conflicts. Practically, large populations in most African countries have no means of getting to urban centres where statutory courts are situated to resolve their conflicts. Even if they can get to the cities, few can afford the legal services much needed to access the formal justice system.

But conflicts must be resolved in order to prevent them from escalating into violent actions or distractions and thereby ensure the peaceful, harmonious and stable existence of the society. To this end, apart from the formal government courts, different societies have developed and used different customary mechanisms to resolve conflicts based on their social, economic, religious, political and cultural contexts.

The continual reliance on such traditional systems in Africa is evidence of public confidence those systems enjoy. To the extent that traditional fora enjoy that confidence, those traditional institutions must be retained and strengthened as a part of the larger Rule of Law strategy. One of the most compelling reasons for the pursuit of legal pluralism in the post-colonial state is to preserve and respect the cultural traditions of indigenous people. This is because the traditional culture of the colonized state has often been devalued and foreign models of governance and justice imposed.

There are, however, some concerns over legal pluralism when it comes to human rights. There are concerns that legal pluralism inherently compromises human rights, particularly those of women, children and other minorities. A main concern is that it often perpetuates and strengthens traditional patriarchal regimes that systematically undervalue children and women's rights and interests. They also argue that the application of customary law can also do tremendous violence to others who lack power or authority under the traditional regime and those who have been historically disenfranchised, such as non-natives.

In Ghana like in many African societies, customary conflict resolution mechanisms have been developed and employed since ancient times. Again, in Ghana like other African states, formal government courts have been shaped on an originally western model and, therefore, alien to African societies. Due to this, only small numbers of conflicts are taken to and dealt with by formal government structures (Alula & Getachew, 2008). Hence, the customary conflict resolution mechanisms in Africa have played and still play a significant role in resolving conflicts of various degree and thereby maintain the peace of the society.

Different ethnic groups in Ghana have established and used various customary institutions of conflict resolution mechanisms which are unique to their own culture (Gebre, 2011; Alula & Getachew 2008). Studies into traditional ways of conflict resolution in the country identified that family heads, chiefs, council of elders, and religious leaders/institutions are employing Mediation, Negotiation and Arbitration to deal with conflict. They further elucidate that these traditional mechanisms are not only used to deal with conflict among themselves but also with other people living in the country.

Among the Nabdam of Ghana, prominent conflict resolution fora include using chiefs and their councils of elders and a state-based court system. The Nabdam traditional conflict resolution model (i.e. using chiefs with councils of elders) is a well- structured, and time-proven, social system with a strong focus on reconciliation, maintenance, restoration and improvement of social relationships of disputants as is the case with other traditional approaches in Africa (Choudree, 1999; Naude, 2010; Mensah, 2005; Ndumbe III, 2001; Murithi, 2009, Okrah, 2003). The strength of the practice lies in its deep rootedness in the customs and traditions of the people and also the peoples' understanding that it often restores balance (Awedoba, 2009; Choudree, 1999; Kaderi, 2013). It is also believed to be influenced by the gods/ancestors of the land (Awedoba, 2009; Ndumbe III, 2001; Nyamu-Musembi, 2002). It is also noted for providing a cheap and unintimidating environment to disputing parties for processing their conflicts (Marfo, 2014; Awedoba, 2009; Pkalya, Adam & Masinde, 2004).

The legitimacy of the traditional approach to conflict resolution is not only linked to its credibility among the communities that practice it, but also to the 1992 Ghana Constitution which guarantees the institution of chieftaincy, together with its traditional councils as

established by customary law and usage (Article 270), and the Chieftaincy Act, 2008 (Act 759) that empowers the chief with his elders to arbitrate on disputes (Section 30).

The traditional approach is used to handle all forms of conflict including land and chieftaincy disputes, marital conflicts, theft, family disputes and petty quarrels (Mensah-Bonsu, 2012). At the same time, in the Nabdam area of Ghana, there are a few, poorly resourced, and expensive law courts for justice delivery, which also have a reputation of "justice-buying", power influence, and manipulations (Oquaye, 2003). This reinforces or strengthens the relevance of the traditional approach to resolving conflicts in the Nabdam area.

However, there is a general concern that the Nabdam traditional approach may not adequately protect the rights of all persons within the disputing processes (Okrah, 2003). This concern stems from the fact that the practice appears patriarchal, regimented, and highly subjective. Undoubtedly, the presence of both the traditional option to disputes resolution and the court system in the area increases justice seekers' possibilities to make human rights claim. Yet, little is known about how the Nabdam traditional approach is in line with international standards in protecting the rights of persons employing the approach.

1.2 Statement of the Problem

Article 1 of the Universal Declaration of Human Rights (1948) declares "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". Due to limited resources, individual differences and preferences as well as aspirations, human beings are often in conflict. Human rights are threatened or abused under conflict conditions. The resolution

of conflicts is therefore paramount. The process of resolving conflicts is highly crucial for effective outcomes. This is because when persons under conflict resolution processes feel their dignity and rights are compromised, that feeling has a very high potential for affecting the outcomes.

Like any modern society, the state-owned court system exists in the Nabdam area. The courts are manned by professionals who are trained, employed and paid by the state to resolve conflicts of people using the law. The court system recognizes fundamental human rights and freedoms of persons using it and has prescribed procedures and processes that seek to protect the rights of disputants. As a result, disputants are procedurally and substantially protected against such abuses as discrimination on the basis of age, gender, social, religious and economic statuses; verbal abuse, suppression, etc. Unfortunately, few people in the Nabdam area employ the courts to resolve their conflicts which I presume is due to geographical and financial inaccessibility as well as the fear of "justice-buying", power influence, and manipulations. The Nabdam traditional approach (i.e. using chiefs with their councils of elders) to conflict resolution is another option for people in the area to use and resolve their conflicts. This traditional approach is widely used in the area.

With modernization, democratic advancement and religious proliferation and also following persistent criticisms (by especially the Charismatic, Protestants and Pentecostalists) against traditional practices in the Nabdam area, one would have expected that the traditional socio-cultural chieftaincy institution would demise in power, authority and functions. One would also think that the institution would lose its appreciation by the people and as a result, people would resort to the court system to resolve their conflicts. Surprisingly, that is not the case. Majority of the Nabdam people still employ the chiefs

with their councils of elders to manage their disputes. However, how the traditional approach adequately protects the rights of disputants employing it is unknown.

The focus of most research works on traditional conflict resolution has been on its nature, strengths and challenges (Awedoba, 2009; Boege, 2006; Brock-Utne, 2001); its usage in peacebuilding (Marfo, 2014; Badong, 2009; Bingpong & Buta, 2013); the indigenous institutions used in the approach (Brock-Utne, 2006; Kaderi, 2011; Nwolise, 2005); and the mechanisms of the traditional conflicts disputing forum (Mahama, 2002; Kirby, 2006). Some other works looked at it from a women's rights perspective (Nyamu-Musembi, 2002; Pkalya, Adam & Masinde, 2004; Annan, 2013).

These works have generated a key insight relevant in this study. The works show that the traditional model has a high degree of general acceptance by the people. However, there is no scholarly knowledge on how the Nabdam traditional approach (using chiefs and councils of elders) protects and/ or abuses the rights of the disputants, how the process measures to international standards, the structure and arrangement in the approach that guard against discrimination of disputants on grounds of gender, social status, economic, religious and educational backgrounds; how the structures of the traditional approach provide opportunities/ impediments in terms of access to human rights, and how to reinforce the opportunities and overcome the impediments. There is also little scholarly knowledge on structural and procedural aspects of the model. Again, little is known about reforms required to make the model standard and adequate to protect the rights of persons employing it for the resolution of conflicts.

This work, therefore, seeks to provide empirical or researched data on the Nabdam traditional approach to conflict resolution and how it protects and or abuses the human rights of the disputants through which advocacy is made for the formal inclusion of women in its usage.

1.3 Objectives of the Study

The objectives of the study were to:

1. Explore the structural and procedural aspects of the Nabdam traditional conflict resolution approach.
2. Examine how the Nabdam traditional conflict resolution approach protects and or abuses the rights of disputants.
3. Determine the prospects of the Nabdam traditional conflicts resolution approach in the era of religious proliferation and modernity.
4. Explore measures to enhance the protection of the rights of disputants under the Nabdam traditional conflicts resolution model.
5. Establish the differences and similarities with the Nabdam approach to conflict resolution and the state court system.

1.4 Research Questions

The research was guided by the following research questions:

1. What are the structural and procedural aspects of the Nabdam traditional conflict resolution approach?
2. How does the Nabdam traditional conflict resolution approach protects and or abuses the human rights of disputants?

3. What are the prospects of the Nabdam traditional model of conflict resolution in an era of religious proliferation and modernity?
4. What measures can be employed to enhance the protection of the rights of disputants with the Nabdam traditional approach to conflict resolution?
5. What are the similarities and differences with the Nabdam traditional conflict resolution approach and the state court system?

1.5 Justification of the Study

Despite an awareness of it by, among others anthropologists, lawyers, social scientists and the like, legal pluralism has long been neglected by international and donor agencies which have recognized solely the legal system of the state and systematically refused to engage with non-state or informal justice mechanisms. In recent years, however, we have been witnessing a resurgence of interest in legal pluralism outside academia. There seems to be a major paradigm shift and a gradual switch away from what Golub (2003) calls the state-centered orthodoxy of rule of law to non-state law and legal systems.

Expectedly, studies in legal pluralism in Africa in general and the Nabdam area, in particular, are insufficient. The few studies in the area have largely dealt with the way traditional institutions resolve conflicts. For example, Awedoba (2009) examined the nature, strengths and challenges of the traditional conflicts resolution approach; Bimpong and Buta (2013) worked on the traditional approach and peacebuilding; and Marfo's work (2014) focused on indigenous institutions used in traditional conflict resolution.

However, none of these works has specifically focused on the Nabdam traditional approach. Again, none of the works has also looked at human rights issues with the

traditional model of conflict resolution. Those studies that have looked at traditional conflict resolution, have focused on ethnic and chieftaincy conflicts but not on interpersonal conflicts. This study is therefore important in highlighting the practice of the Nabdam traditional model to conflict resolution and also, the human rights issues within the practice. It also provides the perspectives of the traditional approach in handling inter-personal conflicts.

This is relevant in a number of ways. In the first place, resolution of disputes is vital for social cohesion which is a requisite for development. The resolution of disputes in a human rights friendly manner, will, therefore, foster peace, unity and harmony as it would prevent the conflicts from escalating. This will promote investments from within and without which will propel development. Secondly, the study is relevant because the promotion of human rights is a central concern that many donor institutions consider as a condition for providing funds for various development projects. Even organizations like the World Bank directly provide funds for the promotion of human rights. This study should, therefore, result in improving the human rights concerns of the practice, thereby attracting donor support to the area for development. Finally, the study is relevant in the sense that traditional disputes resolution fora often address conflicts relating to access to essential resources such as land and other vital issues such as marriage which are essential factors that hold the fabric of the society together in cohesion and harmony.

1.6 Significance of the Study

The significance of this study cannot be overemphasized. It can be viewed from the following points of view: In the first place, the study contributes to the limited literature on the traditional models of conflict resolution among the Nabdam in particular and Ghana

as well as Africa in general. This study also provides knowledge on how the Nabdam traditional model of conflict resolution does, or does not, measure to human rights standards. Thus, it helps guide researchers who want to carry out further studies on the same or other functions of the chieftaincy institution and human rights.

Moreover, the study serves as an important ethnographic account of the role of chieftaincy institution in conflict resolution and its distinctive approach to dealing with conflicts and human rights, especially in the Nabdam area and by extension Africa. Lastly, the study serves a great purpose in helping formal government structures and traditional authority holders to understand the necessity to recognize and respect the human rights of persons.

1.7 Delimitation

This work sought to examine how the Nabdam traditional approach to conflict resolution protects and or abuses the human rights of disputants, hence, it was carried out in the Nabdam District of the Upper East Region. The work also focused on the resolution of inter-personal conflicts. It engaged selected chiefs, elders and disputants.

1.8 Organization of the Work

This report consists of five chapters. Chapter one provides an introduction to the study by outlining the background to the study, statement of the problems, objective of the study, research question, the justification for the study, and the significance of the study. The second chapter reviews related literature on the issues being studied. The review was broadly done under the themes of human rights, legal pluralism, and traditional conflict resolution. This chapter also covered the conceptual frameworks and theories that underpinned the study.

The third chapter presents the methodology that was employed in the study. It describes the study area, research design, population for the study, sample and sampling techniques, and research instruments used to gather data for the study. It also explains how the data was gathered. The fourth chapter covers the presentation and analysis of the data gathered through the administration of the research instruments. The final chapter presents the summary of findings from the study, conclusions reached based on the findings and recommendations based on the findings and conclusions.

CHAPTER TWO

REVIEW OF LITERATURE

2.0 Introduction

This chapter deals with a review of relevant literature on traditional conflict resolution or traditional justice systems from a human rights perspective. These traditional conflict resolution or justice systems have functioned as an alternative, and/or as a complement to the formal state court system in Ghana. They are typically based on customary practices, traditions and rules of communities that have, over time, been deemed to be customary law. The review was done along three broad themes, namely: human rights, traditional conflict resolution, and legal pluralism. Each of these had a number of sub-themes under which the review was done. It, however, started with the conceptual/theoretical framework.

2.1 Theoretical Framework

This work was inspired by the works of John Locke (1689), Jean-Jacques Rousseau (1765), and Thomas Hobbes (1668) on Human Rights, Peace and Order and Conflict respectively.

2.1.1 On Human Rights

John Locke in his second work on Treatises of Government (1689) defended the claim that 'men are by nature free and equal'. In his work, Locke argued that people have rights, such as the right to life, liberty, and property, which have a foundation independent of the laws of any particular society. He was clear in stating that human beings are equal, free and independent to pursue their happiness but also duty-bound to respect others.

Locke used the claim that 'men are naturally free and equal' as part of the justification for understanding legitimate political government which he described as a social contract

where people conditionally transfer some of their rights to the government in order to better ensure the stable and comfortable enjoyment of their lives, liberty, and property. In the view of Locke, people have natural rights simply because they are human beings, and these natural rights should be protected by the government. Locke states this in strong terms:

> The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that human beings are all equal and independent; no one ought to harm another in his life, health, liberty, or possessions… (and) when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another. (Locke, 1689)

Locke's claim is that individuals have a duty to respect the rights of others but the source of this duty, he says, is natural law.

Thomas Hobbes (1668) expressed a similar view. He maintained that men are free and independent, having a right to pursue their own self-interest, and no duties to one another. He was fundamentally saying that nature has made individuals independent and with the right to fend for themselves. Hobbes opined that the right of man is a fundamental moral fact, rather than any duty individuals have to a law or to each other.

According to Hobbes, individuals are independent but create societies and government as a "social contract" for the sole purpose of safeguarding the rights of each citizen. Hobbes had argued that freedom and equality, and the priority of individual right, meant that individuals could pursue their survival and interest without limitation.

2.1.2. On Peace and Order

Jean-Jacques Rousseau in his 'Discourses on the Origin and Basis of Inequality among Men' (1755), was of the view that human beings are by nature, good, peaceful and orderly but only get corrupted by society, science and technology. This is to say that human beings are born with a natural attribute of being peaceful and orderly. It stands to reason therefore that human beings are inclined to keep and maintain peace and order in their lives.

In Rousseau's state of nature, people did not know each other enough to come into serious conflict. The modern society, and the desire for ownership and the entitlement it entails are, therefore, blamed for the disruption of the state of nature and for that matter affect the peaceful and orderly nature of human being. To Rousseau, it is only society that has made people selfish. In the state of nature, people pretty much lived in harmony with one another and with nature.

Similarly, Seneca in his work 'On a happy life' was with the conviction that human beings are part of the world of nature and that nature is orderly. He espoused that what makes human beings orderly is reason. What makes nature orderly Seneca called the "divine". Hence, when human beings use their reason, Seneca says, they are using that part of themselves that is divine.

Seneca's argument is that, human beings are a part of the world and that the world has been ordered by nature. The lifespan of animals including human beings, the oceans, mountains, sky etc are ordered and continue to exist in that order. The parts of the human body are ordered and they coexist peacefully most of the time. This universal pattern of the world

in which human beings exist together with the divine attribute of reason makes human beings orderly and peaceful.

2.1.3. On Conflicts

Hobbes (1668) expressed that human beings always have desires and as a result, there cannot be a time of perpetual tranquillity in man's life. The struggle of man to meet his desires, in the words of Hobbes, makes life "solitary, poor, nasty, brutish, and short". He described life as "war of all against all". Hobbes further identified three causes of conflicts in human beings namely competition, diffidence, and glory. All of these causes are related to struggles to attain desires.

In the opinion of Hobbes, human beings desire power. By 'power' Hobbes meant the means to obtain what we want but our wants and desires are never-ending. Once we have fulfilled one desire, there will be another. And so we do not try just to satisfy our desires now, we also try to make sure we can satisfy our desires in the future. The desire for power to be able to meet our needs now and in the future keeps human beings in conflict. So human beings will fight for gain, to get what they need; they will fight for security, to get what they need in the future; and, says Hobbes, human beings will fight for 'glory' – the reputation of being powerful, either because we simply enjoy it or because it is a kind of power in its own right.

Maslow (1943), in his "A theory of human motivation", argues that human beings have needs which are ordered in a hierarchy of importance. He categorized the needs into physiological, safety and security, love and belonging, esteem, and self-actualization levels. As human beings strive to achieve their next order of needs within the limited resources conflicts ensue.

He contends that the most basic of human needs is the physiological needs where people desire to satisfy themselves of food, clothes, and shelter. This can be so demanding and competitive as the human population is ever increasing. These needs are central to the survival of people and as a result, people struggle with the limited resources so as to survive. This has a huge potential to generate conflicts. Similarly, the desire to meet the other needs hold a great capacity to create conflicts for people.

These works have influenced me into developing the conception that human beings naturally have human rights, are naturally peaceful and orderly, and are naturally in conflict. Figure 1 below shows a diagrammatic presentation of my conception.

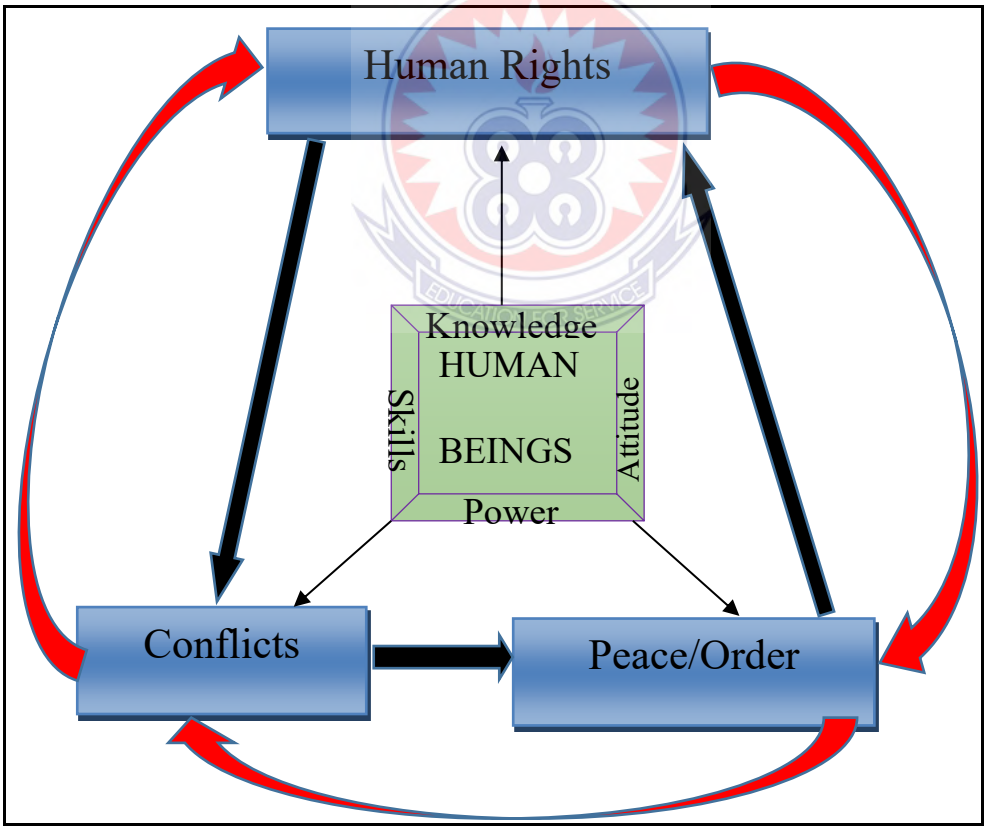

Figure 1: The three natural attributes of human beings and their relationship
Source: Zuure's conception adapted from John Locke, Jean-Jacques Rousseau, and Thomas Hobbes

From Figure 1 above, one can see the view I hold that human beings possess three natural attributes; they have human rights inherent in their human nature; are naturally peaceful and orderly, and are inevitably in conflict. However, human beings also have the knowledge, skills, power, and attitude to influence these natural attributes (human rights, peace/order, and conflicts) of mankind positively as indicated with the black arrows or negatively as indicated with the red arrows. For example, when people in a given society exercise their natural knowledge, skills, attitude, and power to respect rights of each other that society will prevent conflicts and as a result, will be peaceful and orderly. However, when people of a given society exercise their knowledge, skills and power in their daily life activities in such a way as to abuse the rights of each other, conflicts will ensue and that will disrupt peace and order in that society. Similarly, when people in a given society use their power, skills, attitudes, and knowledge to cause conflicts to each other, it can lead to abuses of the human rights of people, and this can affect peace and order in that society. But if they use the power, skills, attitudes, and knowledge to prevent conflicts in the society, it can promote peace and order, and this can prevent human rights abuses in that society. Again, when people use their knowledge, power, skills and attitudes to promote peace and order, it can prevent human rights abuses, and this can result in the prevention of the conflicts in that society, but, if the people use their knowledge, skills, power and attitudes to disrupt peace and order in the society, it can lead to conflicts which can also result in human rights abuses in that society.

2.2 Theories of Traditional Conflicts Resolution

Various theories of conflicts resolution have been developed to explain pathways on how to cope with conflicts, and strategies to resolve them. In this study, the Transformative Mediation, Human Needs-Based, Principled Negotiation, and Arbitration theories are considered.

2.2.1 Transformative Mediation Theory of Conflict Resolution

The transformative mediation approach to conflict resolution finds its roots back to the 1970s. However, Bush and Folger (1994) are said to have brought to the fore its current form in their book *"*The Promise of Mediation". In their book, they contrasted two different approaches to mediation: namely problem-solving and transformative. They argued that the goal of problem-solving mediation is generating a mutually acceptable settlement of the immediate dispute. As a result, problem-solving mediators are often highly directive in their attempts to reach this goal. The mediators' role is not only in controlling the process but also the substance of the discussion, with a serious focus on areas of consensus and "resolvable" issues. The mediators in problem-solving mediation are also required to avoid areas of disagreement where consensus is less likely. Although all decisions are, in theory, left in the hands of the disputants, problem-solving mediators often play a large role in crafting settlement terms and obtaining the parties' agreement.

In this study, the focus is on the transformative mediation approach to conflicts resolution. Bush and Folger (1994) opined that the transformative approach to mediation does not seek resolution of the immediate problem, but rather, seeks the empowerment and mutual recognition of the parties involved. Empowerment, according to them, means enabling the parties to define their own issues and to seek solutions on their own. Recognition means

enabling the parties to see and understand the other person's point of view of the dispute so as to understand how they define the problem and why they seek the solution that they do.

They added that, often, empowerment and recognition pave the way for a mutually agreeable settlement, but that is only a secondary effect. The primary goal of transformative mediation is to foster the parties' empowerment and recognition, thereby enabling them to approach their current problem, as well as later problems, with a stronger, yet more open view. This approach, according to Bush and Folger (1994), puts responsibility for all outcomes squarely on the disputants.

The transformative mediation is most often thought of in terms of interpersonal conflicts. However, Bush and Folger (1994), argue that the approach is applicable in resolving other kinds of disputes as well.

The logic behind the theory of transformative mediation conflict resolution is to relate "transformation" to a fundamental change in attitude and/or behaviour of individuals and/or the relationship between two or more disputing parties. While the change may be relatively minor or subtle, it goes beyond the immediate situation to alter the way in which the parties see themselves, the world, and especially, each other and how they treat each other over the long term.

This theory is relevant to this study in two perspectives. The first is its focus in bringing about not just a resolution to immediate dispute but the building of attitude of the people that would influence how they see and treat each other into the future. This is the basis of the Nabdam traditional conflicts resolution approach. The second is how it works with interpersonal disputes and that is the focus of this study.

2.2.2 Human Needs-Based Conflict Resolution Theory

Burton and Sandole (1986) are credited with the human needs theory. Antecedents to human needs theory came from a variety of disciplines. In the biological and socio-biological disciplines, conflict is perceived to result from competition over scarce resources as a result of common needs.

The Human Needs Theory operates on the premise that a pre-condition for the resolution of conflict is that fundamental human needs must be met. Burton and Sandole (1986) adopted eight fundamental needs from the work by the American sociologist Paul Sites and further introduced a ninth need. Those adopted needs from Paul Sites included control, security, justice, stimulation, response, meaning, rationality and esteem/recognition. Burton and Sandole additional need was 'role-defence,' the need to defend one's role. They called these "ontological needs" as they regarded them as a consequence of human nature, which were universal and would be pursued regardless of the consequence.

This theory requires that the resolution of any conflict must be done with the mind and in a manner that would ultimately ensure that disputants feel that their respective basic needs are met at the end of the process. Human needs are varied and complex, therefore, the people who facilitate the process of resolving conflicts must be tactical enough to identify the specific needs desired by disputing parties over which the dispute emerged. Human needs could be tangible or intangible. An important human need is the desire to be recognized and accorded one's rights and dignity.

This theory is relevant to this study as it deals with the recognition of the needs of people in the process of resolving conflicts as this is the basis of human rights. It is in line with the study whose objective is to understand how the Nabdam traditional conflicts resolution

approach identifies and recognizes the fundamental needs of disputants (their rights) in the dispute settlement process.

2.2.3 Principled Negotiation Theory

Negotiation has been described by Raiffa (2002) as a collaborative and informal process by which means the parties to a dispute communicate and, without any external influence, try to achieve an outcome that can satisfy them. It is a process of conflicts resolution which is non-binding. This means that the parties who have employed this process for the resolution of their conflicts are not legally obliged to comply with the outcome. In the view of Walton and McKersie (1991), negotiation can be classified as distributive or integrative. They explained that in the distributive approach, one looks at the items in dispute as something that can be divided and distributed by the parties in an attempt to maximize their satisfaction. This type of negotiation is characterized by the fact that when a party wins on something, the other loses. In integrative negotiation, the problem is expected to have more solutions than the ones visible at first sight. In this type of problems, the parties try to bring to the table as much interests as possible, so that there are even more valuable items to negotiate. When the parties are increasing the value of what they put on the table, they take into account their interests, which include their needs, fears, concerns, and desires. This type of negotiation is also known as interest-based as the parties try to combine their interests and find topics in which they may meet. By doing so, more satisfactory outcomes are achieved. This makes integrative negotiation more desirable than the distributive one.

This theory is relevant to this study as it provides a contrast to the Nabdam traditional conflicts resolution approach which employs external actors to process disputes. This will facilitate this study to do effective comparative analysis and meaningful conclusions.

2.2.4 Arbitration Theory

Bennett (2002) explains arbitration as an approach to conflict resolution where the two parties to a dispute use a third independent and neutral entity for solving their dispute. The third and neutral entity generally does not have an active role when assisting the parties throughout the process. With arbitration, the third party simply hears the parties and, based on the facts presented, takes a decision without influencing the parties during their presentations. The outcome of an arbitration process is also singular as it may be binding or non-binding.

In the binding form of arbitration, the decision of the neutral third party who handles the case is final and cannot be disputed or appealed. In the end, an enforceable arbitration award is issued, with legal validity, expressing the decision of the settlement. Parties are thus bound by this decision whether they find it fair and acceptable or not. Such a contract does not exist in the case of the non-binding form of arbitration. With this, the arbitrator makes a determination of the rights of the parties to the dispute, but this is not binding upon them. Thus, the award is actually an advisory and expert opinion of the arbitrator's view of the respective merits of the parties' cases and is by no means enforceable.

An advantage in the use of arbitration is that the time spent and the cost of these processes can be significantly smaller than in courts. Buhring-Uhle and Kirchhof (2006) indicated that efficient conflict resolution processes are valued particularly by companies that see their efforts hindered by slow and costly litigation procedures. Another factor that definitively contributes to minimizing the time being spent has to do with the growing number of arbitration service providers. Its confidentiality, when compared to litigation, is also seen as a positive factor.

This theory is relevant to this study because its binding and non-binding attributes are similar to the Nabdam traditional conflict resolution approach, hence, provides appropriate foundation for the study. It provides a basis to the Nabdam traditional conflict resolution approach aim of restoring the social ties that had been broken by the wrongs done, committed or omitted.

2.3.1 Human Rights: An Overview

Human rights have been expressed by scholars as a new concept. But human rights are as old a concept as the history of humanity. Generally, human rights are commonly understood as being those rights which are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without any distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Wiredu (1990), in his work "An Akan perspective on Human" defines human rights as the claims that people are entitled to make simply by virtue of their status as human beings. Indeed, our rights are claims we have by virtue of the fact that we are human beings rather than as citizens of a country.

In the nature of human beings, there are some basic things, conditions, or entitlements that protect our ability to satisfy our most needs in dignity and respect which stem from some natural capacities and capabilities. Hence, as human beings, we have the right to express ourselves because, in our nature, we have mouths with one of its natural functions being speech just as we have the right to move about because in our nature as human beings, we have legs which naturally are able to carry us around. Our human rights are the things we

have the capabilities or capacity to do as human beings and so all persons have human rights.

Frezzo (2014), defines human rights as a set of protections and entitlements held by all members of the human species - irrespective of race, class, gender, sexual orientation, cultural background, or national orientation. This view reveals how human rights have universal legal guarantees that ultimately protect individuals and groups against actions which interfere with fundamental freedoms and human dignity. Human rights and freedoms are fundamental to human existence. They are inherent entitlements that come to every person as a consequence of being human and are founded on respect for the dignity and worth of each individual. Certainly, if the precondition for human rights is to be a human being, then, the same entitlements and protections should be available to everyone across the world.

Some scholars argue that the concept of human rights is a Western idea and as such, is alien to Non-Western cultures (Leary, 1990; Donnelly, 1990). I strongly disagree with that notion. Human rights are innate qualities of human beings but not cultural or geographic features. Of course, the processes to formulate especially international human rights standards were largely dominated by people from the West but the processes are not human rights. I would want to emphasize that these measures in forms of charters, covenants, conventions, protocols and treaties are only protecting and promoting our human rights which we as human beings have. To say that human rights are Western is to reduce the human status of people who are not from the West. Indeed, the rich cultures of Africa and Asia express matters of human dignity in other terms than "rights" (Leary, 1990).

What are the entitlements of human beings that have to be protected as their rights? Generally, human beings require protection from exploitations by individuals, groups, institutions or organizations, and the state at large. Essentially, the protection includes that of the right to life, association, assembly, expression, dignity, integrity, equal treatment, health, and opportunities for economic advancement. These rights be them political, civil, economic or cultural, guarantee individuals' safety, security, personality, and opportunity to participate in public life. This will largely give individuals liberty to engage oneself for one's own intrinsic satisfaction and thus meaningful life.

Human beings are also entitled to economic structures and social programs that grant them convenient means of decent existence, and for the appropriate development of their bodies, minds, and heart and as well pursue their happiness. Human beings need to be granted the opportunities that will facilitate the access to trade, profession, leisure time, as they are also protected from harms and catastrophes. In this regards, it should be acknowledged that human beings have potentials, talents and capabilities that they have to be supported to develop them and follow their dreams in the nature of self-actualization. Therefore, human beings are entitled to food, clothing, security, shelter, employment, education, and a minimum standard of living.

2.3.2 The Foundation of Human Rights

An important question to ask is "where do human rights come from?" Are human rights those provided by the law? Are they what the state says they are? Are human rights those prescribed by the culture of a society? Are they the generally morally accepted way of life within a human group? Or they are what various religious groups preach? In answering the question on the source of human rights, Turner (2006) argued as follows:

> The study of human rights places the human body at the centre of social and political theory, and it employs the notion of embodiment as a foundation for defending universal human rights. My argument is based on four fundamental philosophical assumptions: the vulnerability of human beings as agents, the dependency of humans (especially in their early childhood development), the general reciprocity and interconnectedness of social life, and, finally, the precariousness of social institutions.

This is to say that the foundation of human rights is in the human body and its fundamental needs. So humanity is the source of human rights. Human rights come with the human nature but the human being may be brought up differently according to culture, history and geography.

Ishay (2008) in answering the same question advanced the following argumentation:

> Human rights are held by individuals because they are members of the human species. They are rights shared equally by everyone regardless of sex, race, nationality, and economic background. They are universal in content. Across the centuries, conflicting political traditions have elaborated different components of human rights or differed over which elements have priority. In our day, the manifold meaning of human rights reflects the process of historical continuity and change that helped shape their present substance and helped form the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948.

The Akan of Ghana believes that a person is the result of the union of three elements. These elements include the life (okra), blood (mogya) and the personality (sunsum) [Wiredu, 1990]. The life component of a human being is seen to come directly from God. It is the belief of the Akan that, for the fact that a person possesses okra which is divine, every person has an intrinsic value which the person does not owe to any societal circumstance.

Along with this value is human dignity. Human dignity requires that every person is entitled to an equal measure of respect. Wiredu (1990) adds that the Akan say "everyone is the offspring of God; no one the offspring of the earth" to demonstrate that each person is a recipient of a destiny which means one has distinct destiny assigned to him or her by God. This is to say that everyone has the right from God to do his or her own things and bearing the consequences of one's actions. This expresses the idea that human rights are regarded to come from God, hence, are natural, ascribed and inherent.

2.3.3. Human Rights in Pre-Colonial Africa

A brief overview of the concept and practice of human rights in pre-colonial Africa is very important to understanding human rights thinking in contemporary African indigenous justice systems. This section also addresses the claims often made that pre-colonial Africa had no concept of human rights, and therefore could not practice human rights. As such, human rights are only achievable through liberal regimes, since they are products of Western culture.

Further, Durkheim (1966) argues that there are ideally two types of society, namely mechanical and organic. In societies characterized by mechanical solidarity, members of the society are highly integrated through their cultural and functional similarities. Mechanical solidarity prevailed in pre-industrial societies, and religion and law worked together, with little or no differentiation between the two. Mechanical solidarity societies as Durkheim described them were closest to acephalous societies, while his organic solidarity societies describe European societies with centralized state systems. Above all, Durkheim insisted that the law that prevailed in societies characterized by mechanical

solidarity was basically repressive. The interpretation of this in contemporary human rights parlance implies a lack of human rights in mechanical solidarity societies.

Donnely (1984) further argues that the concept of human rights was non-existent in pre-colonial Africa. He states, "recognition of human rights simply was not the way of traditional Africa, with obvious and important consequences for political practices"(p.308). Earlier, he argued that "even in many cases where Africans had personal rights vis-à-vis their governments, these rights were not based on one's humanity per se, but on membership in the community, status or some other ascriptive characteristics" (p.304).

Human rights, therefore, notes Donnely (1984), is a Western invention. To justify his claim, he distinguishes human rights from human dignity. He defines human rights as rights which are inherent in an individual for the simple reason of his/her humanity. On the other hand, human dignity obtains in situations where the rights of the individual are dependent upon his/her membership of a particular community, hence ascriptive status.

Gyekye (1996), Motala (1989) and Busia Jr. (1994) note that the concept of human rights was not alien to pre-colonial Africa and that human rights were deeply rooted in African cultural values. Gyekye (1996), drawing from his Akan (of Ghana) culture, observes that the African conceives of the individual as endowed with dignity, and believed in the sanctity of human life. To underscore the belief that all human beings are equal, which are ends in themselves, Gyekye cites an Akan maxim that "all human beings are children of God; no one is a child of the earth" (1996: 150). Gyekye notes that the African believes in human dignity, which is an expression of the natural and moral rights of the individual.

The individual's right must be appreciated within a communal context. This is because the group or community rights or interests generally override that of the individual. However, the individual's membership in a community does not rob the individual of his or her dignity, and by extension, the individual's rights. In support, Ifemesia (1978) describes Igbo (Nigeria) societies as humane. A humane living according to him is a way of life emphatically centred upon human interests and values, a mode of living evidently characterized by empathy, and by consideration and compassion for human beings. … Igbo humanness is deeply ingrained in the traditional belief that the human being is supreme in the creation, is the greatest asset one can possess, is the noblest cause one can live and die for.

African communities make the welfare and the well-being of one the concern of all. The African humanitarian emphasis as spiritual communalism. African spiritual communalism must not be confused with the concepts of socialism or welfarism, he insists. African spiritual communalism he observes derives from African indigenous principles of *"live and let live; collective sharing; common concern for one another; a sense of belonging together; social justice; economic progress and viability for all; and the African indigenous political process of participatory democracy"* (emphasis in the original). Awa (1985:32) in support argues that…. A society which believes in the values of equality, individual rights and human freedom will tend to evaluate quite highly any political systems which maximize opportunities for participation and in other ways promote these values.

African morality it must be reiterated has a social and humanistic basis, rather than religious foundation notes (Gyekye 1996). According to him, African moral values derive

largely from the peoples' experience of living in the community. It is informed by the peoples' understanding of what is appropriate in inter-personal relationships. African moral values were not revealed to them by the Supreme-being. Any behaviour that is not geared towards the well-being of the individual and the community is considered morally wrong according to African cultural values.

He maintains that the bases of African moral values are social and humanistic, not religious or individualistic. He states, such a basis of moral values enjoins a moral system that pursues human well-being. Thus, in African morality, there is an unrelenting preoccupation with human welfare. What is morally good is that which brings about – or is supposed, expected, or known to bring about – human well-being. This means, in a society that appreciates and thrives on harmonious social relationships, that what is morally good is what promotes social welfare, solidarity, and harmony in human relationships (Gyekye 1996:57). Mbiti (1970) in addition observes that morality is a corporate affair in African societies.

It is recognized that the individual's wrongdoing does not only affect the direct victim and his or her family but also undermines the community's well-being. Since the community is an entity affected by criminal behaviour, community needs and concerns are to be addressed. This includes creating new positive relationships and or strengthening existing relationships, and increasing community skills in problem-solving. Reinforcing informal social control mechanisms is very important to African justice. It is also important to note that the community also shares in the responsibility of the wrong-doing of its member.

Further, Mutua (1995) argues that the emphasis on individual rights as against communal rights in Western societies is connected to their peculiar historical experience, which Africa lacks. As such, the pursuit of individual rights is neither natural nor universal. The emergence and dominance of the state in social control in Western societies atomized and alienated the individual both from society and the state, hence the need to seek its protection. On the other hand, African states developed differently, for it was imposed through colonialism on ethnopolitical communities. As Mutua (1995: 342) rightly observes, "the rise of the modern nation-state in Europe and its monopoly of violence and instruments of coercion gave birth to a culture of rights to counterbalance the invasive and abusive state".

John Locke in his *Two Treatises of Government* reiterates the social contract whereby individuals in society concede some of their rights and powers to a sovereign in return for their protection. Two major aspects of the social contract are mandate and accountability, from and to the people, arguably a revolutionary shift from the earlier paradigm where the mandate to rule was from divine powers, and therefore accountability was to such powers.

Mutua (1995: 342) notes that this power is conditional and dependent on the state's duty to "protect individual rights and freedoms from invasion and to secure their more effective guarantee." When governments fail to protect individual rights, they lose their legitimacy. As such, the emphasis on individual rights by Western societies derive from European history and world outlook, hence they view human rights corpus merely as "an instrument for individual claims against the state" (Mutua 1995: 341).

Motala (1996) further asserts that in traditional Africa, as well as in modern Africa, the individual was neither autonomous nor alienated. The individual was always a member of an extended family or community. Membership of the extended family or community bestowed the individual with rights and duties. According to M'Baye and Ndiaye (1982),"within the framework of the group, the individual enjoyed freedom of expression, freedom of religion, freedom of movement, freedom of association, the right to work, and the right to education" (as cited in Motala 1989: 381). However, according to Motala, failure to conform to the norms of society could jeopardize the rights of the individual.

This could occur because, as Marashinge notes, freedom of thought, speech and beliefs were considered communal rights. Other conditions for enjoying these rights were guided by the "principle of respect" opine Marashinge. Respect involved respect for oneself and for others. Respect for others varied according to age, ability, and sex. Respect for others was "very much a part of the normative structure of the legal system, and determined the extent to which freedom of speech could be expressed," observes Motala (1989: 382). Motala justifies the limitation on freedom of speech as similar to what obtains in all societies – it is not absolute.

In traditional African societies, according to Gyekye (1996) and Motala (1989), the individual's right to food and shelter was respected and protected. Everyone had access to land since land was owned both privately and communally. As Motala (1989) observes, pre-colonial Africa had no "leisured class of landowners." Everyone had access to land, which was the major means of economic production and was encouraged to work, and idleness carried a social stigma. African societies being gerontocratic, the elders are the custodians of the community wealth. The elders, as custodians of the community land,

administered the land to the best interest of the lineage or community. Old age is deferred to in recognition of the contribution and wisdom of the elders.

Moreover, everyone will get old and enjoy the same status. However, it is important to note that the elder does not own or control the community land, but only held it in trust for the lineage or community. An abuse of the position could result in replacement and or denial of other privileges. Again, land is not a marketable commodity in some African societies, and as such the individual had the right to use the land for the production of food and development for residential purposes only. Notably, Gyekye (1996) and Motala (1989) observe that traditional African societies were democratic and egalitarian, and allowed for the participation of all adults in the decision-making process. Even in communities with Kings or Chiefs, decisions are reached only after full consultation with community members. All participating adults were free to express their opinions on issues before decisions can be reached. Again, all decisions were reached through a consensus. No one is punished for holding opposing views on issues, and no attempt is made to suppress any voice. In some cases, decisions on issues are deferred until all the constituting members or groups of the community are represented. Sithole (1964) aptly sums it up thus: Things are never settled until everyone has had something to say. African traditional council allows the free expression of all shades of opinions. Any man *has full right to express his mind on public questions* (Gyekye 1996:153).

Gyekye (1996) further observes that the individual can assert his or her civil and political rights against violation by the state. There was recognition by African peoples: that people entrusted with power are capable of abusing it. As such, assertion of political rights, have sometimes led to the removal of autocratic or corrupt leaders from office. This practice is

geared towards safeguarding the individual's dignity, which is generally referred to as African humanism, according to Motala (1989). In this regard, "torture, killings, and other abuses would be objectionable in terms of Africa's own traditional standards of human rights" (Motala 1996: 387).

Human rights, therefore, is not purely a Western invention. Neither did the concept of human rights originate from any part of the world, or from liberal democracy, as postulated in some quarters. Arguably, all peoples of the world do not assent to the same basic values and beliefs, but what is certain is that every society has been concerned with the notion of social justice, the relationship between the individual and his/her political authorities. I should think that the struggle for human rights is as old as world history itself, because it concerns the need to protect the individual against the abuse of power by the monarch, the tyrant, or the state. Lauren (1998:120) also points out that "what the West did provide, however, was not a monopoly of ideas on the subject but rather much greater opportunities for visions such as these to receive fuller consideration, articulation, and eventual implementation."

As Eze (1984) rightly observes, all societies recognize human rights. However, its manner of conceptualization varies across different cultural settings. He asserts that pre-colonial Africa had a system of law which is similar to the systems of law in Western states. The difference according to Eze is that… in most traditional African societies the law existed outside the framework of a state in the modern sense. Obedience to the law was maintained through custom and religion as well as established patterns of sanction. These pre-colonial African societies had a high level of organization in which political, economic, and social control was maintained (as cited in Motala 1989:379). Gluckman (1985) concurs with

Eze's viewpoint. He argues that the functions and objectives of law in Africa are similar to that of other societies. According to him, the central objective of the Lozi jurisprudence, for example, is the "regulation of established and the creation of new relationships, the protection and maintenance of certain norms of behaviour, the readjustment of disturbed social relationships, and the punishing of offenders against certain rules" (p.163). Again, he observes that the Lozi jurisprudence shares with other societies such basic legal doctrines as "right and duty and injury; the concept of the reasonable man; the distinctions between statute and custom; and between statute and equity or justice; responsibility, negligence, and guilt; ownership and trespass.

2.3.4 History of Human Rights in Africa

The starting point for analyzing human rights and democracy in contemporary Africa is African Nationalism and Pan-Africanism (Sithole, 1964). Early on, this African nationalism and Pan-Africanism movements were engaged in the fight against rights abuses in Africa and the plundering of Africa's resources by colonial authorities (Rodney, 1974). African nationalists appealed to colonial authorities and the international community regarding the need to respect the rights of colonized people (Sithole, 1964). At the 1945 Pan-African Congress, for instance, 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.

Human rights, therefore, formed an important basis for the fight for independence in Africa. Asante (1969) has outlined three international documents that contributed to a

favorable environment for human rights: the *Charter of the United Nations (1945),*which provided six articles to "encouraging" or "promoting" respect for human rights; the *Universal Declaration of Human Rights (1948),*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 (1950)," which played a role in shaping the human-rights provisions in the constitutions of various African states. Meanwhile, African nationalists used an important tool which was missing from the Universal Declaration, that is, the right to self-determination, which entitles all "peoples" to freely determine their political status and freely pursue their economic, social and cultural development (CESCR, 1966). It is no surprise, then, that this right was brought to the forefront by the struggle of Africans to free themselves from European colonialism.'

African leaders of newly-independent states translated their human-rights rhetoric into internal constitutional provisions (Asante, 1969) which were negotiated with the departing colonial authorities. Asante (1969) and Shivji (1986) maintain that the human rights platform in nationalist and Pan-Africanist campaigns, coupled with the promise of improvement in general welfare under the indigenous rule, created in the African populace an expectation of firm human-rights guarantees with the arrival of nationhood. This hope was re-enforced by continued promises of respect for rights at the dawn of independence.

Notwithstanding the claim of human rights as the basis for the struggle for independence, rights-abuses soon became regular as African leaders began to eliminate human rights from their respective constitutions and, eventually, even from the speeches and writings that gave birth to African socialism (Ambrose, 1995).

2.3.5 African Socialism and Human Rights

Most leaders of post-independent African countries adopted African socialism as the political philosophy towards a new social order akin to the traditions of pre-colonial African society (Busia 1967). African socialism was defined as "democratic socialism as conceived by Africans in Africa, evolving from the African way of life and formulated in particular terms as the result of a continuing examination of African society". African socialism argued for an African concept of democracy as distinct from Western notions. For instance, Nyerere writes:

> The African's mental conception of "government" was personal, not institutional. When the word government was mentioned, the African thought of the chief; he did not, as does Britain, think of a grand building in which a debate was taking place (Nyerere, 1961).

A significant feature in this philosophy was the existence of a leader in whom all authority was vested as was with the traditional setting where people were united under the chief or king. Another element of the tradition was that decisions were taken by consensus (Nyerere, 1961).

2.3.6 The Community School of Thought of Human Rights in Africa

Some African human rights scholars have presented a dichotomy between the communal basis of African societies and the individual rights notion in Western liberal thought. Some Western anthropologists have strongly suggested that traditional African political systems did not possess the idea of rights (Donnelly, 1985). On the contrary, some African scholars have defended that there has always been a notion of rights in Africa. For example, one school (Mojekwu, 1980) argues that the traditional African concept of rights is the direct

opposite of the Western model, emphasizing community rights over individual rights and freedoms. Cobbah 1987) also writes:

> The pursuit of human dignity is not concerned with vindicating the right of any individual against the world. The African notion of the family seeks a vindication of the communal well-being. The starting point is not the individual but the whole group including both the living and the dead (Cobbah, 1987).

The writings of these African scholars have tended to amplify those of African socialists on the 'Merrie Africa' idea. What appears to be a difference is how these scholars considered beyond the state institutions and the social and economic settings to address the key issue of human rights. For example, in considering the socio-political setting of the traditional African society, Mojekwu (1980) asserts:

> The communitarian concept of human rights in Africa was fundamentally based on ascribed status ... One who has lost his membership in a social unit or one who did not belong - an outcast or a stranger- lived outside the range of human rights protection by the social unit (Mojekwu, 1980).

However, in reaction to the community school of thought works by some African scholars, (Donnelly, 1984; Howard (1986) have argued that traditional African societies did not have a concept of rights. In their view, fundamental human rights which are universal in scope and application are inherent in one's humanity, not community. They claim that at best, African societies had notions of human dignity but not of human rights.

Their argument, however, seems inadequate. In part, they believed rights were not granted universally in the sense that strangers and slaves were denied their rights. This was not totally the case. In traditional African societies, strangers and slaves could rise to the status

of ordinary citizen and even hold public office. This is in no way from today's distinction between citizens and non-citizens where countries grant to its citizens particular rights that are not enjoyed by non-citizens (Busia, 1967).

In traditional Africa, community leaders had some opportunity to enjoy some "special" rights or privileges in order to enhance the performance of their enormous required duties, just as in modem societies, heads-of-state, ministers, members of parliament and diplomats are granted certain immunities and privileges to enable them to perform their public duties more effectively. Thus, in most cases, the special considerations for traditional leadership in African societies were for efficiency and reward, but not discrimination. I, therefore, say that both Western *and* African notions of rights are concerned with personal, human rights.

Again, it was not only in African societies that rights were never universally enjoyed. Even in Western Europe, not all rights were enjoyed by all people there. During the Enlightenment period in Europe when the concept of human right is said to have been developed (Berting, 1993), the concept of natural rights was largely for middle-class men to argue for the right to own property. Kathleen Lahey writes in support of this as follows:

> The notion of equality was originally devised by men in order to promote wider distribution of political and economic power among male members of the state. ... In Locke's view, women had to be enslaved within the family if property relations were to be legitimated and maintained (Lahey, 1986).

It is though important to indicate that Locke's conception of equality in his work “The Two Treaties on Government” did not only exclude women but also slaves and serfs (both male and female) from the status of full citizenship. Locke's conception of liberty and equality was, therefore, shared only by "free" persons.

Also, persons who were colonized during the Enlightenment were denied their rights. Eide captures this as follows:

> Genocidal actions ... were carried out by self-proclaimed freedom-lovers emigrating from Europe at a time when human rights jargon was blossoming there and was warmly endorsed by the émigrés - in so far as their own émigré society was concerned, but not embracing the peoples they met (Eide, 1989).

It is, therefore, safe to say that, had the Western concept of human rights truly based on universal humanity, and not on "ascribed status", then, women, slaves, serfs, the poor and colonized peoples would not have been denied their rights.

Additionally, the exercise, as well as the enjoyment of rights, is vital to the performance of a person's duty and to the attainment of human development and dignity. Therefore, all societies, regardless of the stage of their development, exercise and enjoy rights, in the absence of which there would not have been any development. It is, hence, inaccurate by the Western scholars to suggest that the notion of human rights is alien to Africans due to the communal viewpoint of the concept. I state here again my contention that individual rights have existed in African communities, and that their exercise helped to strengthen those societies.

It is important to understand that individualism is not necessarily submerged by communalism nor is communalism antithetical to individualism. In line with this view, Gyekye writes succinctly:

> Communalism may be defined as the doctrine that the group (that is, the society) constitutes the focus of the activities of the individual members of

> the society. The doctrine places emphasis on the activity and success of the wider society rather than, though not necessarily at the expense of, or to the detriment of the individual (Gyekye, 1996).

Gyekye (1996) continues to state that for the Akans of Ghana, individuals are born into a human society and that an individual's capacities are deemed insufficient to meet basic needs. This rightly points to the fact that communalism does not take away individualism; rather, it simply reflects the individual's limited possibilities and calls for the appreciation of the reciprocal relationship between the individual and the group.

The exercise of individual rights in the African community is a reality which leads to the attainment of human dignity and the proper functioning of the community. The issue, therefore, is not a lack of the concept, but the lack of the expression "rights" (Groffier, 1991). The African notion of rights is similar to the Western notion of civil and political rights. The African conception of rights is, therefore, community-based, which is motivated by the community's interest in ensuring and benefitting from the exercise of rights; but individual rights are emphasized first (Mazrui, 1970).

2.3.7 African Values and Human Rights

Human rights have been a long historical concept or ideology in the West which espoused that human rights are universal, equal and inalienable (Donnelly, 2003). In Africa, this concept has always been expressed as human dignity but with the efforts by the United Nations (UN), the concept comes as a recent one. This later angle to the concept of human rights gives the notion that human rights are from the West. They consider human rights as a Western model and that the principles as contained in the Universal Declaration reflect

more on Western values (Cerna, 1994). These different perspectives have led to debate and controversy in relation to human rights for some time now.

The focus of African scholars on group rights never in anyway take away the relevance of individuals at the centre of human rights as expressed early on. Indeed, African societies place a premium on the value and dignity of the individual in their beliefs systems and practices. The focus on the individual rights by the West is used to argue the universalism of the concept. The recognition of the influence of culture on the total life of individual by Africans has also led to the call for cultural relativism to the concept of human rights. These dichotomous perspectives to human rights seem entrenched but that should not really be the case. Indeed, there is no society that does not recognize for example the rights to life, expression, name and food of every individual. What must be made clear is that it is Important to indicate that universalism of human rights is not uniformity as the ideology of the concept cuts across geographic boundaries.

It is therefore perfect to reason with An-Naím and Deng (1990) that international standards of human rights are by no means alien to African tradition and could even be defended on the basis of traditional African value systems and institutional practices. They emphasize that, human rights whether locally or globally defined, are not without roots in African traditional societies, and are actually well grounded in African cultural values and that the formulated international standards can be positively reinforced and enriched by the moral values and normative behaviour of traditional African societies.

The factors that have influenced the African position on human rights are similar to those of Asia in their argument in defence of their “Asian Values” as was expressed during the

United Nations World Conference on Human Rights in June, 1993 in Vienna. Basically, four reasons including the cultural argument, the 'collective' argument, and the 'disciplinary' argument and the 'organic' argument were used to advance their position (Brunn & Jacobsen, 2000). The first three in my view is applicable to the African story.

The African argument from the cultural perspective expresses the point that the application of human rights should synchronize with the cultural background of the people (Donnelly, 1984). This argument recognizes that the nature of all human being is the result of the influence of his or her culture (Eide, 2001) and since cultures vary from society to society, the application of human rights should be appropriate to specific cultures of societies (Engle, 2000). Therefore, the distinct nature of African culture and value system have a significant influence on their conception and application of human rights, thus, human rights for both individuals and groups since the life of the individual cannot be separated from the network of people in his or her society. Africans like Asians see human rights as individual rights but these rights have to be a part of the whole society and for that matter cannot be detached from issues of state, state power, and national sovereignty.

Eide (2001) argues that human rights are a product of culture and a result; human rights must be culturally specific and not separate from the cultural peculiarity of a nation. Therefore, since cultures vary, there would be variation in human rights interpretations. Whiles, I agree with him on the account that cultural differences are a reality and that interpretation of human rights is bound to differ according to the different cultural influences, I maintain that human rights are natural. It is the enjoyment of human rights that is influenced by cultures. It can, therefore, be concluded that it is the nature and character of human rights that are the product of culture but not human rights themselves.

Hence, the values of the African society do to a very large extent influence the nature of the enjoyment of human rights.

It is the inevitability of the cultural argument that the United Nations stressed that those constructing human rights instruments and attempting to resolve human rights issues should pay attention to regional, historical, cultural and religious particularities. It is important to state that Africans appreciate and value the universality of the concept of human rights, what they are against is the imposition of alien values on them. One significant issue to note is that cultures are not tangible things to take and remould; they are the totality of our ways of lives as ascribed to us by our societies. The African Charter on Human and Peoples' Rights (1981) is therefore very appropriate indicating that:

The virtues of the historical tradition and the values of African civilization should inspire and characterize the reflection on the concept of human and peoples' rights

Similarly, Nguyen and Dao (1995) indicate:

> While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting bearing in mind the significance of national and regional particularities and various historical, cultural, and religious backgrounds.

The collective argument centres on the solidarity or group nature of human relationship and existence. It expresses the appreciation of Africans on the interdependent and interconnected African social network system. This slightly differs from the Western view that human rights are more of individual freedoms. Africans emphasize the relevance of societies and nations as that of individuals because of the understanding that the individual

lives in a society and the extent to which they can freely enjoy their lives is hugely linked to the prospects granted by that society. It is therefore believed that when societies and nations advance, individuals get to enjoy their fundamental human rights better. The nation, community, and family are therefore placed before the individual. Accordingly, the interests of individuals incompatible with the group's interests have to give way to the group interest so as to ensure social stability, economic development and progress for all. This view of African probably stems from the many inter and intra tribal wars and conflicts experienced in their days of nation-states formation and the incidences of slave trade and colonialism.

The disciplinary argument is one Africans hold relative to the acknowledgement of their socio-economic development deficit. African societies have survived over the years with low levels of technology though under well-structured political systems. This low level of technology in African societies has impacted on the total productivity of the people. It must be mentioned that Africans are strong and hardworking people but the increasing demands of goods and services due to rapid population growth over the years requires a closer look at the economic and production sector. This has led to the disciplinary argument which is similar to the Asians. As a result, African societies have placed much value on economic related rights over civil and political ones which are not much of a problem in the societies which are mostly rural. So whereas the West focus very much on the individual, civil and political rights, the African value economic factors as a way to deal with their development deficiency. Economic rights including the rights to food, work, own properties, shelter etc are argued to support the exercise of civil and political rights. Economic rights are seen as the source for the flourishing of other forms of rights.

This is not to indicate that Africans in any way regardless civil and political rights for, of course, political, economic, social and cultural rights are provided for by instruments of the United Nations which African states have ratified. In 1966, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights were enacted. The preambles to these two important covenants recognize that people are free to determine their political status and also free to pursue their social, economic and cultural desires.

2.3.8 The Republican Constitution, 1992 of Ghana and Human Rights

Since the Universal Declaration of Human Rights in 1948, constitutions of the world's communities all over contain provisions for Human Rights. Ghana is no exception. Constitutions from the 1960 Constitution through to the present 1992 Constitution have consistently included detailed and extensive provisions for the protection of the fundamental rights and freedoms of the people. This is no doubt a reflection of the experiences which Ghanaians had gone through since independence under various authoritarian governments which have flagrantly flouted and abused the rights and freedom of the people.

The current 1992 Republican Constitution in its preamble affirms a commitment to the protection of the fundamental human rights and freedoms and even with an acknowledgement that, human rights are natural and inalienable. Chapter Five entitled 'Fundamental Human Rights and Freedoms' is dealt in 22 Articles covering 23 pages. The sixth (6^{th}) chapter 'Directive Principle of State Policy' also protects the citizens from abuse and exploitations in the hands of government officials and institutions.

Article 12 clause 2, of the Republican Constitution, 1992 states that "Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Constitution but subject to respect for the rights and freedoms of others and for the public interest". This makes the nature of the fundamental human rights and freedoms guaranteed both vertically and horizontally applicable in the sense that they are enforced against both the government and against individual and private institutions.

The 1992 Republican Constitution of Ghana does not only provide for the protection of Human Rights and Freedoms in Chapter 5, but it also buttresses the idea of these rights and freedoms further by incorporating provisions for dealing with any breaches through the formal establishment of the Commission on Human Rights and Administrative Justice (CHRAJ) through an Act of parliament. The body is specifically charged with the responsibility for matters concerning violations of fundamental human rights and freedoms and other breaches of the constitution by public officers who undermine these rights and freedoms. Branches of the commission are therefore established in all regions and districts throughout the country. Very clearly, the commission's responsibilities are very extensive and of the highest importance.

The rights guaranteed in the Republican Constitution, 1992 are a reflection of the liberal democratic underpinnings inherent in the various democratic Constitutions since 1969. The basic liberal democratic principles of protection of the right to life, protection of personal liberty, respect for human dignity, protection from slavery and forced labour, equality and freedom from discrimination, protection of privacy of human and other property, the right to a fair trial, protection from deprivation of property, the right to freedom of speech and

expression including freedom of the press and other media, freedom of thought, conscience and belief including academic freedom, freedom to practice any religion, freedom of assembly and demonstration, freedom of association, right to information and freedom of movement are strongly upheld in this constitution.

The 1992 Constitution of Ghana also provides for the protection of the rights of groups of persons we often call 'the vulnerable' in society. These include the rights of the disabled, children, women, the sick etc. These are contained in Articles 27, 28, 29 and 30. This is in direct support of the provisions in the United Nations Charter on Human Rights (1945) and the Convention of the Rights of the Child (1990). In addition, there are other equally progressive rights such as the guarantee of the property rights of spouses (Article 22), fair administration of justice (Article 23), and economic rights (Article 24). It also guarantees the rights to education (Article 25), and culture (Article 26).

The Constitution has also established a number of important state institutions that function to protect and promote the rights of citizens in the country. Some of these institutions include the judiciary (Articles 125 – 161), media (162 - 173), and police (Articles 200 – 2004). Redress for breach or anticipated breach of any of these rights can be sought in the High court which has the Authority to issue such directions or orders it may consider appropriate – Article 33(1 & 2).

In addition to the specific provisions already mentioned there is also Chapter Six which covers the 'Directive Principles of State Policy' which sets the various basic objectives that functionaries of the state and individuals should use as a focus in taking and implementing

policy decisions for the establishment of a just and free society. The objectives mentioned include political, economic social, educational and cultural.

2.4.1 Conflicts Resolution

Conflicts are natural and part of human's life. They are in themselves not negative; it is how they are managed that determines the effects of conflicts on human beings. When well-managed, conflicts can become a good source of creativity and initiation and an instrument for advancement and progress. However, when conflicts are poorly managed, they escalate into violence and destruction. Conflicts vary in forms and nature; therefore, the methods and approaches to dealing with or resolving conflict also vary.

Reimann (2005) identifies different forms of dealing with conflict which include: Conflict Prevention, Conflict Management, Conflict Settlement, Conflict Transformation, and Conflict Resolution. These concepts are sometimes used to mean conflict resolution. Though these concepts relate to conflicts resolution, they are different. The focus of this work is on Conflicts Resolution but it is proper to define these terms so as to provide proper perspective to this work.

Conflict Prevention refers to the effort of reducing the occurrence of conflicts. It involves all conscious efforts aimed at preventing conflicts from happening. Conflicts prevention mechanisms involve a whole range of activities by institutions or individuals meant to reduce the incidence of conflicts. I am, therefore, in agreement with Carment and Schnabel (2003) when they define conflict prevention as "a medium and long-term proactive operational or structural strategy undertaken by a variety of actors, intended to identify and create the enabling conditions for a stable and more predictable social security or environment". Swanstrom and Weissmann (2005) on their part categorized conflict

prevention into direct and structural preventions. The direct prevention is aimed at avoiding short-term, often forthcoming, escalation of a possible conflict whereas the structural prevention focuses on more long-term procedures that aimed at dealing with the fundamental causes of conflict.

Conflict management, according to Rabar and Karimi (2004), focuses on measures aimed at reducing the intensity of violent conflicts. For them, the expression also shows pre and post-conflict prevention efforts. From a similar perspective, Tanner (2000) defines conflict management as the "limitation, mitigation and/or containment of a conflict without necessarily solving it". To Swanstrom (2002), conflict management should imply a change, from destructive to constructive. Conflict management aims to increase trust between the conflicting parties so as to bring about improvement in their interaction to ensure open participation in the process of handling a conflict. Wallensteen (2005) refers to conflict management as the procedures that limit, mitigate and/or contain a conflict without necessarily solving it. This is expected to take place in the early phases of conflicts for when conflicts escalate or degenerate into violence phases, management becomes difficult and costly if not impossible. This is because people would have experienced the hurts of the conflicts and as a result may take entrenched positions.

The next related concept is conflict settlement. Reimann (2005) is of the view that conflict settlement involves all measure and strategies that aim at securing the definite end of violence that characterize a conflict but does not necessarily deal with the underlining causes of the conflict. According to Rabar and Karimi (2004), conflict settlement involves three things: the first is, it is predominantly a third-party activity to finding out the strategies that facilitate the transformation of zero-sum games; the second is to end the conflict, and

the third is to achieve political agreement. They maintain that the strategies include both peaceful measures and coercive.

Conflict transformation concerns "an outcome, process and structure oriented long-term peacebuilding activities, which aim to accurately prevent revealed types of direct, cultural and structural opposition" (Reimann, 2005). The aim of conflict transformation is to end violence and restore cordial or positive relationships between the conflicting parties. It also aims at changing the political, social or economic structure which breeds negative relationships. Lederach (1995) stresses that "rather than seeing peace as static and end state, conflict transformation views peace as a continuously evolving and developing the quality of relationships".

With this brief background on the related concept, it is safe to get back to the main concept of conflicts resolution. According to Wallensteen (2005), conflict resolution refers to dealing with the root causes of a conflict and mutual understanding of each party's existence. Lederach (1995) explains that conflict resolution is aimed at examining the exact root cause(s) of the conflict and identifying creative solutions that the parties in conflict may have missed to recognize in their interaction. Burton (1990), on his part, indicates that, although conflict resolution aims to move the violent conflict toward a solution that may be acceptable to all conflicting parties, it does not necessarily seek to avoid future problems in social life or to remove the resentment that existed.

Conflict resolution is used to describe all process-oriented activities that aim to address the underlying causes of any conflicts. Accordingly, there are various types of processes of conflict resolution which mediation, conciliation and negotiation. These approaches are

characterized by collaborative, participatory, informal, non-binding processes and even courts processes which focus on adversarial, fact-oriented, legally binding and imposed decisions (Boulle, 1996). Basically, a non-adversarial process such as mediation negotiation, arbitration and conciliation are practices which have been associated with traditional conflict resolution in Ghana.

As some scholars think of conflict resolution as particular kind of activity such as mediation, negotiation and arbitration, others consider it as a process followed while resolving conflicts and focus on joint action to bring about an acceptable solution to all parties. Tsongo (2012) refers to conflict resolution as the various mechanisms of transforming conflicts so as to maintain secure and fair and just relation.

Despite the availability of various processes through which conflicts are handled, some scholars argue that conflicts are not often resolved. Schellenberg (1996), for example, argues that "neither peaceful nor violent mechanisms of conflict resolution can always totally resolve conflicts." To him, even though decisions are made and agreements are arrived at, the conflicting parties often complain and feel that it has been unjustly treated. Similarly, Wallensteen (2012), disagrees that conflicts are solvable. He says "this is not necessarily naive or optimistic position, rather it is a realistic proposition" (Wallensteen (2012). It is for this strong argument that I would like to refer to this nature of handling disputes as "conflicts processing" instead.

2.4.2 The Indigenous Concept of Conflict Resolution

Traditional conflict resolution in African societies exists at different levels right from the family through to the clan and to the community levels. Traditional conflict resolution

mainly involves using indigenous institutions, knowledge, and ideas to deal with conflicts. Traditional conflict resolution is defined as the "capability of social norms and customs to hold members of a group together by effectively setting and facilitating the terms of their relationship… sustainability facilitates collective action for achieving mutually beneficial ends" (Fred-Mensah, 2005). It is a process which stakeholders take conscious effort to work towards the management of a conflict. The main focus is on re-establishing the flow of harmonious relationship within individuals, families and communities. It is reconciliatory in nature which is often characterized with symbolic gestures and associated rituals including the exchange of gifts, and slaughtering of animals such as chickens, goats, sheep, and cows (Ndumbe III, 2001). Traditional conflict resolution focuses on creating and restoring the impaired relationship with God, the spirits, ancestors, family and neighbours as the case might be (Mbiti, 1991). It is a healing process.

Conflicts must be understood in their social context, involving "values and beliefs, fears and suspicions, interests and needs, attitudes and actions, relationships and networks…" (Brock–Utne, 2001). It is therefore essential to the root causes of conflicts so as to enable shared understandings of the past and present. The focus of conflict resolution especially from the indigenous perspective is as noted by Brock–Utne (2001), "to mend the broken or damaged relationship, rectify wrongs, and restore justice". Another aim is to ensure the full integration of parties into their societies again and to adopt the mood of co-operation. The overall objective of traditional conflict resolution is to avoid accusations and counter-accusations, settle hurt feelings, and reach a compromise with a greater focus on helping improve the future relationship of the parties involved (Brock–Utne (2001).

The key players in traditional conflicts resolution depend on the level at which it is being handled. Some conflicts can be processed at the family level with family heads or at the community level with the chief and elders. The roles played by the key actors may change from time to time as the situation demands. This is because there is no standard model with indigenous conflicts resolution processes. Thus, the traditional conflicts resolution approach is flexible and dynamic and the whole process and content are influenced by the social context. The social situation of those involved is also important. Thus, the social surroundings feedback into or influence the process.

In some parts of Africa including the Nabdam area in Ghana, when the agreement is reached, it is usually shared with all parties including the general community. 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). According to Okrah (2003), traditional societies process conflicts through internal and external social controls. The internal social controls use processes of deterrence such as personal shame and fear of supernatural powers. External controls rely on sanctions associated with actions taken by others in relation to behaviours that may be approved or disapproved. Indigenous conflict resolution mechanisms focus on the principles of empathy, sharing and cooperation in dealing with common problems which underline the essence of humanity (Murithi, 2006).

Generally, traditional conflict resolution involves the identification of the root cause of the problem and engaging all parties concerned to address the underlying issues. This usually ends with the guilty party(ies) acknowledging and accepting wrongdoing, which potentially leads to reconciliation. Usually, the process ends with either a compensation or

just forgiveness (Brock- Utne, 2001; Murthi, 2006). The process of traditional conflict resolution has to do with how indigenous structures and systems bring about actions intended to ensure peace at the individual and community level relationships. In this respect, conflict resolution procedures are generated from general cultural life and daily experiences of living.

2.4.3 Traditional Conflicts Resolution in Ghana

Traditional conflict resolution in Ghana is a structured political, judicial and arbitration mechanism. Therefore, traditional leaders play a vital role in local and grassroots communities in relation to socio-economic development and the administration of justice in the modern political system and conflicts processing. This is part of the cultural heritage of the people of Ghana. Traditional leadership plays critical roles in promoting and sustaining social cohesion, peace and order in societies. These involve two important roles namely a proactive role to promote social cohesion, peace, harmony, coexistence; and secondly, a reactive role in resolving disputes which have already occurred (Department of Justice and Constitutional Development, 2008 of South Africa).

Due to the necessity of conciliation which is embedded with the traditional conflicts resolution mechanism, a neutral venue is often selected in the Ghanaian society. This explains why often the chief's palace, village ground, or the shrine is often used (Best, 2006; Kirby, 2006).

2.4.4 The actors

There are many actors involved in the traditional conflict resolution process. The traditional authority structure in Ghana, as described by the Chieftaincy Act, 2008 (Act 759, Section

58) consists of five levels with ordered authority and power. These include the paramount chiefs, divisional chiefs, sub-divisional chiefs, edikrofo (settlement elders), and any other chiefs recognized by the National House of Chiefs. In the Nabdam area, the paramount chief is known as the 'nakat', the divisional chief is known as 'tengnab', and the sub-divisional chief is referred to as 'nabil'. Among the Akans, the leader of the traditional state is the paramount chief (omanhene) followed by the divisional chiefs (ohene), and the head of villages (odikro - literally meaning the owner of the village). Villages consist of a number of family groups or clans/lineages. Each family group or clan is headed by an elder of the family (abusuapanyin), known in the Nabdam area as 'yidaan'.

There are corresponding female leaders known as queens or queen-mothers from the paramount chief to the 'odikro' levels in some traditional areas in Ghana. These queens are also critical in conflict resolution. Chiefs at all levels have a council of elders which helps in governance as part of the formal structure of chieftaincy. Other actors may be drawn from across all sections of society including clans, youth, women, singing and self-help groups/associations. Also, of significance are the traditional priests, herbalists and soothsayers. This study covers chiefs and elders from the sub-divisional chief's level to the paramount chief's level.

Naturally, conflicts that could not be resolved at a lower level of authority are sent to a higher level of authority for processing. Similarly, disputants who are not satisfied with settlement decisions or outcome from lower authority levelled chief can make an appeal at a higher level of authority.

It has to be noted that, though there are some general views that are basically similar in various traditional settings, there are some variations among ethnic groups in Ghana. For example, whereas among the Akans, land is vested with the chief, among the Nabdam and the North of Ghana in general, it is vested with the 'tendaana' (Landlord). Therefore, when it comes to land disputes, the 'tendaana' in Northern Ghana plays a very active role.

2.4.5 The setting

The setting or venue for traditional resolution of conflicts is very crucial. A neutral ground is often selected for traditional conflict processing event due to the value of conciliation embedded in the traditional approach (Esia-Donkoh, 2012). This informs why cases are often processed at the chief's palace (Best, 2006; Kirby, 2006). Nonetheless, when the conflict involves a contention over a boundary, then the boundary in contention could be used as the venue. Under such instances, the earth goddess, as well as the ancestors, are invoked as they are regarded as the real owners of land (Best, 2006).

There are cultural and spiritual connotations to the choice of neutral grounds for the traditional processing of conflicts. It shows that the communal interest of the people is supreme, hence, the interest of the community must be placed above individuals' interest. Also, the choice of a neutral grounds indicates there is a dependence on the spirit beings to witness and assist in the resolution process so as to achieve harmony. Thirdly, the choice of some neutral grounds like the palace and shrine symbolizes the support and heritage of the entire community (Esia-Donkoh, 2012).

It must be noted, however, that some conflicts are processed at different levels of venues so as to maintain privacy and confidentiality and promote anonymity. For example, if there

is a domestic or an intra-clan conflict, such a conflict could be handled in a domestic setting.

2.4.6 The process

There are a well-established traditional leadership and consultative structures and processes through which disputes are settled at the community level. Generally, a traditional conflict resolution process has three stages which include the pre-resolution, resolution, and post resolution.

The pre-resolution stage is characterized with the filing of complaints, issuance of sermons, consultation for suitable date and venue, invitations to appropriate persons, and gathering of the required materials. According to Manuh (1988), among the Akans, a person who is desirous of initiating proceedings in the palace, first goes to the Okyeame (linguist) and makes a report of the matter to him. The Okyeame decides whether or not a complaint should be admitted. When a complaint is made out, the Okyeame receives a settlement fee known as 'Essiesieto dee' based on the gravity of the offence. The fee may be decided by the complainant or by asking the Okyeame of how much is appropriate for making a complaint.

Usually, writs are delivered to the defendants through the linguist after a complainant has reported a case at the palace. Manuh (1988) indicates that a messenger is sent to issue summon to the named party and the complainant bears the cost. The respondent who is served with the summon can either agree to appear or refuse. If he or she agrees to appear, the case can proceed. However, if the respondent refuses, the complainant is given back his or her complaint fee and advised to seek alternative forum. Where the respondent

appears, he or she deposits an amount called 'ntaasoo' equal to the amount of the complainant. At the end of the case, the guilty party pays the victorious party all the expenses he or she incurred.

A date is usually set for the resolution stage to begin. When a party is absent on the said date when the case is called without a good reason, he or she pays the other party the cost he or she incurred. Where both parties are present, the proceedings can begin. The respondent is asked if he or she knows the complainant and that a complaint has been brought against him or her. If the answer is positive, the complainant swears an oath to speak the truth. The oath can be sworn on the Bible, Quran, or any other system of belief or faith. The complainant is then asked to state his or her case. After the presentation by the complainant, the respondent is given the opportunity to ask him or her any question. The court can also ask questions to clarify any issue. If the complainant has witness(es), they are called in. A witness fee is paid by the party(ies) with witnesses part of which is given to the witnesses at the end of the case to compensate for their time. The witness(es) is/are then asked to swear an oath and narrate what they know about the case. After presentations by the witness(es), the complainant is given the chance to ask them any question of interest. The respondent also has the opportunity to ask complainant's witness(es) any question (Manuh, 1988).

After, the respondent is given the chance to present his or her case after swearing an oath. Similarly, his or her witness(es), if there are any, is/are called in as was done with the complainant. The respondent, court, and the complainant have the chance to ask the respondent's witness(es) any question of concern (Manuh, 1988). Esia-Donkoh (2012), expresses the fact that, at the resolution stage, efforts are made to get the disputants through

various methods to process the dispute and restore peace and harmony. Rituals, sacrifices and proverbs are often employed at this stage to assist in resolving the disputes.

In the end, members of the court are asked of their opinions on the case differently. A conclusion is reached and communicated and the loser is required to offer an apology known as 'dibim' to the victor. The loser may appeal to the Okyeame to offer the apologies on his or her behaviour. The parties are asked to swear that there is no further problem between them and that they will be dealt with should any problem arise again (Manuh, 1988).

The parties thank the court. The unsuccessful party loses his or her deposits whiles the successful party gets his or her deposits refunded. The elders and others who sat on the case are given part of the money forfeited by the unsuccessful party.

The post- resolution stage is one that attempts to cement the cordial relationship among the disputing parties. Some activities engaged in this stage include sharing a drink from the same cup or calabash where possible, eating together from the same bowl, and chewing kola together (Esia-Donkoh, 2012). There can be appeals by a party who is not satisfied with the outcome to the next level of traditional authority in the area till it gets to the paramount chief.

The traditional court, the main seat of authority, among many ethnic groups in Ghana, consists of the chief, his elders, the queen mother and the linguist. The elders represent all the people in the division. They operate based on consultation, open discussion, consensus building and coalitions which I will describe as democratic. The composition of the traditional authority also demonstrates the Ghanaian traditional notion of participatory

democracy (Okrah, 2003). The traditional process of conflict resolution in Ghana especially the Nabdam is based on the notion that whatever decision is arrived at should improve the relationship between the parties and that the judgment should be wise and practical (Okrah, 2003).

The traditional conflicts resolution process in Ghana involves the use of social, spiritual, and material tools (Awedowa, 2010; Kendie, 2010; Sarpong, 2009). The spiritual tools involve the performance of rituals such as sacrifices, libation, incantations, and prayers supposed to engage the ancestors in the disputing process. The social tools include the use of proverbs, marriage ties, historical experiences, joke relationships etc. Some of the material tools used included the use of local foods, drinks, and fines.

2.4 .7 Methods of Traditional Conflicts Resolution

Various methods of conflict resolution such as mediation, arbitration, negotiation, and conciliation are usually employed in customary institutions in processing conflicts. The methods each have a definite practice, procedure and time and not just a one-way approach (Best, 2006).

Negotiation according to Horowitz (2007), is a process where two or more parties in conflict open a dialogue and use offers and counter-offers in an effort to build a mutually acceptable agreement. For American Bar Association (ABA), 2006, negotiation can also be a process of communication whereby the representatives of conflicting parties seek to resolve their conflicts and work to bring a mutual agreement for the parties. With this method, the parties to a conflict are made to engage each towards the resolution of their conflicts. Parties share their concerns regarding the conflicts and they work out a settlement

agreement satisfactory to them. The traditional leader employing this method admonishes the parties to listen to each other, appreciate the feeling and hurts of each other, and then fashion out satisfactory agreement to resolve the conflict. After parties have reached an agreement, they report to the traditional leader who takes them through feasting activities such as sharing drinks, food, or even a handshake.

Mediation is a consensual conflict resolution method in which an independent neutral third party intervene the situation in order to facilitate negotiation and assist the parties in conflict to resolve their conflict and reach a mutually acceptable agreement (ABA, 2006). According to Moore (1986), in the process of mediation, the mediator must be accepted by all parties. He/she does not have decision making power about the conflict. Rather the task of a mediator, according to Moore, is creating the conditions for an open dialogue. It also includes; assuring the parties involved in the conflict freedom of speech, clarifying issues, identifying and managing emotions, and creating options, thus making it possible to reach an agreement (Horowitz, 2007). Therefore, some researchers argue for mediation as it helps the parties in conflict to arrive at an agreement. For instance, Fisher and Ury (1981), speak of joint problem solving to reach a win-win solution. This method also has a good potential to restore relationship which is central to the traditional conflicts resolution process.

However, different writers criticize the role of mediation in bringing mutually acceptable agreement, thus, categorize mediation into less directive and directive mediation (Horowitz, 2007), or pure mediation and mediation with power (Ramsbotham et al. (2005). Horowitz (2007), contends that, with the less directive mediation, the mediator facilitates the flow of dialogue. The mediator in the more directive one is very concerned with the result of the mediation, thus provides personal opinions and even offers guidance on the

content of the agreement. Ramsbotham et al. (2005), on their part, argue that in pure mediation, the conflicting parties maintain control over the outcome, but the process can sometimes be combined with positive and negative incentives in the case of mediation with power.

Reconciliation is another method of conflict resolution which is close in meaning to pure mediation. In this process, conflicting parties assisted by a neutral conciliator (in this case the traditional leader), identify the issues, explore options and attempt an agreement (Ramsbotham et al. 2005). To Santa-Barbara (2007), reconciliation is the restoration of a state of peace to the relationship, where the parties are at least not harming each other and can begin to be trusted not to do so in future. Reconciliation, in this case, is a situation in which revenge is foregone as an option and conflicting parties come back together to work harmoniously together. Central to reconciliation is forgiveness in which the moral debt is cancelled, anger and resentment are dropped and thus, there will be no revenge (Webel and Galtung, 2007).

Arbitration, according to ABA (2006), is a process for obtaining a ruling of judicial character without going before a court. In this process, the arbitrator has decision-making power to resolve a conflict after considering the representations of the parties (Tsongo, 2012). The elected but unpaid judges (in the case of this study, the chiefs and councils of elders) decide cases "without written law, resolving the conflict by minimizing the sense of injustice and outrage felt by the parties of a case" (Nader 1990).

In all of the above-mentioned methods of traditional conflicts resolution, the decisions arrived at are not binding. The alternative to these methods of conflicts resolution where

the process does not employ written law and the decisions reached are not binding on the parties is an adjudication. Adjudication involves an authorized third party, judges or administrators, who possess the power to impose a resolution on parties based on legal principles. It is sometimes depicted as the antithesis of negotiation. With this medium of resolution, the decision, award or judgment is binding.

There is no defined method for specified kinds of conflicts, hence, a combination of the methods can be done towards processing a conflict at hand. Actors or practitioners, directed by the will of parties in conflict and the conflict situation, must decide whether it is best to engage in negotiation and/or mediation, to offer arbitration and/or conciliation, etc.(Tsongo, 2012).

2.4.7 Customary Institutions of Conflict Resolution in Africa

Customary institutions of conflict resolution, as stated by Fred-Mensah (2005), are the "capability of social norms and customs to hold members of a group together by effectively setting and facilitating the terms of their relationship… sustainability facilitates collective action for achieving mutually beneficial ends" (Fred-Mensah, 2005). Most African countries have developed various customary laws and customary institutions which are employed for traditional conflict resolution. These customary laws and institutions have been well established and followed such that they are said to have contributed to the social harmony/togetherness and humanness in most African states (Muigua, 2010).

For many scholars, customary institutions of conflict resolution basically exist within a particular cultural context and are unique to particular societies, and reactive to the justice desires of societies (Mutisi, 2011). Oruwari (2006) writes that, since societies have diverse

cultures and historical experiences, the processes of conflict resolution mechanisms that have been developed by various societies eventually are different. However, Oruwari adds that some customary institutions are likely to work efficiently outside their own cultural contexts.

Many empirical studies show that most African countries have their own institutions of conflict resolution which are rooted in their respective culture and custom. According to Busia, et al (2006), the Ibo village assembly in Eastern Nigeria, the Eritrean village 'baito'(assembly), the 'gada'(age-set) system of the Oromo in Ethiopia and Kenya, as well as the council of elders (kiama) of the Kikuyu in Kenya, the Teso and Lango of Uganda, and the Tonga of Zambia, are among well-known examples where decisions are largely made democratically by customary institutions. Mutusi (2011) also enumerated other African customary institutions such as the *dare* in Zimbabwe, 'abunzi' and the 'gacaca' courts of Rwanda, and the 'bashingantahe' in Burundi, which are well known for their roles in conflict resolution. Some of the customary institutions of conflict resolution are fully recognized under the government law which South Africa's Truth and Reconciliation Commission and the Rwanda's 'gacaca' courts are examples. In other countries, these customary institutions of conflicts resolution exist extra-judicially.

Customary institutions are known by different terms, such as 'traditional mechanisms' or 'traditional approaches', 'indigenous institutions'. For the purpose of this study, customary institutions are defined as those institutions that have been experienced for long period and have developed within societies, rather than being the product of external importation. In essence, these institutions are implanted in the culture, traditions and history of societies, and are embedded in the socio-political and economic setting of a given society.

Generally, most scholars agree that customary institutions make use of customary knowledge, norms, values, beliefs and traditions of local communities to manage, process or resolve conflicts. Zartman (1999) therefore labels these institutions as 'African conflict medicine' with a strong view that, such institutions are essential to healing African societies most of which are affected by conflicts. Various forms of conflicts have been resolved through these customary institutions, especially at the grassroots level. Common of some of these include; conflicts over land, water, grazing-land rights, fishing, marital problems, inheritance, ownership rights, murder, cattle raiding, theft, rape, banditry, and inter-ethnic and religious conflicts (Rabar and Karimi, 2004). Brock-Utne(2001), however, notes that through modernity, internal and external factors, customary institutions are gradually eroding.

Castro and Ettenger (1996), affirm that customary institutions of conflict resolution do not only assist in determining who is right or wrong and the punishment of offenders, but, they reconcile the conflicting parties to avoid reoccurrence of conflict in the future. In other words, these institutions focus on the transformation of conflicts in which both parties are satisfied and ready to let go their pain and forgive each other (Bukari, 2013). In line with this, Choudree (1999), states that the importance and utility of the processes lie in the fact that these institutions strive "to restore a balance, to resolve conflict and eliminate conflict." Similarly, Boenge (2006) explains this as 'recitative reconciliation'. Thus, according to Boenge, customary institutions of conflict resolution work towards restorative justice and the maintenance of relationships through reintegrating conflicting parties for true reconciliation.

2.4.8 Indigenous Religious Institutions and Rituals in Conflict Resolution in Africa

Indigenous religious institutions have been helpful in resolving conflicts in Africa (Coe et al, 2013). They further stressed that any discourse of customary mechanisms of conflict resolution must be based on a consideration that religion plays a central role in resolving conflict behaviours and influencing the cooperative social behaviour of many people. Smith (1998), noted that "religion did not exist for the saving of souls but for the preservation and welfare of society". Douglas (2002), therefore, concluded that religion could help the society to manage conflicts and boost their hope to live together peacefully.

In the mechanism of indigenous religious institutions, it is common to invoke an oath during conflict resolution. Either a plaintiff or a defendant may swear an oath to support his/her claim. When that happens, it is expected that the other party, if innocent will also swear an oath against that claim. In that case, the conflicting parties having sworn the oath have to go to the supreme chief to carry out the required rituals and resolve the conflict. However, failure to react to an oath is perceived to be an admission of guilt until reversed by the custodian of the oath (Douglas, 2002).

Rituals play an important role in the customary processes of conflict resolution. They serve to connect people to the past, present and future. Mbiti (1970), discloses that the spiritual dimension of conflict resolution is mainly concerned with making and re-establishing a damaged connection with God, the spirits, ancestors, family and neighbours. According to Turner (1973), rituals involve "astereotyped sequence of activities involving gestures, words, and objects, performed in asequestered place and designed to influence supernatural entities or forces". In other words, rituals involve a series of events carried out according to the customary or prescribed procedure. Rituals do not just involve any form of

stereotyped behaviour; they are distinguished by stereotyped cooperation, an important consequence of which the aim is to promote future on-stereotyped cooperation among participants (Steadman and Palmer, 2008). Rituals of reconciliation, thus, were performed not only to bring about reconciliation but to also prevent the acceleration of interpersonal or intergroup conflict and remind people the importance of reconciliation and continued cooperation (Coe, et al, 2013).

Rituals for Turner (1957) are a social drama that resolves crises by dramatizing the advantages of values and social agreements. It is performed in response to the breach of law during times of social conflicts to restore the social order. Through rituals, social values are given sacred authority. According to him, the drama of dispute settlement passes through four phases: (1) the breach of peace, (2) the crises that result from the breach, (3) the practice of resolving the crises and (4) the re-establishment of the unity of the groups.

According to Kendie and Guri (2006), among Ghanaian societies, conflicts which are related with spiritual aspects such as incantations, curses, witchcraft and oath-taking are usually brought before the indigenous religious leaders to be resolved. They discuss that, in Ghana, when one party invokes a curse by using the name of a deity to harm another person for perceived wrongdoing, once the afflicted party realizes through divination that they have been cursed, the accused is requested to reverse or remove that curse by performing the necessary rituals and going through the necessary cultural processes.

The Oromo ethnic groups of Ethiopia have had an indigenous religious institution called ‘qaalluuto’ resolve conflicts and interpret the law of ‘Waaqa’and ‘ayyaana’in its mechanism. ‘Qaalluu’is the high priest who was the spiritual leader of Oromo indigenous

religion (Mohammed, 2005).This institution has been in function since time immemorial as one of the most important institutions in guarding and interpreting the law of the creator (*Waaqa*). Various scholars state that 'qaalluu' is the most senior and knowledgeable person who knows and applies both the Oromo customary laws and religious laws. For example, according to Assefa (2005), 'qaalluu'is believed to be all-knowing and one who easily identifies whose claim is true and whose is false. On top of this, there is a belief among the Oromo people that, using its divine power, the 'qaalluu' penalizes a party who gives false statements. This belief forces the conflict parties to present accurate and true cases concerning the conflict before 'qaalluu' institution that helps to provide justice and fair decision.

2.5.1 The Concept of Legal Pluralism

Legal pluralism comes into being when other systems of law exist and operate with the state law. The relationship between the laws in a society of legal pluralism could be in harmony or conflict (Chiba, 1989), and could be incorporated or separate (Bracey, 2006). Roseveare (2013) defines legal pluralism as 'the existence of multiple sources of law (both state and non-state) within the same geographical area. Although the rule of law is often represented as the law being made and administered by the state, a growing body of literature suggests that the provision of a range of different legal and quasi-legal security and justice mechanisms creates choices for individuals, communities, and even the state itself' (Roseveare, 2013).

Legal pluralism is said to have started in the 1930s with premises concerning the nature of law (Ehrlich, 1936). From the 1970s, the term has come into common use with pioneers such as Hooker (1975), Sally Falk Moore (1978), John Griffiths (1986), and William

Twining (2000). Merry (1988) maintains that the initial studies of legal pluralism were centred on the relationship between normative orders in colonial and post-colonial societies (she calls this one "classical legal pluralism), and others on non-colonized societies (she calls this one 'new legal pluralism').

Since the 1980s, legal pluralism studies have been on the existence of more than one legal order in a social field. Scholars such as Merry and Griffiths sought to understand what law meant. Scholars in trying to focus on whether laws are only those recognized by the state or they include non-state laws have studied the role of the state in the recognition of different legal systems as well as people's conceptualization and application of law in society, and on the legal validity of the state law and non-state (Greenhouse & Strijbosch, 1993).

Legal pluralism is studied as an attribute of social life not a characteristic of law or legal system (Griffiths, 1986). Based on the studies of others Griffiths develops the concept of legal pluralism defining it as "that state of affairs, for any social field, in which behaviour pursuant to more than one legal order occurs. He again wrote:

> Legal pluralism is a concomitant of social pluralism: the legal organization of society is congruent with its social organization. 'Legal pluralism refers to the normative heterogeneity attendant upon the fact that social action will take place in a context of multiple, overlapping, 'semi-autonomous social fields', which, it may be added, is in practice a dynamic condition.

Chiba (1989) defines legal pluralism as the coexisting structure of different legal systems under the identity postulate of a legal culture in which three combinations of official law

and unofficial law, indigenous law and transplanted law, and legal rules and legal postulates are conglomerated.

It is generally defined as a situation in which two or more legal systems coexist in the same social field (Merry, 1988). Merry, in referring to Popsil stated that his pioneering work on legal levels claims that 'every functioning sub-group in a society has its own legal system which is necessarily different in some other respects from those of other subgroups. By subgroups, he means units such as family, lineage, community, and political consideration that are integral parts of a homogenous society, hierarchically ranked, and essentially similar in rules and procedure (Merry, 1988).

Hooker (1975) provides a masterful and comprehensive overview of legal pluralism by defining legal pluralism as 'circumstances in the contemporary world which have resulted from the transfer of whole legal systems across cultural boundaries.

Legal pluralism is also defined as the existence of multiple legal systems within one geographical area. Plural legal systems are particularly in former colonies, where the law of a former colonial authority may exist alongside more traditional legal systems. When these systems developed, the idea was that certain issues (e.g., commercial transactions) would be covered by the colonial law, while other issues (e.g., family and marriage) would be covered by the traditional law. Over time, these distinctions tended to break down and individuals would choose to bring their legal claims under the system and they thought would offer them the best advantage (Agbede, 1991).

According to Tamantha (1993), Legal pluralism is everywhere. There is, in every social arena one examines, a seeming multiplicity of legal orders, from the lowest local level to

the most expansive global level. There are villages, towns, or municipals laws of various types; there are state, district or regional laws of various types; there are national, transnational and international laws of various types (Merry, 1988).

Legal pluralism is unique in the sense that not only are there diversity of laws but these laws are uncoordinated and give room for competing claims, conflict of demands and different interpretations of laws, thus, in turn, creates uncertainty in the body of legal knowledge.

Law claims to permeate every stratum of life, but legal pluralism challenges this claim because in essence legal pluralism is a confluence of history, politics, sociology and the culture of the people whose colonial law supplants.

Legal pluralism is about the fact that the structure of law in a nation is not limited to just the state law, but also includes the culture of the people in the society. The culture of the people is what the people believe to be their own laws based on their cultural tradition. The structure of the law of a society is therefore comprised different legal frames interacting with each other.

Legal pluralism should be considered as a natural social phenomenon (Griffiths, 1986). Nations have different ethnic groups, and emigrants often leading to a new social group. Ethnic groups have their own laws preserved by their communities. The presence of many ethnic groups together with emigrants will create varieties of laws over time. This gives rise to the naturally occurring, the social phenomenon of legal pluralism.

Traditional justice systems have been in existence since time immemorial in Africa. Different ethnic groups evolved their own specific informal justice system, based on their

respective cultures. Usually, traditional courts were headed by the traditional head or leader of the community. However, the traditional justice system began to gradually occupy the back seat, with the advent of modern democracy. This has generated a lot of controversies among scholars. Some observers believe that states in Africa have adopted systems of government that are not socio-culturally oriented, cost-effective and sustainable. According to them, the post-colonial state is quick to emulate western institutions of governance, which are often at odds with African cultural values and the region's contemporary socio-economic realities (Economic Commission for Africa 2007: 1). On the other hand, the traditional institutions which are custodians of the people's culture and customs, are forced to occupy the back seat. From that perspective, "it will be misleading to expect the state to meet the expectations of the majority of Africans, because political independence was basically a matter of transferring the reins of power to chosen Africans who could protect the economic interests of the colonisers" (Omoweh and van den Boom 2005: 14). "Due to the distortion of African values, traditions and culture, particularly by the post-colonial political elite of Africa, it is imperative that any reliable consensus of values begins with the restitution of the purely African values, cultures and traditions" (Achu 2004: 17). In fragile and post-conflict states, hybrid justice mechanisms are quite common, the reason being that; in reality, the state cannot alone meet the ever-increasing demands of its growing population. It thus seems that the traditional justice system, when incorporated into the Alternative Dispute Resolution (ADR), can potentially address root causes of conflicts, which the formal justice mechanism may not be able to handle.

2.5.2 Legal Pluralism in Africa

In pre-colonial Africa, the legal framework was solely based on the traditional justice system, which was informed by the culture and norms of society. Usually, the traditional head presides over criminal cases and pronounces judgment based on the customary laws of the particular society. However, colonisation brought about legal pluralism. European colonial occupation greatly altered the political and socio-economic entities of African governance and institutional structures (Economic Commission for Africa 2007: 6). Immediately after independence, many states in Africa were quick to adopt their colonial masters' systems of governance. English Law for instance, was introduced to Nigeria because the country was colonised by the British. According to Ige (2015: 59), legal pluralism connotes "the existence of multiple legal systems within one geographical area", and it is often practiced in former colonies "where the law of a former colonial authority may exist alongside more traditional legal systems". Originally, legal pluralism was based on the idea that colonial law would be applicable to specific issues like commercial transactions, while traditional law and system would cater to societal and intimate issues like family and marriage (Ige 2015). In the words of Odinkalu:

> A justice system is said to be plural when it draws the rules and institutions of its laws from two or more normative traditions. This is true of every African country. In Egypt, for instance, the major sources of law are as varied as the Napoleonic Codes and Islamic Sharia. In Nigeria and Sudan, a constitutional, statutory, and civic system of laws co-exists uneasily with both Islamic Sharia and indigenous African customary norms and institutions (Odinkalu 2005: 1).

While the formal justice mechanism takes its root from the legal traditions of the colonial powers (e.g. English common law), the traditional justice system emanates from the norms and values passed down from generation to generation as customary law (Stapleton et al. 2007: 4). The traditional justice mechanism, which operates side-by-side with the formal system in some African countries like Nigeria and Côte d'Ivoire, deals with a wide range of issues that include; security, religion, marriage, crimes and other local disputes. Bowd (2009: 2) argues that the traditional courts are often located in the grassroots because of their use of local languages and their informal nature.

According to UNICEF (2009: 2), the informal justice system has been playing a significant role in conflict resolution in post-colonial countries such as Papua New Guinea, and more importantly, in post-conflict countries such as Rwanda and Liberia. For instance, after the 1994 Rwandan genocide, the national government resorted to the use of the traditional approach to reconciliation and justice by adapting the *Gacaca* system, which is a combination of both retributive and restorative justice. The *Gacaca* courts were set up in 2001 as a form of transitional justice, and they were charged with the responsibility of establishing the truth on circumstances surrounding the genocide, reconciling Rwandans, as well as promoting unity and communal healing, among other goals. The word "*Gacaca*" translates to "grass" in Kinyarwanda Language, and therefore, hearings were held in open and public places like empty markets and schoolyards in various Rwandan communities (Brehm, Uggen and Gasanabo 2014: 336). Elections were usually conducted within the communities to elect judges who presided over the hearings.

According to Le Mon (2007: 1), the judges were made to undergo specific training in criminal law and were allowed to impose sentences up to 30 years' imprisonment. More examples are found in Asia; as an estimated 60-70 percent of all disputes are processed through customary *Salish* (UNDP 2005), and in sub-Sahara Africa; in the case of Sierra Leone, in which, approximately 85 percent of the population falls under the jurisdiction of customary law, defined under the constitution as "the rules of law, which, by custom, are applicable to particular communities in Sierra Leone" (Chirayath, Sage and Woolcook 2005).

Access to justice has remained a critical issue, especially in post-colonial sub-Saharan Africa. McClelland (2009) argues that:

> An effective justice system must be accessible in all its parts. Without this, the system risks losing its relevance to, and the respect of the community it serves. Accessibility is about more than ease of access to sandstone buildings or getting legal advice. It involves an appreciation and understanding of the needs of those who require the assistance of the legal system.

People that are unlawfully deprived of their ancestral lands and means of livelihood, as well as vulnerable groups like grieving widows and orphans who are being disinherited by surviving family members/in-laws, often suffer from the lack of a functioning justice system. According to van de Meene and van Rooij (2008: 21), access to justice serves multiple goals, which include; poverty reduction, protection of individual rights, and security against crimes and abuse. Thus, what the traditional justice system does is to fill the gaps in formal justice mechanisms, especially for the benefit of rural dwellers that do not have access to formal courts, which are usually located in urban areas. Over the years,

the traditional justice system has undergone a series of changes and adjustments in order to align with modernity and uphold human rights. For instance, extreme matters like murder cases are referred to the Police. Kerrigan, Mckay, Kristiansen, and Mundt are of the opinion that:

> Providing accessible justice is a state obligation under international human rights standards, but this obligation does not require that all justice be provided through formal justice systems. If done in ways to respect and uphold human rights, the provision of justice through informal justice systems is not against human rights standards and can be a mechanism to enhance the fulfillment of human rights obligations by delivering accessible justice to individuals and communities where the formal justice system does not have the capacity or geographical reach (Kerrigan, Mckay, Kristiansen, & Mundt, 2012).

Quite a few previous studies have advocated for the creation of hybrid justice mechanisms by incorporating both the state and non-state justice systems, particularly in countries where such do not exist. Clark and Stephens (2011: 2) suggest "the application of a 'grounded approach' (a term borrowed from the 'grounded theory') to designing programs oriented towards strengthening such hybrid structures, particularly when the approach is assumed to be attuned to local needs and opportunities, and focuses on reducing tangible instances of injustice in incremental steps rather than attempting to achieve an ideal form of justice". Grounded legitimacy portrays the way of incorporating traditional authorities and practices within the formal state in order to provide the belief systems within which to enhance the capacity and effectiveness of new forms of statehood (OECD 2010). On the adoption of the "grounded approach" to strengthening hybrid justice systems, five key steps were proposed by Clark and Stephens (2011) and these include:

a) understanding the historical and contemporary political and policy context of formal and customary justice systems;

b) analysing the strengths and weaknesses of formal and customary legal systems;

c) identifying entry points for strengthening hybrid justice systems based on an analytical framework of institutional change;

d) realistically assessing the opportunities for engagement on the entry points; and

e) ensuring a flexible and long-term commitment to implementation.

2.5.3 Legal Pluralism in Ghana

When the British arrived in Ghana, they met a group of people with their own set of laws, rules, and regulations that were employed to control the society in which they lived. Every community was headed by the chief who was responsible for the well-being of the people. One of such major responsibility was the settlement of disputes.

The colonists also introduced the Common Law to Ghana as their own concept of law and justice. However, the colonists did not do away with the laws and tradition which they came to meet in Ghana, then Gold Coast. Hence, the traditional law operated alongside the Common Law.

This introduced two fora for settling disputes in the country; the traditional approach based on customs and traditions and the implanted courts by the colonial masters. The traditional customary approach was led by chiefs and opinion leaders who employed customary arbitration to settle disputes. The result was the existence of a compendium of laws which

are applicable exclusively to the indigenous citizens and the Common Law as was introduced by the colonial masters applicable at the same time.

From the onset, legal pluralism in Ghana had the laws applied to different people in the same country. The Common Law was applied to the colonists, families, their businesses and business partners, and later to non-African citizens and African non-Ghanaians.

In modern times, the Common Law and traditional law in Ghana are regulated by various constitutions effectively. Various societies, hence, are protected by law to use their customary laws to conduct their affairs led by traditional authority holders; the chiefs. Hence, the Nabdam people can resort to the law courts to resolve their disputes but are also able to use chiefs and elders to settle their disputes.

2.6.1 The Ghanaian Courts System

The Constitution, 1992 and the Courts Act, 459 provide for a Judiciary that is headed administratively by a Chief Justice, and a court system that is structured into two broad divisions, namely, the "Superior Courts of Judicature" on the one hand and the "inferior" or "Lower Courts and Tribunals" on the other.

The Superior Courts, consisting of the Supreme Court, the Court of Appeal, the High Court and Regional Tribunals, are creatures of the Constitution, 1992, while the Lower Courts namely the Circuit Courts, District Magistrate Courts, Judicial Committee of the National House of Chiefs; the Judicial Committee of the Regional House of Chiefs and the Judicial Committees of the various Traditional Councils, are creatures of the Courts Act, 459.

In the exercise of their judicial functions, in both civil and criminal matters, all Courts are empowered to issue any orders and directions that are necessary to enforce their judgments, decrees or orders. Civil matters relate to disputes between private individuals arising from a contract or tort etc. Criminal matters, on the other hand, are those matters that relate to crime or activities and which are punishable either by a fine or imprisonment or both a fine and imprisonment. To cement their judicial independence, Article 127(1) of the Constitution, provides expressly that, in the exercise of their judicial function, the Judiciary cannot be subject to the control or direction of any person or authority in Ghana.

2.6.2 The Supreme Court

The Supreme Court established under the 1992 Constitution, is a Superior Court of Record and is the highest court of the land; and it has both criminal and civil jurisdictions. The Constitution empowers the Court to exercise jurisdiction in five main areas: General (Article 129), Supervisory (Article 132), Appellate (Article 131), Review (Article 133), and Original (Article 130).

The Supreme Court consists of the Chief Justice and not less than nine other Justices of the Supreme Court, but is duly constituted for its work by not less than five Supreme Court Justices. The Chief Justice presides at sittings of the Supreme Court and in his absence, the most senior of the Justices of the Supreme Court presides. No person qualifies for appointment as a Justice of the Supreme Court unless he/she is of high moral character and proven integrity and is of not less than fifteen years' standing as a lawyer.

2.6.3 The Court of Appeal

The Court of Appeal is immediately below the Supreme Court but above the High Court. It hears only cases on appeal for example from the High Court, Regional Tribunal and Circuit Courts. It has both criminal and civil jurisdictions but no supervisory jurisdiction and no original jurisdiction.

The Court of Appeal consists of the Chief Justice; not less than ten Justices of the Court of Appeal, and such other Justices of the Superior Court of Judicature as the Chief Justice may by a writing signed by him, request to sit in the Court of Appeal for any period.

The Court of Appeal is duly constituted by any three of its Justices and when so constituted, the most senior of the Justices presides. No person qualifies for appointment as a Justice of the Court of Appeal unless he is of high moral character and proven integrity and is of not less than twelve years standing as a lawyer. The Court of Appeal is not bound by its own precedents, and all courts below it are bound to follow its decisions on questions of law.

The Court of Appeal has jurisdiction throughout Ghana to hear and determine, appeals from among others judgments, decrees or orders of the High Court and Regional Tribunals. In general, an appeal lies, as of right, from a judgments decrees or orders of the High Court and Regional Tribunal to the Court of Appeal; and for the purposes of hearing and determining the appeal the Court of Appeal by law` assumes all powers, authority and jurisdiction vested in the Court from which the appeal emanates. The court of appeal is the final court of appeal in election petitions.

2.6.4 The High Court

In a descending order of importance, the High Court is next court after the Court of Appeal. The Court has both criminal and civil jurisdictions. Within the High Court, there are, however, specialized divisions, namely the Fast Track, Commercial, Finance, Land, Industrial/Labour, and Human Rights Divisions.

The High Court consists of the Chief Justice; not less than twenty Justices of the High Court, and other Justices of the Superior Court of Judicature as the Chief Justice by writing signed by him request to sit as a High Court Judge.

The High Court is constituted by a single Justice of the Court; a single Justice of the Court and jury; a single Justice of the Court with assessors; or three Justices of the Court for the trial of the offence of high treason or treason as required by article 19 of this Constitution. No person qualifies to be appointed as a High Court Judge unless he is a person of high moral character and proven integrity and is of at least ten years' standing as a lawyer.

2.6.5 Jurisdiction of the High Court

The High Court exercises original jurisdiction in all civil and criminal matters and other appellate jurisdiction conferred on it by law. It has appellate jurisdiction in any judgment of the Circuit Court in criminal matters and appellate jurisdiction in any judgment of the District Court or Juvenile Court. The High Court also has exclusive jurisdiction to try acts of piracy, and enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution. In a high treason or treason trial, the High Court has only power to convict a person for high treason or treason. The High Court also exercises supervisory jurisdiction

over all lower courts and adjudicating authorities, and in its exercise of that jurisdiction, it can issue orders and directions for enforcing its supervisory powers. And for hearing and determining appeals assume all the powers, authority and jurisdiction vested in the Court from which the appeal emanates.

1. In relation to its jurisdiction in relation to infants or persons of unsound mind

   (1) High Court may

   (a) on an application by a person, and after hearing the objections to the application, appoint a person as a guardian or as joint-guardian for an infant, make an order concerning the custody of an infant, the right of access to an infant, and weekly or other periodic payments towards the maintenance of an infant, or may, remove a guardian or joint-guardian and appoint a new guardian or joint-guardian; or may, in respect of an infant or person of unsound mind, make the orders and give the directions for the control and administration of the estate of that infant, including the investment of money, that the Court considers desirable having regard to the welfare of the infant; make the orders and give the directions permitting the use of moneys for the education of the infant, or for setting the infant up in an occupation or a career, that the Court considers desirable having regard to the welfare of the infant.

2. In relation to its jurisdiction in maritime matters

   (1) The High Court may, hear and determine

   (a) questions as to the title to, or ownership of, a ship, or the proceeds of the sale of a ship, arising in an action relating to possession, salvage, damage, necessaries, or wages; and

(b) questions arising between the co-owners of ships registered in Ghana as to ownership, possession, employment or earnings of that ship, or a share of it, with power to settle an account outstanding and unsettled between the parties in relation to it, and may direct the ship, or a share of it, to be sold, or make an appropriate order.

2.6.6 The Regional Tribunal

The Regional Tribunal was first created by the 1992 Constitution and is the court immediately after the Court of Appeal. The Tribunal has both criminal and civil jurisdictions and also co-ordinate jurisdiction with the High Court. In terms of Article 142 of the 1992 Constitution, the Regional Tribunal consists of the Chief Justice; one Chairman, and members who may or may not be lawyers designated by the Chief Justice to sit as panel members.

A Regional Tribunal in the exercise of its original jurisdiction is duly constituted by a panel consisting of the Chairman and not less than two and not more than four other panel members. No person qualifies to be appointed as a Chairman unless that person is qualified to be appointed a Justice of the High Court; and no person qualifies to be appointed a panel member unless that person is a person of high moral character and proven integrity. The Chief Justice or a Justice of the High Court or of the Court of Appeal nominated by the Chief Justice can sit as Chairman.

The Regional Tribunal has concurrent original jurisdiction with the High Court in criminal matters but has no civil or supervisory jurisdiction. The jurisdiction of the Tribunal is spelt out in detail in Articles 142-143 of the Constitution, for example, the Tribunal has jurisdiction to try offences specified under the following statutes — Chapter 4 of the

Criminal Code, 1960 (Act 29); the Customs, Excise and Preventive Services Management Law, 1993 (P.N.D.C.L. 330)], the Income Tax Decree, 1975 (S.M.C.D. 5); the Narcotic Drugs (Control, Enforcement and Sanctions) Law, 1990 (P.N.D.C.L. 236)] and any other offence involving serious economic fraud, loss of State funds or property. A Regional Tribunal, however, is permitted by law to try criminal offences requiring the participation of a jury or assessors. The decisions of a Regional Tribunals rest upon the majority opinion of the members hearing the case. Appeals against the decisions of the Tribunal go directly to the Court of Appeal.

2.6.7 The Circuit Court

This court is located immediately below the High Court and Regional Tribunal but above the District Magistrate Court. The Circuit has both criminal and civil jurisdictions and forms part of the inferior or lower courts.

The court has original jurisdiction in civil matters;

(i) in personal actions arising under a contract or a tort, or

for the recovery of a liquidated sum of money, where the amount claimed is not more than 100 million cedis;

(ii) in actions between a landlord and a tenant for the possession of land claimed under a lease and refused to be delivered up;

(iii) in [causes and matters] involving the ownership, possession, occupation of or title to land;

(iv) to appoint guardians of infants and to make orders for the custody of infants;

(v) to grant in an action instituted in the Court, injunctions or orders to stay waste or alienation or for the detention and preservation of property which is the subject matter of that action, or to restrain breaches of contract, or the commission of a tort;

(vi) in claims of relief by way of interpleader in respect of land or any other property attached in execution of an order made by a Circuit Court;

(vii) in applications for the grant of probate or letters of administration in respect of the estate of a deceased person, and in [causes and matters] relating to succession to property of a deceased person, who had, at the time of death, a fixed place of abode within the area of jurisdiction of the Circuit Court, and the value of the estate or property in question does not exceed 100 cedis; and

b. Criminal Jurisdiction of the Circuit Court

Section 43 of Act 459 shows a Circuit Court has original jurisdiction in criminal matters other than treason, offences triable on indictment and offences punishable by death.

2.6.8 The District Court

These are Courts that are set up by the Chief Justice in respective Districts of the country. District Court has both criminal and civil jurisdictions and is presided over by Magistrates who are appointed, subject to the approval of the President, by the Chief Justice on the advice of the Judicial Council. However, a person does not qualify to be appointed a

Magistrate of a District Court unless that person is of high moral character and proven integrity and is a lawyer of not less than three years' standing.

A District Court has civil jurisdiction in the following matters:

(a) Personal actions arising under a contract or a tort for the recovery of a liquidated sum of money where the amount claimed does not exceed ten million cedis;

(b) Granting of injunctions or orders to stay waste or alienation, or for the detention and preservation of property which is the subject matter of that action, or restrains a breach of contract or the commission of a tort;

(c) Claims for relief by way of interpleader in respect of land or any other property attached in execution of [a decree] [an order] made by the District Court;

(d) Civil actions relating to the landlord and tenant of premises, or a person interested in the premises as required or authorised by a law relating to landlord and tenant;

(e) Actions relating to ownership, possession or occupation of land, where the value of the land does not exceed ten million cedis;

(f) Divorce and other matrimonial [causes or matters] and actions for paternity and custody of children;

(g) Applications for grant of probate or letters of administration in respect of the estate of a deceased person, and in [causes and matters] relating to succession to property of a deceased person, who had at the time of death a fixed place of abode within the area of jurisdiction of the District Court and

the value of the estate or property in question does not exceed ten million cedis; and

(h) hear and determine charges and dispose of any other matters affecting juveniles, that is persons under the age of eighteen.

In criminal matters, a District Court has jurisdiction to try summarily:

(a) an offence punishable by a fine not exceeding five hundred penalty units or a term of imprisonment not exceeding two years or both the fine and the imprisonment;

(b) any other offence, except an offence punishable by death or by imprisonment for life or an offence declared by an enactment to be a first-degree felony, if the Attorney-General thinks that the case is suitable to be tried summarily, considering

(i) the nature of the offence,

(ii) the absence of circumstances which would render the offence of a grave or serious character, and

(iii) any other circumstances of the case;

(c) an attempt to commit an offence to which paragraph (a) or (b) applies;

(d) abetment of or conspiracy in respect of that offence.

2.6.9 The Juvenile Court

The Juvenile Court is a specialized District Court that hears and determines actions under the Children's Act 1998(Act 560). It has both criminal and civil jurisdictions jurisdiction in matters concerning parentage, custody of children, access to and maintenance of children. It hears cases concerning children in need of special care and protection. It can

take care and supervision orders. The Tribunal sits with a panel consisting of a chairman and not less than two members, one being a Social Welfare Officer.

2.6.10: The Family Tribunal

The Family Tribunal hears criminal or civil cases involving persons under the age of eighteen (18) years. The court is constituted by a District Magistrate and two other persons, one of whom must be a Social Welfare Officer. The Chief Justice designates a District Court Judge to preside over the court.

2.6.11: The Chieftaincy Tribunal

Under the 1992 Constitution chieftaincy disputes are to be heard by the Judicial Committees of the Traditional Authorities. Matters heard by Traditional Councils can be appealed to the Regional House of Chiefs and a further appeal to the National House of chiefs. The Supreme Court serves, however, as the final court of appeal for all Chieftaincy Tribunal cases.

2.7.1: The Ghanaian Legal System and Conflict Resolution

Litigation is the conduct of a lawsuit in a court of law. It is important because it offers disputing parties an opportunity to resolve legal disputes in accordance with law. Litigation is an intensely procedural process. It is governed by rules and generally starts when one or more parties (called the plaintiff or plaintiffs) or their lawyers file a claim against one or more parties (called the defendant or defendants) for certain specified reliefs in a court of law.

The 1992 Constitution and the Courts Act 469 of 1993 as amended by the Courts (Amendment) Act of 1993 (Act 464) provide the composition and jurisdiction of the courts. The Constitution itself endorses the courts as the final location for resolution of legal disputes. Indeed, by virtue of Article 125 (3) of the Constitution, judicial power, that is the power to adjudicate, or resolve disputes in accordance with legal rules, vests ultimately in the Judiciary. According to Clause 3 of Article 125, no President of Ghana, Parliament and any other organ or agency created by the President or Parliament, the power to exercise the final say in any judicial matter. In a criminal case, therefore, where a party is to be adjudged guilty of any offence, Article 125 (3) implies that final or ultimate determination of that party's guilt in terms of the law, can only be made by a duly constituted court exercising criminal jurisdiction.

The Code of Ethics of the Ghana Bar Association, however, makes it the professional obligation of lawyers to advise their clients to avoid or terminate litigation whenever the controversy admits of a fair settlement. In Ghana, given that litigation could be a costly, harmful to reputation and time-consuming, many companies are now opting for alternative forms of resolving disputes in or outside court.

2.7.2 Processing a case in court in Ghana

Every court is manned by a registry which is headed by a Registrar who is responsible for keeping the official records of the court and issuing out the orders of the courts. In the performance of these administrative duties of the court, the Registrar is assisted by a number of subordinate staff who performs duties on his behalf. The subordinate staff of a registry includes the court clerks, cashiers, recorders, interpreters, bailiffs, messengers, etc.

Some of these subordinate staff functions mainly in the registry, while others function in the court during court sittings to facilitate the trial process.

Two such identifiable functions are those of the Interpreter and the Court Recorder. This short presentation seeks to highlight some of the courtroom processes that an Interpreter and a Court Recorder need to know for the understanding and appreciation of their roles in the course of the trial.

2.7.3.1 Initiating a civil case in court

Since the Nabdam traditional approach to conflict resolution is mostly employed to deal with only civil cases, I will also look at how the formal court system works when it comes to processing civil cases. In Ghana, civil action or civil proceedings in the High Court are commenced, primarily in three ways. These are:

1. Writ of Summons
2. Originating Motion on Notice
3. Petition

2.7.3.2 Writ of summons

A Writ is a formal document by which the Chief Justice informs a defendant that an action has been commenced against him or her by the named plaintiff and commands the defendant to cause an appearance to be entered' within 8 days if he or she wishes to dispute the plaintiff's claim otherwise judgment may be given against him or her in his or her absence and without further notice. The writ states the name and address of the plaintiff and the name and address of the defendant. It must be endorsed with a statement of claim.

Most cases in the High Court are commenced by issuing a Writ of Summons. Order 2, rule 2 of the High Court (Civil Procedure) Rules 2004 (C. 1. 47) which governs civil proceedings in the High Court states that – subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a writ of summons. The initiator of an action and the adversary are respectively known as the plaintiff and defendant.

The following proceedings by a plaintiff must ordinarily be commenced by writ:

1. Claims for any relief or remedy for tort, other than trespass to land
2. Claims based on an allegation of fraud
3. Claims for damages for breach of duty(whether contractual, statutory or otherwise) resulting in death, personal injury, (including disease and mental impairment) or damage to property
4. Claims in respect of the infringement of a patent

The parties named in a writ must be persons capable of litigating as plaintiff or defendant. In other words, they must have the capacity to sue or be sued. As such the parties must be recognized at law as individuals or entities for or against whom judgment can be enforced. However certain persons or entities such as diplomats or officers of certain international organizations have immunity from court action. Also, a company registered in Ghana is regarded as a natural person and may sue or be sued in its registered name. Further, a foreign company though not present in Ghana, may litigate in its registered name.

2.7.3.3 Originating motion on notice

This is a specialized process generally adapted where a statute provides for the making of an application to the courts but does not provide the manner in which it is to be made or there are no rules of court governing the proceedings. Order 19, rule 1(2) of C.I 47 provides: " proceedings by which an application is to be made shall be initiated by motion and where an enactment provides that an application shall be made by some other means, an application by motion shall be deemed to satisfy the provision of the enactment as to the making of the application"

2.7.3.4 Petition

This is a written application in the nature of a pleading setting out a party's case in detail and made in open court. There are no prescribed forms which a petition should follow but the form is in fact settled by long usage.

The title followed that of an originating motion on notice and concludes with a prayer asking for a relief that the petitioner considers himself entitled to. C.1 47 states: "all proceedings for divorce, nullity, presumption of death, dissolution of a marriage, maintenance orders and child custody" shall be commenced by petition. Section 1 of the Matrimonial Causes Act buttresses this point. Also, ACT 180 states that winding-up proceedings shall be commenced by a petition. Further, Representation of People Act, 1992 (PNDCL 284) provides that election contest shall be commenced by petition.

An important point to consider is what if there is no originating process prescribed by the rules or where there is more than one prescribed originating process in the Rules or by law.

2.7.4 The trial process

The trial process in our courts is adversarial in the sense that it involves conflicting or opposing positions by parties in litigation. This means that each party advances a position that is opposite the stance of the other. The Judge or Magistrate is the umpire in the contest. The interpreter and other staff of the court assist the court, that is to say, the magistrate/judge, from a neutral position to distil evidence of the parties in the litigation. This, therefore, demands that the Interpreter and the Court Recorder should know and understand their roles in order to function in them in an accurate, precise, neutral and unbiased manner. The roles of the Interpreter and Court Recorder transcend the nature of the application or matter, be it a motion, a civil action or a criminal charge. In a civil action, the parties are the plaintiff who initiates the claim and a defendant against whom the claim is made.

In a criminal trial, those involved are the Prosecution and the accused or defence. The prosecution's duty is to proffer charges against the accused and to prove those charges also against the accused. The accused has no duty to discharge except that when a prima facie case is made against him he has to raise a reasonable doubt in the case of the prosecution either by himself or through his counsel. The law of evidence is the area of law that regulates the requirement pertaining to the degree of proof in satisfaction of the burdens on parties in the discharge of their criminal or civil burdens respectively. For instance, the law of evidence requires that in a criminal charge the prosecution has the burden throughout the trial to prove the guilt of the accused beyond reasonable doubt. In a civil claim, on the other hand, the burden of proof, if it is on a party, requires that he proves his claim on the balance of probabilities.

Motions are applications to a court or judge for an order directing something to be done in the applicant's favour. Motions are usually made with notice given to the party affected in which case it is called a motion on notice. In other instances when no notice is given to the party affected such motion is described as ex parte. The person initiating the motion is described as the applicant whilst the person affected by the application is the respondent.

2.7.4.1 The Interpreter

The service of an interpreter is required in the courts to facilitate communication "where a party/accused or witness speaks a language other than English and requests that an Interpreter is present to interpret for them. Interpreters generally sit/stand directly alongside a party/accused and witnesses in court. The services of an Interpreter may be required at various stages of a trial or hearing process in court". As stated earlier, these services may be needed in a motion, a civil action or a criminal trial.

The Interpreter's work allows all parties and the court, (Magistrate or Judge) to understand each other where a party or accused and witness cannot understand or speak English very well. For these reasons, the Interpreter must:

Interpret accurately and precisely what is being said and ensure that the meaning is conveyed.

1. The interpreter must, therefore, have a good linguistic understanding of the language being interpreted.
2. He should speak firmly and clearly.
3. He should not become personally or emotionally involved with what he is interpreting.

4. He should try to replicate the type of language being used, whether simple, formal, and colloquial, etc. If abusive or obscene language is used in the source language, he should use the English equivalent. Similarly, do not make additions or omissions. Restrict yourself only to what is being said, without changing the meaning based on your own personal opinion, advice or sensitivity. Learn about the general culture, social and political situations in the communities from which the languages being interpreted originate.

Interpreters have a constitutional and professional duty to treat all people equally irrespective of their race, sexual orientation, nationality, ethnic origin, age, disability, religion, gender, marital status, membership or otherwise of a trade union. They also have a duty to be impartial and be seen by others to be impartial in your interpretation so as to make the job of the Magistrate or Judge who has the ultimate duty of evaluating the evidence and arriving at a conclusion one way or the other, complete and reliable.

2.7.4.2 Court Recorders/ Court Clerks

A court recorder is an officer of the court whose duty is to record and transcribe proceedings in court. He/she transcribes speech (evidence) into written form through the use of electronic equipment where available or in the case of the un-automated courts, manually from the judge's record book.

A court clerk is an officer of the court who provides direct support services to the judge/magistrate. He is responsible for all clerical duties when the court is in session. He also serves as a link between the registry and the court by providing the judge/magistrate

with all materials such as documents, information that the judge/magistrate may need from the registry for the discharge of his duties.

The court recorder has a duty to record all proceedings accurately and precisely. Thus a court recorder must exhibit technical and attitudinal competence in his function. The technical competence involves excellent spelling and grammar skills; typing at a minimum speed of 40 w.p.m with minimal errors; basic knowledge of legal vocabulary in use in the courts; an understanding of courtroom management and case flow management; computer literacy. The attitudinal competence includes good listening and hearing skills, good ethical standards and a good measure of integrity; ability to work under pressure and to meet deadlines; punctuality to work.

2.7.4.3 The role of lawyers in the Ghanaian court system

A lawyer is an officer of the court who is qualified by his training to advise his clients about the law, prepare legal documents for them and to represent them in court. There are various descriptions of the lawyer. For instance, in England, a lawyer who is qualified to speak in the higher courts is called a barrister. In Scotland, a barrister is called an advocate. Other names for the lawyer are an attorney, a solicitor, and a counsel. Lawyers play a key role in the administration of justice since they help to advance the cases of their clients and help to arrive at the truth of matters in which they appear.

2.8 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) refers to a range of procedures that serve as alternatives to traditional litigation for the resolution of disputes and generally involves the assistance of a neutral or impartial third party.

Generally, ADR applies to civil matters between private persons, not criminal matters, which are matters between the Republic and a person. With the passage of the Alternative Dispute Resolution Act (Act 798) of 2010 ADR practice has now received a major boost. Certain courts like the Commercial Court require all disputing parties to resort to ADR of some type, usually pre-trial mediation, before permitting a case to be tried. The rising popularity of ADR is explained by the increasing caseload of traditional courts, as well as awareness that ADR imposes lesser costs than litigation, there is also confidentiality, and parties could have greater control over the selection of the third party who can decide their disputes.

2.8.1 Types of Alternative Dispute Resolution (ADR) Mechanisms

There are various methods of resolving disputes using ADR. These methods include; arbitration, negotiation, conciliation, mediation, customary-arbitration, mediation-arbitration and neutral case evaluation.

2.8.2 Arbitration

Arbitration is an out of court settlement of a dispute by an independent person chosen by the disputing parties themselves. Where a contract has a clause requiring the parties to submit a dispute arising between them first to arbitration, the court will enforce it and will not permit a party to proceed in breach of the clause, unless the matter has been first being dealt with through arbitration.

One significant advantage of arbitration is that the parties themselves are involved in choosing the person who is going to settle their dispute. This means that they can request the services of an expert in the particular commercial area they operate in.

Another merit of arbitration is that it is less formal, fully private, quicker and less expensive in comparison with litigation. Where a particular dispute covers, for example, a commercially sensitive matter, this may actually be more helpful to avoid negative publicity. Courtroom proceedings, on the other hand, are usually placed on record and are accessible by the public.

2.8.3 Negotiation

Negotiation is a process by which the parties to a dispute or their representatives discuss the issues in dispute with the intention of settling the dispute without the intervention of one or more third parties.

For negotiation to succeed, the parties must be willing and ready to compromise. And they must act in good faith and be responsive to the legitimate interests, concern and fears of each other.

2.8.4 Mediation

Mediation is generally expressed as a process by which a neutral or impartial third party, known as a mediator, acts to assist the disputants to find ways to resolve their dispute. The duty of the mediator is to facilitate dialogue between parties to assist them to arrive at a mutually acceptable settlement. The mediator works with the parties to find the situation that best fits them all and not to decide who is right or wrong.

There are three types of meditation approaches that the mediator can opt for. The amount of control the disputing parties have is the main difference between these types:

1) Evaluation Meditation: This type focuses on the legal rights of the parties disputing. The mediator hears the different sides of the issue and evaluates

it based on the legal rights and fairness to bring out a solution that fits all. The mediator used in this type needs to have a legal background.

2) Facilitative Mediation: The parties here have more control over the process. The mediator does not give an opinion about the solution but ensures that the parties come to an agreement of their own.
3) Transformative Mediation: Like the facilitative mediation, the power of settling disputes lies with the disputing parties. The parties determine and layout the process and the mediator only helps them understand each other's values and point of views. This type is mostly used to resolve interpersonal disputes).

Mediation offers the various parties the confidentiality needed to settle their case. The confidentiality involved is such that mediators cannot be forced to testify in court about the case. Parties can have the privacy to settle their differences without spewing it out in public.

During mediation there is a mutual attempt to arrive at a solution that suits all parties involved. This goes a long way to maintain and repair the relationship between the disputants. The main characteristics of mediation are, however, as follows:

1. It is a confidential procedure. This means the parties cannot be compelled to disclose information that they prefer to keep confidential. That information cannot be provided to anyone including even a court outside the context of the mediation.
2. It is a non-binding procedure controlled by the parties. This means that a party to mediation cannot be forced to accept an outcome that it does not

like. Unlike an arbitrator or a judge, the mediator is not a decision-maker. The mediator's role is, rather, to assist the parties in reaching a settlement of the dispute. Indeed, even when the parties have agreed to submit a dispute to mediation, they are free to abandon the process at any time after the first meeting if they find that its continuation does not meet their interests. However, parties usually participate actively in mediations once they begin. If they decide to proceed with the mediation, the parties decide on how it should be conducted with the mediator.

2.8.5 Customary Arbitration

Customary Arbitration involves a voluntary submission of a dispute to one or more arbitrators acting under customary law or according to customary traditional norms. It refers to the process of voluntary submission of a dispute to one or more neutral persons for a final and binding determination or settlement. Arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to or after the emergence of the dispute. Usually, it is advisable if such an agreement is in writing.

2.8.6 Conciliation

Conciliation is similar to mediation. In this type of dispute resolution, a third party (Conciliator) helps the parties to reach a resolution and the third party plays a more active role in bringing the parties together and suggesting solutions.

Conciliation is a less formal form of arbitration. Conciliation does not require the existence of any previous agreement. Any party may request the other party to appoint a conciliator.

A single conciliator can be appointed but two or three are also acceptable. Where there are multiple conciliators, all must act jointly. Where a party rejects the offer to conciliate, no conciliation can be held.

Parties may submit statements to the conciliator describing the general nature of the dispute and the facts in issue, and to each other. The conciliator may request further details, and the parties may even submit suggestions for the settlement of the dispute to the conciliator. Where the conciliator finds that settlement exists, he can draw up the terms of settlement and server it to the parties for their acceptance. If the parties accept to sign the terms of settlement it becomes final and binding on them.

The effects of conciliation include the fact that the parties involved maintain their autonomy and control over the process. Conciliation is also a good way of saving time and cost due to the fact that the parties have the advantage of doing things to suit their time and financial situations. Parties involved also enjoy the confidentiality that comes with having to settle the dispute with only the other parties and the conciliator.

2.9.1 The Chieftaincy Institution in Ghana

Unlike other African countries, Chieftaincy is one of the few institutions that have survived through all the three political phases of Ghana's history: pre-colonial, colonial and post-colonial times. According to the Centre for Indigenous Knowledge and Organizational Development (CIKOD, 2006), many Ghanaians claim allegiance to one kind of a chief or another.

The Republic Constitution of Ghana, 1992 and the Chieftaincy Act, 2008, Act 759, define a chief as "a person who hailing from appropriate family and lineage, who has been validly

nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage". The Act further sets the minimum qualification for a chief to be a person who has never been convicted of high treason, treason, high crime or for an offence dealing with the security of the State, fraud, dishonesty or moral turpitude (Chieftaincy Act, 2008). Section 58 of the Act stipulates various levels of chiefs permissible in the country into "Asantehene and Paramount Chiefs; Divisional Chiefs; Sub-Divisional Chiefs; Adikrofo; and Others Chiefs reorganized by the National House". Any person upholding himself or herself as chief must belong to one of these categories outlined by the Act.

In Ghana, the chieftaincy institution is regarded to be the custodian of history and traditional ways. It is also the custodian of the indigenous traditions, customs, and society of Ghana and as well occupies the vacuum created by Ghana's modern political structures in terms of customary arbitration and law and enforcement at the communal level (Owusu-Mensah, 2013).

One thing about the chieftaincy in Ghana is the feature of gender. Tradition and custom of some communities have defined the responsibilities and positions of men and women. A mention can be the Dagombas in the Northern Region of Ghana where three "skins" Kukulogu, Kpatuya and Gundogu are purposely reserved for women. The modes of succession to these skins are also well-defined. For the Akans, the top leadership positions and responsibilities are divided between men and women. The heir to the stool is a man, but a woman must always nominate him. It must be noted however that not all communities have this arrangement. The Nabdam people, for example, have no such positions for women.

2.9.2 Chieftaincy in pre-colonial Ghana

Before colonial rule in Ghana, then, Gold Coast, Ghanaians were organized into ethnic states with chiefs and councils of elders exercising legislative, executive and judicial powers. Some of these states included the Asante State, the Dagomba State, the Gonja State, the Anlo State, etc. the chiefs had the responsibility of uniting the people under his tutelage and authority to discipline members of the state.

The chieftaincy institution was structured hierarchically in a way that the lower level chiefs received instructions from the higher chiefs in all aspects of administration. The paramount chief was the highest in authority. The communities and divisional chiefs were under obligation to report to paramount chiefs on the affairs of the state when they had their meetings. It can be said that institutions were fashioned and functioned as modern Ghana and similar to the systems in the western countries at the time in terms of structure and administrative procedures, and the substance of the responsibilities, and privileges, as well as the social and political cohesion (Owusu-Mensah, 2013).

Brempong (2006) writes that though pre-colonial Ghana was not completely the ideal so as to merit a recommendation of the pre-colonial social and political system wholesale to modern Ghana; the system exhibits a high level of democracy and protection of human rights and freedom within the context of the traditional values and cultures of the people.

The modern Alternative Dispute Resolution (ADR) can be said to be a recast of time-tested pre-colonial conflict resolution mechanisms administered through the chieftaincy institution in Ghana, which sought to reconcile individuals and communities as well as improve social relations (Frempong, 2006). The chieftaincy institution during the pre-

colonial period was not regulated by any external legislation beyond the respective traditional councils. The Traditional Councils were considered independent entities with apposite sovereignty (Owusu-Mensah, 2013).

2.9.3 Chieftaincy in the colonial era

The Gold Coast (now Ghana) became an official British Colony in 1874 following the Order in Council of 1856. The Order in Council defined local norms, customary law, practices, and usages. This Order began customary law in Ghana. The Chiefs Ordinance 1904 was one of the first major legislation regarding the chieftaincy institution. The preamble of the ordinance reads: "An Ordinance to facilitate the proof of the election and installation and the deposition of chiefs according to native custom" (The Chiefs Ordinance, 1904).

British colonial masters influenced the chieftaincy institution during the colonial period. It was restructured, and integrated into the British Colonial administrative hierarchy. Daannaa (2010) maintains that this was a cost-efficient means for the British to facilitate control and governance. The colonial period brought on a legal framework to regulate the institution. Prior to this period, the chiefs with the support of and recommendations from their council of elders enacted laws to regulate their jurisdictions (Daannaa, 2010).

Daannaa (2010) further indicates that there were three main considerations by the British that determined legislation regarding chieftaincy. First, the institution was made to suit the British colonial requirement at the time. Secondly, attempts were made to practice a colonial policy before ordinances were introduced to legalize such practices, and finally,

chiefs who resisted laws of the colonial administration were deposed or sent out of the country.

The chieftaincy institution began to experience agitations from the educated elites and youth as a reaction against some colonial policies. The educated elites and the youth were of the view that the policies introduced by the colonial people were meant to exploit the people of the natural mineral resources. This also influenced colonial legislation on chieftaincy in the country. The colonial master brought legislation to deal with the growing social discontentment which was increasingly threatening the position of the chief. Chiefs in these communities consequently lost the long-held community reverence because they were considered traitors. Consequently, the stability of the social order, of which the chiefs were amongst the foremost constituents, became a concern for the colonial regime (Ninson, 1986).

One major change into the authority of the chieftaincy institution during the colonial era was to align their position to be dependent upon British recognition through vetting by the colonial government. This was perhaps, an attempt by the colonial regime to modernize the indigenous institutions and redesign them according to the British models of the monarchy (Kumado, 1992). Although the British had promulgated the appropriate legislative instruments meant to give legal legitimacy to colonial activities, the native custom was highly respected and recognized by the colonial regime.

The Native Authority Ordinance, 1932 further boosted customary law in Ghana. The ordinance enabled the Colonial regime to create more chiefs and head chiefs. Some parts of Gold Coast were considered acephalous societies, hence, did not have any central

authority system. Subsequently, social controls were carried out by communal consensus. Needs of individuals were provided for and protected by family units. The colonial authorities created and established "chiefs" as heads of empires, kingdoms and principalities and ascribed them with native authority for the purposes of implementing the colonial policies (Brempong, 2006). Colonial activities in Northern Ghana allowed for the devastation of the major centralized states of Mamprugu, Dagbon and Gonja. The slave raiding and trading activities of Samory and Babatu pushed the three main kingdoms to the verge of disintegration (Brukum, 2006).

2.9.4 Chieftaincy in post-colonial Ghana

Owusu-Menash (2013) writes that after independence the relationship between the chiefs and the central government became uncertain. The question arose as to whether chiefs should be allotted the same powers they possessed during the pre-colonial past or whether they would be accorded the same treatment granted them during the colonial period. Some schools of thought argued for the complete abolishing of the institution because of their role in aiding the colonial regime to oppress the indigenes. The political leadership at the time examined the space occupied by the institution and appreciated the need to maintain it, but also to exercise a form of state control over it.

The Constitutions of 1957 and 1960 guaranteed the institution in accordance with custom and usage, but the nature of the relationship between the central government and the chiefs was more complicated. President Kwame Nkrumah had very little reverence for the chiefs, and the perception that some Asante and Abuakwa chiefs supported the opposition party during the struggle for independence fuelled his hostility. The regime passed Act 81 which defined a chief as an individual who has been nominated, elected and installed as a chief

in accordance with customary law, and is recognized by the Minister responsible for Local Government (Chieftaincy Act, 1961). The Chieftaincy Act of 1961 granted powers to the Convention Peoples Party's (CPP) Government to meddle in chieftaincy matters without recourse to the Regional and National Houses of Chiefs. Chiefs were to conduct their affairs in a manner that suited the Government of the day

The overthrow of the CPP regime gave chieftaincy a long respite. The 1969 Constitution recognized the institution with the Traditional Councils, Regional and National Houses of Chiefs. All chieftaincy matters were to be handled by the respective constituent bodies of the institution. The recognition was further enhanced with the passage of Chieftaincy Act, 370 in 1971. This Act remained as the legal instrument when it comes to chieftaincy issues in the country until the 2008 Chieftaincy Act was passed.

Various military regimes that emerged along the period after colonial rule also accepted the chieftaincy institution. But this was not without initial skirmishes that occasionally ensued between the institution and the government. The military accepted and supported the institution as a means of acquiring political legitimacy.

The 1992 Constitution of the Fourth Republic also guaranteed the institution of chieftaincy. Article 270(1) states: "Parliament shall have no power to enact any law which:

1) confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purposes whatsoever; or
2) in any way detracts or derogates from the honour and dignity of the institution of chieftaincy."

The Constitution provides for in Articles 271 to 274 the establishment, role, and jurisdictions and functions of the Regional and National Houses of Chiefs. Article 276 in a unique way, repudiates chiefs from "active" engagement in party politics. Consequently, any chief who wishes to participate in "active" party politics must abdicate his or her stool or skin. The objective of this provision is to uphold the sanctity of the traditional values enshrined in the Ghanaian culture of the chieftaincy institution and protect the institution from the rancour and wrangling associated with partisan politics.

The constitution, however, provides an avenue to involve the chiefs in the management of the state on issues that relate to the custom and tradition of the people. Chiefs are appointed to serve on various statutory boards and commissions such as the Council of State, Forestry Commission, National Aids Commission, Constitutional Review Commission, Ghana National Petroleum Corporation Board, Prisons Council, the Regional Co-ordinating Councils, and in the Land Commission, as well as the Regional Land Commission (Brempong, 2006).

To facilitate the effective functioning of chiefs, every Traditional Council and Regional and National House of Chiefs is provided with administrative and technical staff who are also employees of the Civil Service of Ghana. These staffs are responsible for the management of the respective secretariat of the chiefs, as well as for providing technical guidance to the chiefs in respect of customs and traditions, the law and various instruments which may impact the work of the chiefs. They also conduct research to help in conflict resolution as well as in the settlement of disputes. Again, they serve as the Public Relation Officers of the chiefs.

The Ministry of Chieftaincy and Culture was established in the year 2006 to demonstrate the government's commitment to the institution. Even though the relationship between the chiefs and Government of Ghana has been cordial with the inception of the Fourth Republic, a recommendation by the African Peer Review Mechanism necessitated such a step in which I think is in the right direction. This has afforded chiefs who play significant roles in the management and administration of the country to be in cabinet meetings so as to bring issues that obstruct the workings of the institution as well as programs and projects which will promote the institution to the attention of the government (Owusu-Mensah, 2013).

2.9.5 Customary Law in Ghana

Long before the formation of the modern country now known as Ghana, and long before the colonization of those lands by the British, there were welldeveloped tribal or ethnic groups in the West African territories for whom custom was law (Ollennu, 1971). Linguistically and ethnically diverse, these populations lived by a set of rules particular and peculiar to their society and community, and the rules of any other tribe were foreign law (Ollennu, 1971). When the British began to install a central government, the concept of customary law, as distinguished from their own common law system, appeared for the first time (Ollennu, 1971).

During this colonial period of approximately 140 years, the British recognized the force of African customary law, establishing a dual court system with some courts administering "general law," or the law they brought with them, and native and local courts administering primarily customary law (Allott, 1962). The Supreme Court of Ghana was empowered to enforce the customary law in cases where the parties were Africans if the law was not . . .

repugnant to natural justice, equity and good conscience, or to any other enactment (Supreme Court Ordinance, 1876). In addition to this legal authority to veto particular aspects of customary law that they found repugnant, the British imposed various conditions on the applicability of customary law. For example, although the courts were to give effect to native customs, they could only do so when the customs existed at the date of the passage of the Supreme Court Ordinance in 1876 (Ekow-Daniels, 1992). Rules of customary law were treated as questions of fact, subject to re-litigation in each case; this ensured that any customary rule or practice could repeatedly be subjected to the repugnancy test (Ekow-Daniel, 1992). As Vanderlinden (2007) describes it, "in order to become 'civilized,' Africans and their laws had to give up all mechanisms linked to the prevalence of social harmony for the benefit of the adjudicatory legal process favored in Europe.

In 1957, Ghana gained independence from the British colonial administration. In 1960, the newly formed country of Ghana designated issues of customary law as questions of law for the court, not questions of fact and enacted a constitution that promptly eliminated the "repugnancy clause (Ekow-Daniel, 1992). Casting off the British attempt to solidify customary law, the Courts Act provided that if a court had any doubt as to the existence or content of customary law in any proceedings, the judge could, after reviewing cases, textbooks, and other sources, adjourn the proceedings to consult with persons possessing knowledge of the customary law (Ogwurike, 1966). In these ways, the Republic of Ghana sought to reclaim and preserve its customary law.

However, by the time of independence, Ghana, like other Anglophonic African countries, had absorbed or "received" English law. Statutes had been enacted locally to apply to Ghana, and many "received" English statutes were in force as well. In addition, there was "received" English common law, supplemented by local judicial precedent (Ogwurike, 1996). All post-independence constitutions have continued this dual legal system consisting of enacted statutes and regulations, common law decisions of the Ghanaian courts, and customary law.

The 1992 Constitution, Ghana's most recent, states that the laws of Ghana comprise various sources, including the current constitution itself, statutes enacted by Parliament, and the common law (1992 Constitution, Ghana). The rules of customary law, defined as "the rules of law which by custom are applicable to particular communities in Ghana," are part of the common law of Ghana (1992 Constitution, Ghana). The scope and content of customary law in Ghana is very broad. Bimpong-Buta (2013) called customary law "the living embodiment of the country's cultural heritage." The late Chief Justice, George Kingsley Acquah, described it well, stating:

> Ghana, like most nations, is made up of a number of ethnic communities, each with its own deep-rooted customary practices and offences handed down from generation to generation. . . . Some of the customary practices and offences are related to the history of the founding fathers of the community, others to particular incidents in the lifetime of the people, others to marriage and puberty rites of the women, and others to the day to day life in the community (Acquah, 1992).

Customary law possesses a number of characteristic traits including flexibility, popularity, adaptability, and a communal focus. Because customary law reflects the practices of the people, it has the capacity to change, and thus to avoid the fossilization that characterizes

some civil codes (Ekow-Daniel, 1992). The fact that customary law is unwritten enhances its adaptability. Its popularity is vital to its survival; when a group stops following a practice, it loses force (Ekow-Daniel, 1992).

Despite social, economic, political, and external influences and pressures, the essential features of customary law remain intact because the law has been instrumental in maintaining the social equilibrium among groups related by kinship (Ekow-Daniel, 1992). Unlike the U.S. or Europe, where criminal law occupies a large role in maintaining social order (Vanderlinden, 2007) customary law serves much of that function in countries where it is used. This use of customary law underscores the dual and plural nature of African law. At the traditional level, society does not prosecute or punish an offender, but the initiation of a complaint brings to the forefront not only the individual's interest, but also the collective interest in addressing conduct that may disrupt the "necessary harmony that society needs to survive (Vanderlinden, 2007). Remedies may range from apologies to compensation (Vanderlinden, 2007). This communal focus is evident in the Ghanaian customary tort law. Although Ghanaians rejected the assertion that colonial courts should tell them when customary law was "repugnant to natural justice, equity and good conscience," they recognized that there might be a need to prune their own customary law rules if they were outmoded or against public policy. This is done in several ways. The 1992 Constitution states that all customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited. It established the National House of Chiefs and the Regional House of Chiefs and requires these institutions to study, interpret, and compile customary laws with the goal of eliminating customs and usages that

are "outmoded and socially harmful (1992 Constitution, Ghana). In addition, a Law Reform Commission was founded that has the power to propose new laws or changes in the existing law (Law Reform Commission Decrcee, 1975).

The work of that Commission resulted in the enactment of the Intestate Succession Law (Intestate Succession Law, 198), which sought to unify the law relating to intestate succession because various ethnic regions previously followed different succession rules (Fenrich & Higgins, 2001). Finally, the Ghanaian courts themselves have at times held a custom to be contrary to statute or natural justice.

2.9.6 Nabdam Customary Law

Each traditional area in Ghana has a form of customary laws that are applicable to communities in the area. The complexity of the application of customary laws has given rise to forms of adjudication that focus on the interpretation of traditional laws and norms. Woodman (1996) argues that the most trustworthy evidence in these disputes over customary law consist of previous decisions of the court.

Ollennu and Woodman (1985) contend that to ascertain the validity of a customary law, chiefs, linguists and other elders learned in custom are called into court to testify on elements of the particular custom subject at issue. Local customs, which are related to natural justice, equity, and good conscience, are considered part of the customary law. For a custom to be considered in harmony with natural justice, equity and good conscience, it must not be incompatible either directly or indirectly with any law currently enforced and it must not be contrary to public policy (Ogwuriku, 1966).

Provision in Article 11 of the 1992 Constitution stipulates the sources of law in Ghana to include the constitution; enactments made by or under the authority of the Parliament established by the constitution; existing laws; orders, rules and regulations made by any other authority under a power conferred by the constitution and the common law of Ghana. The common laws of Ghana include customary laws. The constitution defines customary law as rules of law which by custom are applicable to particular communities in Ghana (Republican Constitution of Ghana, 1992).

The challenge emanating from the definition is "applicable to particular communities in Ghana". Woodman (1996) contends that courts have declared a huge number of customary rules applicable throughout Ghana. For example, the process of installing a chief must conform to the established norms and customs of the people in the traditional area. Ollennu (1985) maintains that these rules of general applicability should not be considered components of customary law but must constitute a core part of the common laws of Ghana.

The constitution in including the appropriate customary laws of the country has involved the National House of Chiefs in the development of customary law. Section 49 of the Chieftaincy Act charges the National House of Chiefs to undertake progressive study of the various Traditional Councils through the respective Regional Houses of Chiefs so as to interpret and codify customary laws with a view to better understanding the appropriate cases for a unified system of rules of customary laws in Ghana (Chieftaincy Act, 2008). The National House of Chiefs through the Research Committee has over the years consulted key stakeholders to undertake this constitutional mandate.

The Nabdam traditional area operates a customary system evolved over a period which is sustained through oral narration. It is the chiefs and elders who enforce it.

2.9.7 The way forward for the chieftaincy institution in Ghana

The chieftaincy has been integrated into the governance structures of Ghana. It, therefore, becomes important for the institution to find its relevance in the midst of westernization and also of the fact that there is an erosion of the Ghanaian culture due to technology advancement. As a result, the institution should not only count on its legal basis but must strive to conduct its mandate so as to secure the trust and reverence from the urban and rural Ghanaians.

According to Appiah (2006), for chiefs and queen mothers in Ghana to be visible with the next generations of Ghanaians, the chieftaincy institution must come up with an appropriate peer review mechanism which should authorize a paramount chief from a traditional area to monitor and evaluate the custodian responsibility and programs of another traditional area with the aim of invigorating the progress of that area. The peer review system will curtail the unjustifiable sale of stool lands to unscrupulous investors who connive with mendacious chiefs to exploit the resources of their communities which tarnishes the image of the institution.

The chieftaincy institution is encumbered with a wide array of disputes at all levels across the country. These frivolous and costly chieftaincy disputes are the main sources of recurring and devastating conflicts in Ghana (Owusu-Mensah, 2013). Although political parties occasionally trigger conflicts which raise societal tensions, these incessant conflicts in the eyes of modern Ghanaians compel them to declare the chieftaincy institution to be outmoded and conflict-oriented. This corroborates the view held by Frempong (2006) that

the institutions ought to convince the people of Ghana of their relevance and make efforts to curtail this menace by resolving these superfluous conflicts. It is also important that there is a sustainable financial arrangement and framework for the institution so as to empower the state to provide relevant resources for the institution of chieftaincy in order to insulate the institution from direct political manipulation and control. The current arrangements where the National House of Chiefs is treated similarly to any other government agency is unhelpful.

Customary law is a very useful source of law in Ghana as it protects communities' customs and values handed down over time. This explains the constitutional responsibility entrusted to chiefs to engage their indigenes on continuous legal and traditional education regarding the relevance of respective customs within the Traditional Areas. The historical evidence indicates that various political regimes in the Ghana over time, have had a unique place for the institution of chieftaincy. The institution went through turbulent times in the early independence years but currently possesses latent, but considerable political, social and cultural space in the Ghanaian political system. From the pre-colonial era through the colonial regime and all other regimes of the Republic, the essence of customary law has been respected, recognized and promoted to be a major source of law in Ghana, especially laws in respect of land acquisition, ownership and distribution (Owusu-Mensah, 2013). The promotion and reform of this institution is a noble endeavor which will not only support Ghanaian democracy, but the strength, prosperity, and traditions of the Ghanaian people.

2.10 Summary

In this chapter, literature on the various themes on the topic has been reviewed. This is has helped to put this work in proper perspective. In the next chapter, the methodology for the study shall be presented

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This study explored legal pluralism, conflicts resolution and human rights with a focus on the traditional model of the Nabdam of Ghana. There was a need to find a research design and approach that would help to achieve this purpose. This chapter looks at the methodology employed in the study. Specifically, the chapter focuses on the Research Design, Description of the Study Area, Population, Sample and Sampling Procedure, Research Instruments and Data Collection, Validity and Reliability, Data Analysis and ethical considerations.

3.1 The Study Area

The Nabdam District Assembly was established by Legislative Instrument (L.I) 2105 of 2012. Nangodi is the capital town of this newly created district in Upper East Region. It was carved out of the then Talensi-Nabdam District Assembly. The Nabdam District Assembly envisions a Decentralized Governance Authority championing the total development of the District. As a mission, the Nabdam District Assembly exists to ensure the improvement of the standard of living of its people in freedom and peace through efficient, effective and creativity in harnessing both human and natural resources, investing in capital and social programmes and projects, the involvement of the private sector and the practice of good governance.

The population of Nabdam District, according to the 2010 Population and Housing Census, is 33,826 representing 3.2 percent of the Upper East region's total population. Males constitute 49.9 percent and females represent 50.1 percent. The district is entirely rural. The population of the district is youthful (41.7%) depicting a broad base population pyramid which tapers off with a small number of elderly persons (6.8%). The total age dependency ratio for the district is 94.1, the age dependency ratio for males is higher (97.1) than that of females (91.2).

The District is divided into three (3) administrative areas popularly called Area Councils. They are Nangodi, Sakoti and Zoliba Area Councils. The Nabdam District Assembly has one (1) Constituency, which is Nabdam Constituency with thirteen (13) Electoral Areas. The District has a total number of eighty-five (85) communities. The number of unit committees within the district is thirteen (13). The total membership of the Assembly is twenty-one (21) made up of thirteen (13) elected members, six (6) appointed members, One (1) Member of Parliament and the District Chief Executive. Figure 2 below is a map of the Nabdam District

Source: Ghana Statistical Service, GIS

Figure 2: Map of Nabdam District

The Nabdam District Assembly is bordered to the north by the Bongo District, to the south by Talensi District, east by Bawku West District and to the west by the Bolgatanga Municipality.

The Nabdam District Assembly occupies a land area of 353 km2. Its climate is tropical with two distinct seasons, namely wet season (May - October) and a dry season (October – April). The population of the district is 31,843 with a population density of 110.6 persons per square kilometre.

Table 1: Age and Sex Distribution of the population of Nabdam District

Sex	Population Size	Percentage (%)
Male	15,794	49.6%
Female	16,044	50.4%
Total	**31,838**	**100%**

Source: Ghana Statistical Service (2010)

Table 1 above shows the population of the Nabdam District in which the study was done as according to the 2010 Population and Housing Census. Women were a little more than men as they constituted 50.4% and men were 49.6%. The total number of people according to the census were 31,838.

The indigenous ethnic group in the district is Nabnam with two partial Guruni speaking communities- Dasabligo and Pitanga.

3.2 District Economy

The economy of the Nabdam District Assembly can be classified into three main sectors, thus primary, secondary and tertiary even though the primary sector is dominant. Generally, the primary sector activities are predominantly agricultural in nature. The secondary sector is dominated by small–Scale Industrial Enterprise activities, while the tertiary sector concerns itself with the provision of services. All these sectors contribute towards the Gross Domestic Product and labour employment of the District. However, the existence of weak linkages between the Primary and the other sectors make economic activities sluggish.

3.2.1 Primary Sector

The sector of the Nabdam economy is as follows:

3.2.1.1 Extraction

The District is endowed with sand clay and rock deposits which are extracted for various purposes like construction, making of pots and so on. There are also some deposits of gold in some parts of the Municipality which is increasingly tapped for the enhancement of the prospects of the municipality's economy.

3.2.1.2 Quarrying

There are some pockets of small-scale manual quarrying activities in the District. The quarrying in this case is basically on stones to serve Road and Building Contractors. It is a source of employment and for that matter income to the people who are engaged in the extraction of these natural resources.

3.2.1.3 Small – scale informal industry

The activities that dominate this sub-sector are Small–Scale Agro – Processing such as groundnuts, Shea nuts, dawadawa, rice, sorghum, soya beans, maize, millet processing among others and Handicraft works like basket weaving, leather works and wood carving.

3.2.2 Tertiary sector

Generally, the service/tertiary sector activities include Trading/commerce, Transportation, Postal and Telecommunication services, Banking, Tourism, the Hospitality Industry, Energy, Law Enforcement and the Judiciary.

3.2.2.1 Trading and commerce

Trading and commercial activities in the Municipality are centered on foodstuffs, Semi-processed food and craft items, which are marketed locally as well as outside the District.

3.2.2.2 Tourist attractions

The District has only one developed tourist site. This is the Spiritual Renewal Centre at Kongo which is patronized for spiritual purposes. However, there are great tourist potentials in the District that need development.

3.2.2.3 Hospitality

The hospitality industry which includes entertainment centres is controlled by private individuals. However the industry needs serious attention if it is to develop.

3.2.2.4 Road Network

The road network of the District is made up of feeder roads that link communities within the District and also between the district and other districts. There is also one major Highway road that passes through the capital town of this district and other towns like Kongo. The road is in bad condition thereby posing threat to human life with the rampant occurrence of accidents.

3.2.2.5 Banking and other Financial Services

The district with numerous economic activities including the small-scale mining has no financial institution in service the people. They rather rely on the financial institutions in neighbouring Bolgatanga Municipality.

3.2.2.6 Educational Institutions

The District is endowed with Forty-eight (48) educational institutions. This is made up of one (1) Senior High Schools (SHS), Fourteen (14) Junior High Schools (JHS), Twenty-four (24) Primary Schools and nine (9) Kindergartens (KG). The Pupil-Teacher ratio in the district is 36:1

3.2.2.7 Health Delivery

There are Nine (9) Health Facilities in the District. These include Two (2) Health Centres, Two (2) Clinics and Five (5) CHPS Compounds. Health Facilities as well as Health personnel in the District are inadequate. There is only one Doctor operating a private clinic that serves the entire district with Medical Assistants manning the Public Health Facilities

3.2.2.8 Water and Sanitation

There are two (2) Small Town Water Systems, Fifty-seven (57) Boreholes and Ninety-two (92) Hand-dug wells in the District. The sanitation facilities in the Nabdam District are summarized below:

Water Closet Toilet	- 24
KVIPs	- 2
VIPs	- 46

3.3 Philosophical Worldview

Creswell (2009:6) describes worldview as "the general orientation about the world and the nature of research that a researcher holds". Similarly, Lincoln and Guba (2000) indicate that worldviews are paradigms which mean a worldview is a basic set of beliefs that guide an action.

Interpretivism and positivism have traditionally been considered as the two main worldviews or ontological perspectives in social science researchers (Grix, 2004; Bryman, 2001; Guba and Lincoln, 1994; Robson, 1999). Grix (2004) writes that positivism viewpoint is that reality exists independently without our knowledge of it. To this perspective, the social world is revealed to us but not that we construct it (Miller & Brewer, 2003). This mean knowledge of the social world is one and fixed which can be known accurately through research. In line with the positivism viewpoint, is an assumption that the natural is fixed in existence and we only get to know parts of it at different times through the experiences of our senses. As a result, we only react and relate to it but we do not contribute much to what it is (Miller & Brewer, 2003)

Interpretivism, on the other hand, holds the viewpoint that reality is a complex and social construction of meaning, values, and lived experiences (Grix, 2004). Therefore, reality can be better understood through people's interactions and interpretations based on their capacity to make such meaning but not as in the view of the positivism, through our sensory observation and experiences of the world (Bryman, 2004; Robson, 1999).

This study which is qualitative in paradigm employs the social interpretivist worldview (Creswell, 2009). Social interpretivist worldview operates on the assumptions that individuals seek understanding of the world in which they live and work (Creswell, 2009). Creswell opines that the goal of research in social constructivist/interpretivist worldview is to gather as much as possible from the participants, views on the phenomenon under study. This, therefore, indicates that social constructivist/interpretivist worldview focuses on constructing and producing an understanding of the social world. Social constructivist/interpretivist worldview holds the viewpoint that knowledge or meaning is made or constructed by human beings as they interact with their environment.

In tandem with the nature of social constructivist/interpretivist worldview is what Mason (2002:39) describes as "a legitimate way to collect data on ontological properties, to interact with people, to talk to them and to gain access to their account and articulations". Here, the knowledge, views, interpretations, and interactions of people are important to the researcher.

Glesnce (2010:9) writes that with the social constructivist/interpretivist worldview, "reality is socially constructed, and variables are complex, interwoven, and difficult to measure". Therefore, the researcher's role is to gain other people's interpretations of social

phenomenon, themselves, and others' actions and intentions. This worldview is relevant to this study as it guided me to work towards gathering deep and rich data, knowledge from the participants on the Nabdam traditional approach to conflict resolution and how it protects and/or abuses the rights of disputants.

3.4 Research Paradigm

Researchers identify three different approaches to the social science research: qualitative, quantitative and mixed method. The study used qualitative research paradigm to address the problem. Denzin and Lincoln (2008:4) say qualitative research is "a situated activity that locates the observer in the world consisting of a set of interpretive, and material practices which make the world visible". On the part of Ary, Razavieh and Soreman (2006:25), 'qualitative research is rooted in phenomenology". As a result, in qualitative research, the social reality is unique; the individuals and the world are viewed as interconnected and cannot be separated. Subsequently, Ary, Razavieh and Soreman (2006) explain that in qualitative research, the researcher can only understand human behaviour through the meaning of events that people are involved in.

The rationale for using this research paradigm was that it mostly takes interpretive and naturalistic approaches to its subject matter. Using the qualitative approach, I was able to 'explore a social or human problem, build a complex holistic picture, analyse words, report detailed views of informants, and conduct the study in a natural setting' (Creswell, 1998: 15). This paradigm of research was very helpful to gathering first-hand and rich ethnographic information and understanding the social, economic, political and religious life of the society.

Qualitative research methodology is an umbrella term encompassing many approaches including case study, ethnography, action research, grounded theory, and narrative research (Creswell, 1998). It is linked to the interpretive and critical paradigms school of thought (Gray, 2004; Henn, Weinstein & Foard, 2006). Interpretive paradigm argues that researchers' understanding of the social world can be deepened when they make an effort to understand it from the perspectives of the people being studied rather than explaining their behaviour through cause and effect (Henn, Weinstein & Foard, 2006). In this paradigm, social reality is created jointly through meaningful interaction between the researcher and the researched on agreement in the latter's socio-cultural context (Grbich, 2007; Rugg & Petre, 2007).

This approach involves an "in-depth investigation of a phenomenon through such means as participant observation, interviewing, archival or other documentary analysis or ethnographic study" (Ragin, 1994:91). These methods with the qualitative research do not rely on numerical measurement though they can make use of it. Grix (2004) explains that qualitative researches gather information on events, institutions or geographical location, with the aim of determining discerning patterns, trends, and relationships between variables. Holloway, (1997) adds that qualitative research gathers, interprets, and analyses data on cases in their social and cultural context over a defined period of time which may result in theorizing

The qualitative research approach was adopted for this study because it was appropriate in guiding me to understand the structural and procedural aspects of the Nabdam conflict resolution model, and how it protects and/or abuses the rights of disputants. As indicated by Ary, Razavieh and Soreman (2006) with the qualitative design, my focus was to

examine a phenomenon in rich detail and not as a comparison of relationship as with quantitative studies. Again, this design made me to have inductive but not deductive approach to the study.

3.4 Research Design

The case study design was used for this study. Case study has been defined in different ways but Punch (2005) gives a prescriptive definition of the approach. He indicates that:

> A case study aims to understand the case in depth, and in its natural setting, recognizing its complexity and its context. It also has a holistic focus, aiming to preserve and understand the wholeness and unity of the case (Punch, 2005:144).

A case study according to Yin (2009:18) is "an empirical inquiry that investigates a contemporary phenomenon in depth and within a real-life context, especially when the boundaries between phenomenon and context are not clearly evident". Silverman (2005) cites Stake to categorise case study into three namely: the intrinsic case study where the focus is on learning about a unique phenomenon where the findings cannot be used to generalise or build theory; the instrumental case study where a case is examined in order to provide insight into an issue or to revise a generalization; and the multiple case study where investigation is done into a phenomenon in different locations. Bryman (2008) on his part categorized case study into the critical case, the extreme or unique case, the representative or typical case, the relevatory case and the longitudinal case types.

The case study approach has many advantages. Firstly, it is able to capture and explore the complexity of phenomenon for a better understanding (Verma & Mallick, 1999; Denscombe, 2003). This is what a large-scale study like survey fails to achieve since it

gathers superficial information about a phenomenon for the purpose of generalisation (Muijs, 2004). Secondly, using the case study approach requires the use of multiple methods to collect data, enabling it to be validated through triangulation (Denscombe, 2003; Yin, 2003). Thirdly, it is action-oriented and therefore the findings are useful for improving practice (Cohen, Manion, & Morrison, 2000). These identified strengths of the design made the study effective and useful.

In this study, the intrinsic case study typology involving multi-sites was used which enabled me to gather rich data on the phenomenon being studied. The case in this study was the Nabdam traditional model to conflict resolution and human rights. This study was carried out at different chiefs' palaces in the Nabdam traditional area. Although each case is a study on its own, it shares attributes of the phenomenon with the others for the purpose of providing convergent evidence on the phenomenon. Hence, the use of term multiple case study.

The use of multiple case study gave me the opportunity to select the study sites and participants. This approach allows for the understanding of complex social phenomena such as conflict resolution, and human rights (Yin, 2009).

In this study, participants were selected according to what Yin (2009) refers to as "literal replication" where each of the palaces constituted a case and each was selected because it was expected that they would share similar attributes of the phenomenon under investigation. As explained by Yin (20090 in multiple case study, each case is considered a "whole" study.

3.5 Overall Methodological Approach

The overall approach or methodology included two main components: (a) a desk-based literature review and (b) fieldwork in the study area. Both components feed into each other and into the analysis and conclusions.

(a)The Literature Review

The literature review covered three areas:

(1) First, I identified and analyzed empirical data from secondary sources on: (i) the African traditional approach to conflicts resolution using chiefs with elders (ii) the phases of the traditional model of conflicts resolution over the years (iii) human rights documents and provisions applicable to Ghana and (iv) how the human rights provisions interplay on the protection of the rights of persons within disputes resolution processes.

For this purpose, I did an extensive review of literature on traditional conflict disputing forums across selected African states (even though some of this literature was not written from the perspective adopted in this research, they contained useful data). Out of this, I developed status questions.

(2) Second, I analyzed the literature on the resolution of the traditional conflict in the Nabdam part of Ghana and on the human rights challenges in the area. After that, I developed two interview guides: one used for the semi-structured interviews with chiefs and elders who moderate the forums in the Nabdam area and another one used for the semi-structured interviews with persons who used the Nabdam traditional model/approach to attempt resolution of their conflicts.

(b) The Fieldwork

I collected qualitative empirical data from primary sources by means of fieldwork to determine how the structural, substantive, and procedural aspects of the Nabdam traditional conflicts resolution model and the practice of it protect and or abuse the rights of persons in the dispute process. This aspect covered: (i) an overview of the Nabdam approach to dispute resolution from the chiefs and elders (ii) a detailed description and analysis of the structure and procedure of the approach and how they enhance and/or hinder the protection of the rights of disputants (iii) detailed description of views of persons who have experienced the traditional approach to conflict on how the approach protects and or abuses the rights of people. For this purpose, a variety of qualitative legal anthropological methods were combined as follows:

(1) A first round of exploratory interviews with five chiefs, and ten on the practice of the approach. Areas covered in these interviews included the general structural and procedural aspects of the process, the application of the approach and how it respects and or abuses the human rights of the disputants, and the prospects of the approach in the face of the growing modernization and proliferation of religions in the Nabdam area, and measure to make the traditional approach better protect and respect the human rights of disputants. This served a great purpose of refining my understanding of the practice. This also helped in the identification of the fifteen persons who have resorted to the resolution of their conflicts through the process for interviews.

(2) Semi-structured interviews with fifteen (15) persons who have employed the traditional approach to resolve their conflicts. The semi-structured interviews with these persons aimed at gathering views from their perspectives on the approach and how it

protects and or abuses their human rights based on their knowledge and experiences with the approach.

(3) Observation of disputes processing by chiefs with councils of elders at four palaces was done. This allowed me to gather first-hand information on how the approach is employed. In particular, it enabled me to identify the expressions, signs and gestures employed that may recognize or infringe on the rights of disputants. This is important because there are certain expressions, signs, and gestures in the Nabdam language which have specific meanings that may constitute an infringement on the rights of persons in the disputing forum.

(4) Focused-Group Discussions: I came out with two approaches to the Focused-Group Discussion. The first was organized with chiefs, elders and opinion leaders and persons who have used the approach to resolve their conflicts based on the preliminary analysis of the data generated by the previous methods. This helped me to refine my understanding of these issues. This did not only allow me to validate preliminary results, but it also provided a forum for the participation of stakeholders in the interpretation of the empirical findings.

The second one was without the involvement of the researcher. Five elders; one from each palace held a Focused-Group Discussion among themselves on how the Nabdam traditional approach to conflict resolution protects and or abuses the human rights of disputants. The purpose of this approach was to detach myself from them and allow them to freely say what they knew about the topic.

(c) Analysis and Conclusions

The data collected from both the primary and secondary sources were analyzed in order to determine how the nature, structures, procedure, and application of the traditional approach to conflict resolution protect and or abuse the rights of disputants in line with international human rights requirements. This was done based on developed themes derived from the research objectives.

Next, I evaluated how measures, policies and development initiatives dealing with the traditional disputing forums can contribute to removing existing barriers and taking advantage of opportunities towards protecting the rights of disputants. Inspirations were drawn from other African states through the extensive review of literature on traditional disputing forums from other African states such as Nigeria, Kenya and South Africa.

3.4 Population and Sample

Population is the number of people, objects or events having common observable characteristics in which the researcher is interested (Agyedu et al., 1999). The target population for the study was the adult (18 years and above) people of the Nabdam District in the Upper East Region of Ghana. The total Nabdam population according to 2010 National Population and Housing Census, is 33,826. Out of this number, 16,871 are males and 16,955 are females. However, the accessible population was the chiefs, elders, and individuals who employed the traditional approach to resolve their conflicts hereby referred to as disputants.

It was impossible to involve all the adult citizens of the Nabdam area in this particular study because of time constraints and financial implications. Therefore, I considered it

appropriate to conduct a 'bite-size' research covering selected chiefs and individuals who have used the traditional approach in an attempt to resolve their conflicts. The sample was made up of a total of thirty (30) persons consisting of five (5) chiefs, ten (10) elders, and fifteen (15) disputants who had come before chiefs for settlement of their disputes.

I considered these people to be well placed to provide right and relevant responses or answers to my interview questions since the chiefs and elders were the people who manned the application of the traditional approach to conflicts resolution in the area, and the disputants had personal experiences when it came to employing the approach to resolve conflicts.

In dealing with these people especially the chiefs and elders, I recognized the high positions of respect and esteem they occupied in society and the relevant knowledge they possessed, as a result, I endeavoured to create and display the needed rapport and humility so as to obtain the needed responses from them.

The Chiefs

In the Nabdam District, there were a total of two Paramount Chiefs and ten Divisional Chiefs. Both Paramount Chiefs were selected for the study. Three Divisional Chiefs were also selected from the ten for the study. Names of traditional areas in the Nabdam District are shown in Table 2 below.

Table 2: Names of traditional areas in Nabdam District

s/n	Traditional Area	Category of Chief
1	Sekoti	Paramount Chief
2	Nangodi	Paramount Chief
3	Zanlerigu	Divisional Chief

4	Dagliga	Divisional Chief
5	Damulgu	Divisional Chief
6	Tindongo	Divisional Chief
7	Logre	Divisional Chief
8	Pelungu	Divisional Chief
9	Yekot	Divisional Chief
10	Kongo	Divisional Chief
11	Dasabligu	Divisional Chief
12	Zoog	Divisional Chief

Table 2 above shows the traditional area in the Nabdam District. Two of the traditional areas are paramouncies and ten are divisional. As a result, there are ten paramount chiefs and ten divisional chiefs in the Nabdam area.

The Elders

In Nabdam area, every palace had a set of elders. There were some common elder across the palaces. In addition to the common elders, some palaces had Section Leaders as part of those who sat in the traditional court to resolve disputes. The common elders include the following in Table 3:

Table 3: Names of Elders in a Palace in Nabdam area

s/n	Name of Elder
1	Kpanna
2	Adua
3	Bihenaab
4	Kanbonnaaab
5	Yidaan

Table 3 above shows the title names of elders in the Nabdam traditional court or palace. It shows that there are five common elders that are in a traditional court who assist the chiefs to function. In all, ten elders consisting of two from each palace were sampled for the study.

The Disputants

I depended on the chiefs and elders to refer me to people in the community who had used the approach to resolve their disputants. I traced to the houses of these persons the chiefs and elders told me. On meeting each I introduced myself and explained the purpose of my work to them. They were told they had the choices of accepting or declining to be part. Fortunately, all the disputants I approached obliged or accepted to be part of the study. In all, fifteen disputants identified through the five palaces were sampled for the study

3.5 Sampling Techniques

The Nabdam District in the Upper East Region was 'handpicked' (O'Leary, 2005) as the case for the study partly because of the widespread use of the traditional approach to resolve conflicts in the area and also due to the almost non-existing literature on the way the traditional approach to conflict resolution. The sample population of 30 was drawn from five traditional areas within the district. The traditional areas were Kongo, Nangodi, Sekoti, Zanlerigu and Peligu. Two of these (Nangodi and Sekoti) were Paramount Chiefs, hence were selected through the census method. The other three chiefs were selected through the lottery sampling where the names of all the ten (10) Divisional Chiefs in the area were written in pieces of paper and the four picked one after the other. The elders were conveniently selected. The disputants were selected through the direction of the chiefs and elders.

Table 5: Coding for participants

Coding for Chiefs

DC1	DC2	DC3
PC1	PC2	

Coding for Elders

DCE1	DCE2	DCE3	DCE4	DCE5	DCE6
PCE1	PCE2	PCE3	PCE4		

Coding for Disputants

DCD1	DCD8	DCD3	DCD4	DCD5	DCD6
DCD7	DCD8	DCD9			
PCD1	PCD2	PCD3	PCD4	PCD5	PCD6

Table 5 shows coding for chiefs, elders, and disputants involved in the study. DC2, DC2 and DC3 stand for Divisional Chiefs 1, 2, and 3 respectively, and PC1 and PC2 stand for Paramount Chiefs 1 and 2 respectively. DCE1, DCE2, DCE3, DCE4, DCE5 and DCE6 stand elders sampled from Divisional Chief 1, Divisional Chief 2, Divisional Chief 3, Divisional 4, Divisional Chief 5, and Divisional Chief 6 respectively, and PCE1, PCE2, PCE3, and PCE4 stand for elders sampled from Paramount Chief 1, Paramount Chief 2, Paramount Chief 3, and Paramount Chief 4 palaces respectively for the study. DCD1, DCD2, DCD3, DCD4, DCD5, DCD6, DCD7, DCD8, and DCD9 stand for disputants sampled through Divisional Chief 1, Divisional Chief 2, Divisional Chief 3, Divisional Chief 4, Divisional Chief 5, and Divisional Chief 6, Divisional Chief 7, Divisional Chief 8 and Divisional Chief 9, while PCD1, PCD2, PCD3, PCD4, PCD5, and PCD6 stand for disputants sampled through Paramount Chief 1, Paramount Chief 2, Paramount Chief 3, Paramount Chief 4, Paramount Chief 5 and paramount Chief 6. For the study.

3.6 Data Collection Procedure

Before embarking on the empirical data collection with the chiefs and elders, I had an introductory letter from the Department of Social Studies of the University of Education, Winneba. Copies of this letter were sent to the various chiefs who were involved in the study. Subsequently, I visited all the chiefs involved in a follow up to the letter sent to them. All the chiefs gave me a warm reception and acceptance. I explained the purpose of the study, participants, needed assistance and the procedures involved to them. They later informed their respective elders about the study.

Dates for the interviews were scheduled and communicated to me. On the said date, I visited the palaces and met with the chiefs and elders for the interviews. The chiefs and elders willingly avail themselves for the interviews. So as to create any intimidation on the interviewees, the setting was made as much as possible informal. The audio recorder tape was placed in a way so as not to distract the interview process.

At every palace, after exchanging greetings, I started the interview with the chiefs. After the chiefs, I interviewed the elders. Usually, I welcome the interviewee to the section and then introduced myself to them. With the focus group discussion, I asked the question and allowed them to some time to organize their thoughts before speaking. So as not to allow a few outspoken persons to highjack the process, I called participants by names to respond. At the end of the interview sections, I thanked the participants for availing themselves and taking part and for their contributions.

For the disputants, I was directed by the chiefs and elders to houses of persons who have ever used the approach to resolve their conflicts. I went to the houses and sought for the

acceptance to be part of the study. When they agreed, we scheduled a convenient time for the interview. I made sure we did not discuss the details of their cases but the process of the approach.

At the end of the interview section, we shared a drink before I would depart. All the interview sections were audio recorded and video recorded by my Research Assistants that I recruited.

The chiefs took my phone number and called to invite me to observe cases that were been heard. At such hearing, I sat and observed the process. I was not introduced for fear of making the disputants feel uncomfortable.

A Focused-Group Discussion sections were held with two chiefs, two elders and a disputant. Another was organized for five elders (one each from the palaces) without the researcher involved. These Focused-Group Discussions were aimed at providing opportunities to the chiefs and elders who are the main actors when it comes to the Nabdam approach to conflict resolution to share their knowledge, ideas, and experiences.

3.7 Research Instruments

When I considered my research questions for the study, qualitative data was appropriate to deal with the issue in the study. As a result, I felt it appropriate to have face-to-face interview sessions with the respondents so as to get in-depth data from them. I also felt it was appropriate to observe how the approach was put into operation. This was to offer me first-hand information on the application of the approach and human rights issues. Again, since the respondents were identified with specific palaces which operated independently,

I considered it very appropriate to bring some of them to a common platform to discuss the issues so as to bring more clarity.

The instruments for the data collection were Semi-Structured Interviews, Field Observations, and Focused-Group Discussion. The interview was used as a major instrument and the observations and focused-group discussion were supplementary instruments. The use of these instruments allowed for the triangulation of the results.

3.7.1 Semi-structured interview

In conducting a qualitative research, interview is an important instrument for collecting data. It allows the respondents to be able to express their views, beliefs, practices, interactions and concerns (Freebody, 2003). Interviews are an important aspect of qualitative research because they are two-way approaches which allow the exchange of ideas and information between the interviewee and the interviewer. Interviews seek to clarify issues and where a respondent misinterprets a question, the researcher can follow with an explanation or where possible, ask alternative questions (Seidu, 2006).

O'Leary (2005) argues that: Semi-structured interviews are neither fully fixed nor fully free and are perhaps best seen as flexible. Interviews generally start with some defined questioning plan but pursue a more conversational style of interview that may see questions answered in an order natural to the flow of the conversation. They may also start with a few defined questions but be ready to pursue any interesting tangents that may develop (O'Leary, 2005). Wragg (2002) notes that this instrument allows the interviewer to ask initial questions, followed by probes meant to seek clarification of issues raised. Probes are

either pre-stated or posed in the course of the interview, making the interview process flexible.

The interview instrument was used to gather data from the chiefs, elders, and disputants on:

a) The structural and procedural aspects of the Nabdam traditional approach to conflicts resolution;
b) The Nabdam traditional approach to conflicts resolution and human rights;
c) The prospects of the Nabdam approach to conflict resolution; and
d) The measures to make the Nabdam approach to conflicts resolution adequately protect and respect the human rights of disputants.

Bryman (2004) provides a guide on how to use the interview technique to gather data which include:

i. Developing an interview guide based on the research questions of the study;
ii. Avoid double-barreled and multiple barreled questions;
iii. The identification of possible interview themes or subjects;
iv. Identifying the possible respondents from a given population;
v. Deciding the mode of recording the interview;
vi. Seeking permission from the interviewees, and
vii. Arranging suitable time and place for the interview.

Going by this guide, I developed a guide for the interview sessions with the chiefs, elders, and disputants. One interview guide was designed and used for the chiefs and elders and

another for the disputants. The interview guide had questions on the research questions and themes to enable me to gather the needed data from the chiefs, elders, and disputants.

Care was taken to ensure that the interview guide was reliable; as a result, the themes on which the themes were developed were drawn from the objectives of the study. The guide was further reviewed by three lecturers of the University of Education, Winneba who employed interview in the doctoral studies. Through their reviews, useful comments on the content and structure were offered and incorporated. The guides were then taken to my supervisors and we had discussions on them. The guides were then piloted with a chief and two elders of Dagliga area and my cousin who had used the traditional approach to resolve a dispute before. The responses were compared with the objectives of the study and it was realized the right data was gathered.

3.7.2 Conducting the interview

Interview session with the chiefs and elders as well as the disputants in the Nabdam area was obviously not cheap work. I, therefore, prepared myself to be able to act competently so as to gather sufficient and relevant data from them. I approached each of the respondents for single-face-to-face interviews. After seeking the consent of each respondent, I proceeded to conduct the interviews. On the average, one hour, thirty minutes was spent on each interview. Each respondent was interviewed using the problem centred interview approach which combined narration based interview with guideline interviews and minimal interviewer structuring of the interview. This approach gave freedom to the interviewee to structure the narration at the beginning according to his/her relevant setting. This was to help respondents express their views more broadly and deeply. Field notes and recorder were used to document the views expressed.

Picture 1: A Paramount Chief responding to interview at his palace

Picture 2: Researcher in an interview session with an elder

Picture 3: Researcher in an interview with a disputant

3.7.3 Focused-Group Discussion

Bryman (2008) refers to focus group discussion method as an interview with several people on a specific topic or issue. It typically emphasizes specific themes or topics that are explored in depth. In the focus group discussion, they are many participants in addition to the facilitator who interacts to construct meaning.

In this study, one Paramount Chief, one Divisional Chief and two Elders were involved in the Focused-Group Discussion. They were taken through the themes through which they shared knowledge, and experiences on the Nabdam traditional conflicts resolution and human rights.

Picture 4: Researcher in a Focused-Group Discussion with chiefs and elders

Picture 5: Elders in a Focused-Group Discussion

The second form of the Focused-Group Discussion was without the involvement of the researcher. An elder from each palace involved in the study was selected for a discussion among themselves on how the Nabdam traditional approach to conflict resolution protects and or abuses the human rights of disputants. A proposed date, venue, and time for the meeting was communicated to the elders to which they all agreed. On the agreed date, the elders gathered.

They were given audio recorders and cameras with which they were asked to capture the proceedings of the discussion. They selected one of them to lead them through the process. The discussion was done for about one hour and forty minutes. The main aim of this approach was to distance the researcher from the discussion process and to allow the elders to feel very free and comfortable to express their view and knowledge on the topic so as to enable me gather rich information.

3.7.5 Field observation

Yin (1982) writes that observation is a form of evidence that does not depend on verbal behaviour. With this method of data collection, the investigator is able to observe the phenomenon directly. Miller and Brewer (2003) have categorized observation into 'unobtrusive observation' and 'participant observation' based on the level of involvement of the researcher, and 'covert' and 'overt' observations based on the level of awareness of the people observed.

This study employed the 'obtrusive' and 'overt' observations since I only needed to follow the process of application of the traditional method of conflict resolution and how it respects and or abuses the human rights of disputants. The observations were purposed at

noting the language, expressions, signs and gestures that the chiefs and elders used and how these reflected on the human rights of disputants.

I made personal observations at the palaces of four chiefs when conflicts were being resolved to identify the ways the fundamental human rights of disputants were respected and or abused. The signs, gestures, and symbols that were employed by the chiefs and elders were observed. The noted expressions, signs and gestures with human rights implications were written down in a jotter and later referred to.

Picture 6: A chief with his elders listening to a disputant during a dispute resolution

Picture 7: A section of the public watching the resolution of a case at a palace

3.8 Data Analysis Procedure

Researchers have analyzed qualitative data in diverse ways. Walliman (2005) argued that the analytical frame chosen for a study depends on the theoretical and philosophical perspectives which inform it, the goal of the study, the questions addressed and the methodology used. This study was informed by the ontological assumption that knowledge was acquired, subjective in nature and the results of human cognition (Cohen et al, 2000; Sikes, 2004). This was further informed by the interpretive paradigm which argued that knowledge is created through the interaction between the researcher and the researched. The instruments used in the data collection produced mainly qualitative data. These data were analyzed thematically (Creswell, 2005; Grbich, 2007).

The findings of the interview schedules and observations made were presented and the data analysis was done manually. This strategy was chosen because the volume of data collected was manageable, making it less difficult to identify relevant text passages and my desire was to interact and have a hands-on feel for the data (Creswell, 2005). The problem associated with analyzing data manually is that it is laborious (Creswell, 2005; Marshall and Rossman, 2006).

Since the instruments generated mainly qualitative data, the presentation went through the same stages. The first stage was preparatory where the interview data for presentation began with the organization and transcription of the audio-tape recordings. The transcription involved listening to each tape repeatedly to familiarize myself with the conversations and carefully writing them down in the words of each interviewee. The interview data was then categorized into the three types of respondents for effective management and comparisons. The next stage involved intensive and repeated reading of the data with the aim of immersing myself in it. The aim of this activity was to determine analytical categories or themes (Schmidt, 2004; Creswell, 2005) using my professional judgment (Denscombe, 2003). The development of the themes was guided by the research questions and the literature review. The coding process began after determining the themes.

The respondents were coded to avoid identification. Contributions, responses and comments made were not attached to names but the codes. Brief quotations from the data were used to add realism (Creswell, 2005) to the description. Since the data were collected from different categories of respondents, it was analyzed from their perspectives in order to build some kind of complexity into the study (Creswell, 2005).

In the data analysis and discussion stage, which is contained in a separate chapter, the findings of the interviews and the observations were put together and analyzed. In the discussion, references were made to the interview and observation findings for detailed explanation and validation. Also, I compared and contrasted issues and ideas with the existing body of knowledge.

3.9 Trustworthiness

In order to have any effect on educational theory or practice, educational research studies must be rigorous and present results that are acceptable to other educators and researchers (Merriam, 1998). To accomplish this task, studies must be of high quality and results must be trustworthy and dependable.

Validity and reliability, therefore, have been the traditional standards used in the two main research traditions--quantitative and qualitative research studies to judge rigour and quality although their assumptions about reality differ. Qualitative research is linked to the interpretive paradigm and the argument is that knowledge does not exist 'out there'; it is created jointly through meaningful interaction between the researcher and the researched on agreement on the latter's socio-cultural context (Grbich, 2007). This explains that the interpretive researcher gathers data in words rather than in numbers. The elements of validity and reliability criteria include internal validity, generalisability or external validity, reliability and objectivity. But Guba (1992) contends that trustworthiness is one of the most popular criteria for judging the quality of a study within the interpretive- qualitative framework. In doing this, one has to consider the elements of credibility or authenticity, transferability or fittingness, dependability or consistency, and confirmability.

Credibility is concerned with the confidence in the 'truth' of findings and this can be achieved through triangulation (Silverman, 2005). This, therefore, involves the use of two or more methods to gather data. This element of credibility was addressed in this study through the use of Interview, Focused-Group Discussion, and Observation as methods to gather data from the respondents (chiefs, elders, and disputants).

The element of transferability of findings in a qualitative study is similar to generalization in quantitative studies. Though qualitative studies do not aim at generalizing findings, but at enhancing the understanding of phenomena, when sufficient similarities exist between one phenomenon and the other, the findings can be transferred or applied. In addressing this element in this study, examples of similarities and differences have been cited between the Nabdam traditional approach to conflict resolution and that of the Dagomba, Akan, Ewe, Ga, and other states.

Dependability or consistency in qualitative studies is also similar to reliability of findings in quantitative studies. This was achieved by asking clear questions, reducing bias and subjectivity during data collection; and triangulating the data. The instruments were also given to legal practitioners and experts in chieftaincy issues to ensure that they gather relevant data for the study.

Confirmability concerns itself with the ability of research findings not to be 'contaminated' by any individual involved. It is about ensuring that meanings of the data a researcher collects are not changed by the knowledge and experiences of the researcher, but that the results as the researcher's subjective knowledge can be traced back to the raw data of the research. To address this, the instruments were piloted in Dagliga community and analysis

of the data gathered informed the construction of the final items of the Interview, Focused-group Discussion, and Observation guides. Again, I ensured that the results were not influenced by personal feelings, interpretations of the results, or personal prejudices but purely based on facts. I also ensured that the persons selected were the right representatives of the people being studied.

3.10 Ethical Considerations

Whenever research is conducted on people, the well-being of research participants must be our top priority. The research question is always of secondary importance. This means that if a choice must be made between doing harm to a participant and doing harm to the research, it is the research that is sacrificed. Fortunately, choices of that magnitude rarely need to be made in qualitative research! But the principle must not be dismissed as irrelevant, or we can find ourselves making decisions that eventually bring us to the point where our work threatens to disrupt the lives of the people we are researching.

The statement above indicates that the prime objective of every research is to solve problems and improve the lives of the people. It stands to reason therefore that when conducting a research the welfare of the people whom the findings seek to address must be of paramount concern. Our actions and inactions as researchers must be guided so as not to compound the very problem/s we seek to solve.

It must be pointed out that qualitative research largely involves human participation in data collection rather than some inanimate mechanism (Eisner, 1991; Frankel & Wallen, 1990; Merriam, 1988) and therefore the researcher has an obligation to respect the rights, needs, values and desires of the informant(s). The use of qualitative instruments invades the life

of informants (Spradley, 1980) and sensitive information is frequently revealed. This was of particular concern in this study since the ethical issues raise concerns for the trustworthiness and credibility of the research report and the data contained therein. I, therefore, was as a matter of principle and obligation, guided by a number of ethical considerations.

One major issue I considered was to eliminate interviewer bias and make the collected data truly reflect the views of the respondents. The strategy was a constant consciousness against being passionate, sentimental and pessimistic during the interview process. My personal experiences and opinions were avoided.

Data were in all cases obtained with the consent of the respondents. This was achieved by explaining clearly the purpose of the research to the respondents and reminding them that they had a choice either to participate or not to. Additionally, respondents were made to understand that they were at liberty to opt out if at a point in the interview they felt uncomfortable. Before administering the interviews, permission was sort from and approval given by every participant.

Respondents' consent was sought before voice recordings were made or any photographs were taken. Whatever was recorded was played back for respondents to listen before leaving. As much as possible, the respondents' identities have not been disclosed. However, where respondents' identities were disclosed, they fully consented to that and indeed some even insisted that their views be attributed to them.

Finally, the cardinal principle that guided the analysis was reflexivity. Constantly the researcher reflected and checked to avoid the imposition of personal experiences in the analysis of data.

3.11 Summary

In this chapter, I have detailed my research design to explain the research process, choices of methods and the direction of the study. I have also discussed my approaches to data analysis. Educational research studies must be rigorous and present results that are acceptable to other educators and researchers and to accomplish this task, the concept of validity and reliability of the data collected in the research design were comprehensively discussed. The next chapter is a presentation and discussion of the data obtained from the participants in the study through the administration of the research instruments.

CHAPTER FOUR

RESULTS AND DISCUSSION

4.0 Introduction

The research methodology employed in the study to gather the needed data was presented in the previous chapter. In this chapter, the focus is on presenting the results obtained through the administration of the research instruments. This data came from the selected chiefs and elders in the Nabdam traditional area, and disputants who used the approach to process their disputes. The presentation and analysis are done under themes derived from the research questions and the data from the fieldwork. The themes include the structural and procedural aspects of the Nabdam traditional conflicts resolution; the Nabdam traditional conflicts resolution and human rights; the prospects of the Nabdam traditional conflicts resolution in an era of modernization and religious proliferations; and measures to make the Nabdam traditional approach to conflicts resolution protect the human rights of disputants. These themes are further divided into sub-themes.

4.1 The Structural and Procedural Aspects of the Nabdam Traditional Conflicts Resolution Approach

The first research question was set to elicit information on the structural and procedural aspects of the Nabdam traditional approach to conflicts resolution from the chiefs, elders and the disputants who have had experience of the approach. I deemed it very important that the structural and procedural aspect of the traditional approach be considered since, in many instances/events, the process is as important as the end result. This is also because many scholars have indicated that the African traditional conflicts resolution is a well-

structured and time-proven social system (Choudree, 1999; Robinson, 2009; Naude, 2010; Fred-Mensah, 2005). Again, in the formal judiciary system, the substantive aspect is distinguished from the procedural aspect of the law. Mondak (1991) writes that substantive law refers to the body of rules that determine the rights and obligations of individuals and collective bodies while the procedural law is the body of legal rules that govern the process for determining the rights of parties. To this end, a number of sub-themes were developed to ascertain this.

4.1.1: Major actors in Nabdam traditional conflicts resolution

Generally, conflict resolution is a process involving the identification of the root cause of the problem and bringing all parties involved to address the underlying issues. With African traditional or indigenous systems, this usually ends with the guilty accepting wrongdoing, leading to reconciliation which may include compensation or just forgiveness (Brock-Utne, 2001; Murithi, 2002). This requires the people to make this happen to be technically proficient and generally accepted, hence, the actors in the conflicts resolution process is very significant.

Various works have identified various actors in traditional conflict resolutions mechanisms. For example, the Department of Justice and Constitutional Development (2008) of South Africa noted that traditional leaders play a vital role in local and grassroots communities in relation to socio-economic development and the administration of justice in the modern political system as part of the cultural heritage of the African people. Murithi (2006) adds that indigenous conflicts resolution processes demand the principles of empathy, sharing and cooperation. These qualities are expected from the Nabdam

traditional approach. Hence, the main actors with the approach hold a crucial role in the success of the process. They must be persons with high repute, integrity, and respect.

The United Nations Commission on Human Rights has indicated that, in traditional justice systems, decisions are made by members of the community—whether by the chief or sub-chiefs, headman or headwoman, group of elders who provide leadership for the community, or by direct decision of the community itself in the form of a general assembly. In some communities, traditional leaders are chosen for the explicit purpose of performing a judicial or quasi-judicial role. In others, a person's position as a traditional political leader of the community includes the responsibility to hear and resolve disputes.

Against this background, it was considered imperative to determine who the main actors are in the Nabdam traditional conflicts resolution approach. Accordingly, the chiefs were asked to indicate the major actors involved with the Nabdam traditional conflicts resolution process. They first outlined the structure of traditional authority in the Nabdam area. Responses from the chiefs indicated that the Nabdam traditional authority structure stretches from the family head (yidaan), through clan head (yizugudaan), sub-divisional chief (nabil), divisional chief (tengnaab) to the paramount chief (nakaat). PC1had this to say on the structure of the Nabdam traditional authority:

> In the Nabdam area, authority and power are well structured so nicely for the good of the people and that is the beauty of our custom and tradition. When it comes to resolving conflicts, it starts from the family head to the head of the clan, through to the sub-divisional chief, to the divisional chief, and then to the paramount chief.

This was also expressed by DC2 as follows:

The traditional authority in the Nabdam area is structured to include the family head, head of clan, sub-divisional chief, divisional chief, and paramount chief. All of these have the power to deal with issues that are brought before them and are expected to handle those cases amicably in a manner that will foster peace and harmony.

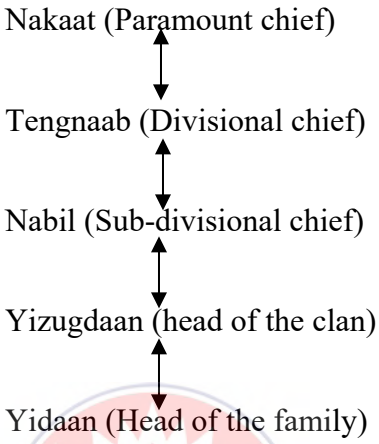

Figure 3**:** The structure of the Nabdam traditional authority

Source: Field data, 2017: Interview

This study focused on the Divisional Chief and the Paramount Chief Levels. It was made clear by all the chiefs involved in this study that, the chiefs with their elders (male) are the main persons involved in resolving conflicts using the traditional approach. They pointed out that all the chiefs have some regular elders with whom they worked. These elders as mentioned by DC1 included: "Kanbongnaab" (responsible for external relations), "Kpanna"(in charge of the palace), "Bihenaab" (in charge of the youth), Äduu" (linguist), and "Yidaan" (usually the eldest son of the chief). All the chiefs also indicated they had an errand person known as "Bitobrik" but he does not directly sit in court to process cases. DC2 added that he had an elder responsible for taxes mobilization known as "Kpeem".

PC1 went on to add Royal Secretary and Section Leaders as people who sit in and take part in processing conflicts in the palace. The following captures his view:

> I don't sit on cases alone, no way!!! I have elders – kpanna, kanbongnaab, aduu, bihenaab, yidaan, section leaders and my secretary that I usually invite to sit in court to handle cases. These are my able men with great wisdom who make things happen here with most of the people if not all who come here leave satisfied.

This attribute of elders serving as major actors in traditional conflicts resolution in the Nabdam area is similar to the practice in other parts of Ghana and Africa as contains in works on African traditional conflicts resolution (eg Awedoba (2010); Marfo, (2014); Zartma (2005); Okrah (2003); Lanek (1999); Kendie and Guri (2006). Again, it corroborates Nwosile (2005) when he wrote that the actors in African traditional conflicts resolution are elders, clan chiefs, prominent leaders, acceptable and respected persons (eg.,great hunters).

The Department of Justice and Constitutional Development (2008) of South Africa contends that appropriate elders are the actors in traditional conflicts resolution because these elders could have wisdom and knowledge; and respect as trustworthy mediators, so that, traditional institutions play a proactive role to promote social cohesion, peace, harmony, co-existence; and a reactive role in resolving disputes which have already occurred.

Unlike the Akan where all levels of traditional authority have corresponding female actors (Manuh, 1988; Esia-Donkoh, 2012), and the Ewe of Volta Region (Togbe Satsi III, 2017), the Nabdam traditional structure has no such role for a female. When the

chiefs were asked about the role of women in traditional conflicts resolution in the area, all the four chiefs responded that women have no role to play in the process. The structure of the Nabdam traditional authority without women is akin to the traditional authority of the Ga in the Greater Accra Region. The chiefs, however, indicated that in recent times, following calls from the National House of Chiefs, they are trying to work with women leaders in the communities known as "mangaazien". It has to be stated that the "mangaazien" are not queen; they are just women who lead in the organization of other women in the communities due to their own leadership attributes, hence, they hold no traditional authority. Notwithstanding, DC1 had this to say about the role and involvement of women in traditional conflicts resolution process in the area:

> Even though women traditionally have no place in traditional authority and in resolving conflicts, I have been working with the "magaazien" especially on cases that involve women. I recognise that women are the source of nature, full of wisdom and ideas. I equally recognise that even we men came from women and so women are very important. I, therefore, have been inviting the "mangaazie" to come and sit in to process some cases. I also sometimes, refer women to her to assist them to resolve their cases after which she reports back to me.

The absence of an official role for women in the conflicts resolution process in the Nabdam area may be attributed to the patriarchal nature of the society. Patriarchy, in its wider definition, means the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general (Jagger & Rosenberg, 1984). It implies that men hold power in all the important institutions of society" and that "women are deprived of access to such power Walby (1990). However, it does not imply that women are either totally

powerless or totally deprived of rights, influence, and resources (Lerner, 1989). Thus, patriarchy describes the institutionalized system of male dominance.

The work by Aristotle has sought to provide the origin of patriarchy. In his work, he labelled males as active and females as passive. For him, female was "mutilated male", someone who does not have a soul. In his view, the biological inferiority of a woman makes her inferior in her capacities and her ability to reason, and, therefore, her ability to make decisions. Because man is superior and woman inferior, he is born to rule and she to be ruled. He indicated that the courage of a man is shown in commanding of a woman in obeying (Learner 1989).

Summarily, the main actors in the Nabdam disputes resolution include the chief and his council of elders. This finding of males as the major actors with the Nabdam traditional conflict resolution process corroborates the view of Elechi (2004) when he wrote that adult males dominate the process of conflict resolution in Africa.

4.1.2 Initiating a case in the Nabdam chief's palace

This section sought to understand how anyone who needs to have his or her case reported at the palace for settlement goes about it. All the chiefs gave a similar procedure though some had slight differences. The chiefs were asked to take me through how a case is reported at their palaces.

DC1 gave the following response:

> A case cannot be reported directly to me the chief, and so, is first reported to an elder. The elder then comes to inform me in private about the request of the person. After the elder reports the case to me, I will ask the elder to come with the complainant to the palace for the case to be reported to the

chief officially. When the elder and the complainant appear at the palace, the complainant is given the opportunity to make a report of his or her case with either an amount of money or animal or a combination as a filing fee.

DC2 also said:

Anyone desiring for his or her case to be processed at the palace has to first report the case to any of my elders. The said elder will determine whether the case merits to be heard in court or not. If the elder decides that the case should not get to the chief, the rest of the other elders are called in to handle it without the involvement of the chief. If the case must get to the chief, the elder makes a formal report to the chief on behalf of the complainant. The chief then asks the elder to come with the complainant to register the case. The complaint registers his or her case at the palace with a filing fee (known as "saam" in Nabt). This could be an amount of money or animal(s). It is the complainant who decides on how much or what animal(s) or even a combination to file a case with.

PC1 on his part said:

Cases for processing at the Paramount Chief's level are referred from Divisional Chiefs. Even if an aggrieved person comes to me first, I will refer him or her back to the Divisional chief. So cases that Divisional Chiefs are unable to handle are referred here. The Divisional Chief involved brings the disputants. The Divisional Chief concerned comes with the disputants, greets and indicates whether he was unable to resolve the case satisfactorily or he considered the case beyond his capacity. The filing fee at the Divisional Chief's level is brought to register the case here.

PC2 presented the following as the way cases are reported at his palace for processing:

Cases are usually referred here by Divisional Chiefs. Nonetheless, anybody who needs the palace court to settle his or her case comes to the palace with an amount or animal and makes a request to register a case against a named

> accused. That person cannot go directly to the chief; he or she has to look for a particular elder of the chief known as "naabkpeem" and register the case. It is that elder that then informs the chief that, someone has come to file a case with this amount or that animal. It is after this that the errand person is sent to go and inform the defendant that a case has been lodged against him or her. The defendant is also told of the filing fee. This is because the defendant must appear with what the complainant has used to register the case.

It can be seen that, with the Nabdam traditional conflicts resolution process, no one goes directly to the chief to report a case for processing (DC1, DC2, and PC2). According to DC2 in an interview session, this was put in place by the forefathers to show respect to the chief. The good thing is that the person desiring his or her case to be heard has a number of elders at his or his convenience to approach and start the process of reporting his or her case. I support the practice of allowing cases to be reported to any of the elders because that will enhance quick access to reporting, hearing and resolution of cases since the elders stay in various part of the communities. I also contend that the thinking behind not allowing persons to report their cases directly to the chief is very appropriate as that practically shows respect to the authority of the chief and hence, places him in the capacity to deal with issues in a manner that will ensure peace and harmony.

Cases get to the Paramount Chief's palace for resolution through a referral from a Divisional Chief (PC1, PC2) or direct report by disputants (PC2). Whiles, PC1 insisted that all cases for consideration at the Paramount Chief's place must be brought from the palace of a Divisional Chief, else, he refers the disputants back to the Divisional chief, PC2 indicated he accepts cases directly from the disputants. This explains how the traditional approach is flexible and without a defined standard (Manuah, 1986). The insistence that

cases to the Paramount Chief's palace must go through Divisional Chiefs is important in ensuring structures of authority are followed and that the Divisional Chiefs are not undermined.

Generally, cases are reported to any of the elders in the various palaces to be forwarded to the chief but in the case of PC2, there is a particular elder "naabkpeem" who is responsible for receiving cases. The elders receive cases and subsequently report them to chiefs but the elders in the case of DC2 can decide whether the case should get to the chief or not. On a decision not to let a case get to the chief, the elders by themselves can settle the case. This is similar to the Akans' as noted by Manuh (1988) that the elder who receives the case from the complainant determines the merit of the case to be heard by the chief.

Another significant feature of the Nabdam traditional conflicts resolution process is that it is the complainant who determines the filing fee. Though the filing fee can take the form of money, animal(s) or both, the complainant is the one who determines what is within his or her means to use for the filing. There is, therefore, no imposition and this takes away financial inaccessibility to justice from the process. This also makes people to be so certain or sure that they have cases before they appear at the chief's palace to make reports since losers forfeit whatever they used to file their case. Animals are used to register cases because, the people in the Nabdam area are predominantly farmers and rear all kinds of animals, hence, almost all persons considered to be adult own animals.

Initiating a case at the palace in the Nabdam traditional area extends to informing the defendant through the services of an errand person ("bitobrick"). DC1 emphasized this point in the following manner:

> Upon receiving the complaint and the filing fee from the plaintiff, the royal errand person is sent to inform the defendant of a reported case against him or her as well as the filing fee as he or she is expected to appear with the same amount or animal(s). The defendant is also told of the day the chief has scheduled for his or her appearance. The defendant is not usually told of the case and who the complainant is by the errand person. It is on the scheduled day when he or she appears at the court that she or he will get to know these. The defendant is expected to report at the palace on the given date without fail except over tangible reason such as the death of a relative or sickness. If no excuse is sort with good reason and he or she does appear, he or she would be charged. Under no circumstance should a person fail to appear on the given date without prior excuse.

DCE2 on his part had this to say about informing the defendant:

> Every palace has a person charged with the responsibility of running errands. After a case is received, this person is sent to go and issue summon to the defendant to appear at the palace. The errand person has to go and meet an elderly person in the defendant's family to call the defendant and also witness the issuance of summon to the defendant. If the defendant is from another traditional area, the errand person goes to the chief of that traditional area for the chief to call the defendant through the family head and witness the issuance of summon. The errand person reports that "chief has asked me to come and inform you that this or that person has come to report a case against you and you are required at the palace". Depending on the nature of the case and the distance, the defendant may be required to appear immediately or later on a given date.

It can be seen from the above that the Nabdam traditional conflicts resolution has a formal way to issue writs of summon to the defendant through the royal errand person. In the words of most of the chiefs, the errand person goes to inform the respondent of a case

brought against him or her at the palace. The errand person in most of the cases, informs the defendant of the complainant and the kind of case reported against him or her. In the case of DC1, however, the defendant is not told of the complainant and the nature of the case until the day he or she appears at the court in the palace. The respondent, however, would usually be able to make a guess of the complainant and nature of complaint based on encounters they have had with others. In all cases, the chiefs indicated that the defendants are always told of the filing fee. The defendant is also expected to appear at the palace with the same amount of animal(s) as was filed by the complainant. This is to make the loose to be felt equally. I believe this was a measure to ensure a balance since the system is against unfairness and injustices. Nonetheless, in the case of the animals, a balance may be very unlikely to be obtained since the animals will likely not be of the same size and health.

The process also exhibits a show of respect to authority as can be seen in the case of DCE2 where the errand person has to first inform the elder of the family before reaching the defendant if the case involves a defendant from within the traditional area and the chief if the defendant is from another traditional area. This certainly fosters respect and co-operation among chiefs in running affairs in the Nabdam area.

The structured nature of initiating a case at the palace of a chief in the Nabdam area serves to limit the numbers of cases to be reported there. This was made clear at a Focused-Group Discussion with the chiefs and elders where they explained that the structured nature of reporting a case at the palace was meant to make people intending to initiate a case get to meet and interact with respected persons whose words of advice and actions can provide

comfort and reduce if not take away the pains in them and subsequently reduce the possibility of going through the process.

The process of initiating a case in the traditional courts in the Nabdam area is similar to the account by Manuh (1988) of the Akan. The slight difference is the elders having the power not to admit cases they did not consider good enough to reach the chief in the case of the Akan. With the Nabdam, any case considered good enough to be heard by the chief is handled by the elders but not refused total admission.

4.1.3 Hearing a case in the chief's palace in the Nabdam area

Next was on how hearing of cases was conducted after the cases were duly reported. The process through which the case is heard is very important to the acceptance of the outcome by the disputants. This is especially crucial with the Nabdam traditional approach since its overarching focus is to maintain a relationship and foster social harmony. The responses from all the chiefs to this all-important aspect of the process depicted a similar pattern. For example, DC1 explained how a hearing on cases was done in his palace as follows:

> On the day of the hearing, when the chief with his elders is seated, each of the disputants takes turns to greet the chief and announce their presence with kola as kola is the traditionally required item to greet a chief in the Nabdam area. After the greeting, everyone is reminded of the presence of the gods and ancestors of the land represented by stones to witness and take part in the process. By this, everyone is called, to be honest, and truthful. Therefore, people often speak the truth for fear of being dealt with by the gods and ancestors if they told lies. Everybody fears the spirits. In the case of our area, the name of our great god is "Zanboku". After the chief has reminded every one of the presence of the gods and ancestors, the elder who received the case and reported to the chief is asked to call the case for

> consideration. When he is through calling the case, the complainant is usually called upon first to take a seat on the floor and present his or her complaint. He or she has all the time required to give an adequate presentation of the case and as he or she is making the presentation, no one interrupts him or her; everyone listens attentively. If he or she has evidence to support his or her case, he or she is expected to use them during the presentation in a manner that will help make his or her side of the story better. After the presentation by the complainant, the defendant takes his or her turn to sit on the floor and present his or her side of the case. Similarly, no one interrupts and the defendant also has all the time required to adequately present his or her case. If the defendant also has evidence, he or she is expected to present them along with his or her presentation in a manner that will help him or her.

PC1 on his part narrated how hearings are conducted as follows:

> On the date of hearing, the disputants with or without people accompanying them appear. After normal greeting exchanges, we get down to the case. The complainant is first given the opportunity to state his or her case. He is free to express himself or herself in the manner he or she feels comfortable in. As the complainant makes a presentation, all persons are to listen calmly. When the complainant is done, the defendant is given the floor to present his or her side of the case as everyone listens.

Interview sessions with elders and disputants and my observations of three live disputes processing in three palaces corroborate the descriptions of how cases are heard with the Nabdam approach as presented by the chiefs as captured above.DCE6 explained that hearing a case in the palace has a formula that is followed. The complainant is first called to present his or her side of the story to the court after which the respondent takes a turn to represents his or her side too. After the presentations, the disputants ask each other

questions on the presentations and about the case after which the elders and chiefs also ask their questions.

My observation saw the elder in charge of the palace "kpaana" would always call the court to order and ask the elder who led the complainant to report the case to call the case for hearing. After the said elder calls the case, the "kpaana" reminds everyone of the presence of the gods and ancestors, hence, the utmost need to be truthful. The parties are then given time to represent their sides of the cases beginning with the complainant. With adequate with, the disputants represented their sides of the story. My observation also showed that the chiefs and elders spoke to the disputants with dignity. They used proverbs, expressions, and gestures that depicted respect for the human rights of the disputants. For example, DC3 indicated at a court that "ninsare ka billa duniya waa" which is translated to mean "there is no a less human being on earth". The chiefs and elders also used "gaafara" – sorry, "e gafaraya" - please excuse me, "maemi emeng" – take your time etc when they were addressing disputants which meant they valued and respected the disputants.

From the above presentations, it can be seen that the Nabdam approach to disputes resolution shows respect to disputants by giving them ample opportunity to present their cases without interruptions. This shows that the approach provides for a fair hearing as the chiefs indicated that the disputants have all the time for them to express themselves. The approach also satisfies the law of natural justice which requires every person accused be given a fair hearing before judgment is passed. This finding makes the Nabdam traditional conflicts resolution approach to meet the requirements of Universal Declaration on Human Rights (1948) Article 10, Article 14 of the International Covenant on Civil and Political

Rights (1966), and Article 7 of the African Charter on Human and Peoples Rights that every person shall have the right to have his or her case heard.

The manner in which cases are heard with the Nabdam approach to conflicts resolution is akin to the accounts of the Akan's given by Manuh (1988) and Esia-Donkoh (2012); and Ewe's by Togbe Satsi III (2017).

4.1.3.1Cross examination in the Nabdam traditional court

Similar to what happens in the law court, there is cross-examination with the Nabdam traditional conflicts resolution process. Olaoba (2000) contends that cross-examination is an important mechanism employed in the process of conflict resolution in traditional African society as a means of weighing evidence through cross-checking and corroborating of the facts of the conflict. Stitt (2004) contends that when you are helping people in a dispute, it is important to facilitate the disputants to communicate directly with each other. It was therefore very important to understand how this feature of disputes processing occurs with the Nabdam traditional approach.

Responses from the interview sessions with chiefs, elders and disputants revealed that with the Nabdam traditional conflicts resolution process, it is the disputants who cross-examine each other. DC1 indicated:

> After the presentation by the defendant, there is a cross-examination section. The defendant is first given the chance to ask the complainant all questions he or she has on the presentation made by the complainant and the complainant is required to provide honest answers. When the defendant is through with all of his or her questions, the complainant is also given the chance to ask the respondent all questions he or she has on the defendant's

presentation and the defendant, in turn, provides honest answers to the questions raised.

This was corroborated by PC1as he indicated that "After the defendant has finished presenting, the disputants are allowed to ask each other questions they have. This begins with the defendant asking the complainant. After the cross-examination of each other by the disputants, the elders come in to ask the disputants questions they have to help clarify issues. The chief is the final person to ask the disputants questions in a bid to get to a successful end of the case".

The cross-examination component helps increase the level of participation of the disputants in the dispute resolution process and interpersonal respect for each other. Studies have shown that disputants are highly satisfied with a process of disputes resolution where parties present their positions and engage each other (Tyler, 1997). This process calms nerves down as disputants get to begin to understand each other as they get to know how each feels about the issue. It enables disputants to raise various concerns they have leading to a proper appreciation of the problem. This subsequently assists in amicable resolution of disputes. Cross-examination enhances communication where the people get to speak directly to each other. Communication is a very important tool for dealing with life circumstances. It helps in clarifying doubts and misconceptions. Often, disputants are so angry that they do not talk to each other, the process of cross-examination serves a great deal bringing the disputants to share their emotions and better understand each other.

Through observation, I noticed a challenge in allowing disputants to ask each other questions with the Nabdam approach. Some disputants asked unrelated questions that could

cause anger to the other party which had the potential of leading to further confrontations and marring of the resolution process. The chiefs and elders handling the settlement process, therefore, need to swift and control the types of questions being asked to prevent the process from becoming confrontational. In settling cases, it is important for the parties to speak and listen, and direct communication and questioning as in cross-examination is very important.

4.1.3.2 Witnesses in a Nabdam traditional court

I will refer to a witness as a person with his or her own account of the facts relating to issues arising in a dispute. The purpose of witnesses in the process of resolving disputes is to provide evidence to support a party's case in the process of determining the case. Witnesses' counts should be limited to the fact, and not comments based on opinions.

The Nabdam traditional conflicts resolution process accepts accounts by witnesses. This was a common opinion expressed by all the chiefs, elders and disputants. This was to assist provide adequate information on the case so that proper and informed decisions can be taken. This was put by DC1 as follows:

> If there are witnesses, they are brought in in-turns after the cross-examination to say all that they know about the case. The witnesses are always kept away from the proceedings and are only brought in when it is time for them to give their accounts. Whiles being kept away, the complainant's and defendant's witnesses are kept separate from each other and they are brought in at a different time.

This was corroborated by DCD4 as he pointed out that "disputants are told if they have witnesses, they can come with them to say what they know about the case. By the nature

of the process, you cannot just bring anybody as a witness; it must be somebody who truly knows case". This component of the Nabdam traditional disputes resolution allowing for witnesses to present factual evidence to a case being processed is a very significant and well-thought decision. It allows for checking of fabrications and twists on cases by disputants to gain favour from the court. This to a large extent helps to get to the merits of cases and meaning resolutions. Witnesses' accounts go to help timid and people with stage fright to get their cases well presented for effective resolution.

Witnesses brought in are often relatives and known persons to the disputants; as a result, it becomes relatively difficult for them to give evidence that is untrue. This helps to bring the facts of the case for fair settlement. This is further enhanced by separating the witnesses at the palace for them to appear at a different time. With this, there will not be a suspicion that the witnesses have conspired against any of the disputants. Again, the witnesses' evidence would not be influenced by what has been said by the disputants and other witnesses as they are only brought in at the time they are required to give the evidence and at different times.

Witnesses before the Nabdam traditional court often presented oral evidence. This has traditionally been due to the unavailability of technological gadgets, but with the proliferation of such gadgets such as phones and cameras, witnesses have started adding picture, video, and audio evidences. This certainly is a good gain from technology which will boost or enhance the process.

4.1.3.3 Concluding on a case in a Nabdam traditional court

When the panel of chiefs and elders of the traditional court sit and take the disputants through the process of hearing the case, allowing for cross-examinations and appearance of witnesses, the next thing as expected is that the case is brought to a close. One important thing with the Nabdam traditional conflicts resolution process is that most of the time, the disputants usually get to concede fault when they are taken through the process. The focus of the approach is conciliation; hence, the approach usually engages the disputant to get a result that will foster cordial relationship among disputants after the process. Nonetheless, there are instances where none of the disputants accepts fault after they have been taken through the process. When that happens, the elders share their just and honest opinions to reach conclusions on cases. DC3 indicated how cases are concluded as follows:

> At the end of the presentations by the complainant and defendant, cross-examination, presentations by witness(es), questions by the elders and chief, the disputants always get to know who is right and who is wrong. The disputants would usually ask for an excuse to go and meet with the people who accompanied them to the palace and take decisions. Upon return, one of the parties is expected to concede and it usually does happen. In the event that none of the disputants accepts to be at fault, the elders' views are taken in private and the decision announced by the linguist. Only the elders take the final decision in private. The chief is not part of taking the final decision so as to isolate him from being seen as bias, especially by the losing party and associates. This way the chief remains neutral. In few instances, however, the opinion of the chief is sort but in a tactical manner.

PC1 in a similar version espoused the following:

> At the end of the presentations and questioning, the disputing parties with their respective family members and friends move out for some time to confer and take decisions on what has transpired. When they return, the accused is expected to accept guilt or eject the case made against him or her. If the accused accepts fault, that becomes the end of the case but if he or she does not accept fault, the complainant is required to say whether after what has been said, he or she still thinks he or she has been wronged. If neither the defendant nor the complainant concedes fault, the elders move into private to express their views on the case and a decision is taken. In some instances when the disputants do not concede fault, the case is adjourned to another date for them to sleep over it, think and reflect on it, and also seek wisdom from the gods and ancestors so as to be able to deliver just judgment.

From the above, it can be seen that the process is opened and plain and often produces fair results as disputants often get to understand the aspects of their cases better and proceed to conclude their cases by themselves. This certainly ensures harmony and cordial relationship among disputants after the settlement process. By this, the process can be described as mediation where the chiefs and elders act as neutral third parties to assist the disputants to resolve their disputes.

The practice of disputants conceding after the hearing indicates that the process is well structured to bring out the truth. This is a positive thing about the Nabdam traditional approach to conflicts. It explains the great thinking that went into designing the approach. This also makes the Nabdam traditional approach unique as I have not read or heard about a similar thing from anywhere. The finding from the Nabdam area is different from the accounts of Manuh (1986) and Esia-Donkor (2013) who indicate that among the Akan of Ghana, it is the elders who take the decision of who is wrong and who is right and Togbe

Satsi III (2017) who indicates, it is the chief and elders who take the decision among the Ewe. The results in the cases of Akan and Ewe can be seen as judgment and the process more of arbitration. However, under instances where none of the disputants concedes and the elders come in to take the decision, the Nabdam approach becomes similar to the practice in other Ghanaian and African societies. When the elders come in to take decisions right after the hearing without adjournment as indicated by DC3, it takes away suspicions of possible bribery and influence. This further entrenches the faith of the people in the approach over the court's system as there are reports of bribery and influences with the modern court's system.

As I appreciate the strength of the Nabdam traditional approach to conflicts resolution to bring out result immediately after hearing, I also appreciate the account given by PC1 where after hearing the case is adjourned to another date. This allows for a deeper reflection on the case and more thought-out decisions to be reached. It also re-enforces the belief held by the Nabdam people that the approach is characterized by the involvement of the gods and ancestors of the land. This belief in the people will make them be more positioned to accept outcomes and move on with life in unity. The challenge with this may be suspicion of bribery and influence.

4.2 Sanctions with the Nabdam Traditional Conflict Resolution Approach

Sanctions with traditional approaches are not meant to punish since the focus of these approaches is to maintain a harmonious relationship between parties. Sanctions are therefore meant to appease victims. The principal sanction to the party at fault with the Nabdam traditional approach to conflicts resolution is the forfeiture of the filing fee. Additional charges in the forms of a fine of money or animal(s) can be imposed on the

guilty party depending on the gravity of the offence. DC1offered the following response to the question on the forms of sanctions delivered by chiefs and elders with the Nabdam traditional approach:

> I don't know if we should call it sanction. What happens is that the loser of the case forfeits his or her filing fee which is either money or animal(s) or both, whiles the winner takes his or her's back. In some cases, however, the chief can issue additional sanctions such as a fine of money, fowl, goat, cow, or a combination. This will only happen if the magnitude of the case is grave. The sanction is to serve as deterrence to the loser and other people so that they would relate well with others in society. Where an additional charge is given in addition to the filing fee, the loser can in private go to the chief to negotiate for reduction. No torturous and humiliating actions such as beating are given. As a chief, I am a father to everyone and must care for all. If I allow for such things, others will certainly abuse it which can lead to harm or death and I will be held responsible. Therefore, our sanctions end with the filing fee, fine of money, animal(s) or a combination. Part of the filing fee of the loser is given to the errand person for his services of delivering the writ of summon to the defendant and inviting the elders to come for the case. Part is also used to refresh the elders who sat on the case.

DC2 corroborated the view expressed by DC1 as follows:

> When a case is brought here and a determination of who is at fault is made, the guilty party forfeits his or her filing fee. We also usually fine him or her so as to deter them and other people from misbehaving in the future and also to comfort the victor. The fine could be money or animal(s) (fowl, goat, or cow) or both depending on the nature of the case.

The sanctions with the Nabdam traditional approach to conflicts resolution serve to check on people deciding to report cases to the traditional courts for processing. As indicated

earlier, filing a case comes with a filing fee in the forms of animal(s), money or both and if losing a case would result in the forfeiture of these items you have used to file, people will critically analyse issues before reporting them at the palace.

One important thing about the sanctions with the Nabdam traditional approach is the winner does not take any part of the loser's forfeited things away. It is used to motivate the errand person, refresh the panel who sat on the case, and for the royal service. When fines are given, the party charged can get a respected person in the society to go and negotiate with the chief for reduction. The fine; original or negotiated is not necessarily required to be settled immediately but must be done and within a reasonable time. In the case of a delay in settlement of the fine, someone has to stand as a surety.

The sanction system employed by the Nabdam traditional approach is certainly human rights friendly since it does not involve any torturous, degrading, dehumanizing, and cruel punishment.

4.3 Duration of a Case in the Nabdam Traditional Palace

It is commonly said that justice delayed is justice denied. From the accounts of the chiefs, elders and disputants, the Nabdam traditional approach to conflicts resolution gets conflicts resolved without delay. Most cases brought before chiefs and elders in the Nabdam traditional area are usually resolved within a day. DC1 indicated that quick resolution of conflicts promotes good relationship and gives peace of mind to the people involved.

> I usually desire to finish cases very fast to foster a good relationship and harmonious living among my people. I also wish to settle cases fast so as to give the people peace of mind. Hence, most of the cases that are brought are

> heard and settled within a day. Some cases, however, take a number of days to be dealt with.

DC2 confirmed that most cases were resolved within a day. He, however, indicated that the nature of the case can delay the time it is dealt with. He noted that, if in handling a case there are connections made to some people who are not around, the case has to be adjourned for the people to be called to come and assist the process to a successful end.

PC1 on his part also confirmed that some cases are settled within a day. He, however, indicated that he and his elders are not always in a hurry to give judgment and as a result, after hearing from the disputing parties and asking them questions and none concedes, the case is adjourned to another date for the chief and elders to reflect and also get wisdom from the gods and ancestors before delivering judgment. As a result, cases brought to his palace in which the disputants themselves do not concede on who is right and who is wrong, are heard and judgments are given on different days.

Usually, cases involving witchcraft are referred to spiritualists for assistance. Referral to a spiritualist is normally the next day so that none of the disputants is able to get to the spiritualist before the case is heard. This will prevent suspicion that either of the disputants has gone to influence the said spiritualist. On the set day, the chief makes one of his elders to lead the disputants to the spiritualist for the case to be heard. After the determination by the spiritualist through divinations, they get back to the chief with the result for further direction. Similarly, the loser at the place of the spiritualist forfeits the fowl, goat, and cow which are used to file witchcraft cases with spiritualists.

4.4 Considerations with the Nabdam Traditional Conflicts Resolution

The next item sort for information from the chiefs and elders whether there were some considerations when the cases involved different groups of persons in the society such as a male and a female; an elderly person and a young person; a well-educated person and a less educated person; a rich person and a poor person; a native and a foreigner; a first time appearance and a more than first appearance; married couple and closed relatives.

The chiefs and elders indicated that the procedure is the same for all cases and that who is involved does not matter. Cases once reported to the palace for settlement go through the same process to determine the truth. However, when the right decision is reached through the procedure, the sanctions may be done with considerations. Relationships of people involved in a dispute such as with couple, parents and children are considered when giving sanctions since the focus of the traditional approach is to maintain a cordial relationship after cases are settled as a result, no further fines are charged on such cases.

In a case of disputes involving couples, the chiefs and elders pointed out that care is taken to ensure that the sanctions will not promote separation or divorce, but, rather a continuous stay together for their own good and the good of their children. This is important in my view due to the relevance of a family to the development of a child. This view is corroborated by Kowal and Kramer (1997) when they stated that depriving children of a loving family environment causes lasting damage to their intelligence, emotional well-being and even their physical stature. A lack of care and attention leave children with stunted growth, substantially lower IQs and more behavioural and psychological problems than children who had been better cared for.

The chiefs also added that if the case involves a parent and a child, care is also taken to sustain respect for the parent. As a result, when it is noticed through the process that the child is right, the elders would call the parent aside and tell him or her plainly that he or she is at fault. The final decision is then announced in such a way as not to make the child the loser but also not to make the parent lose authority and respect before the child. Again, the focus here is to sustain social structures and maintain a cordial relationship.

4.5 Types of Conflict Handled Under the Nabdam Traditional Conflicts Resolution Approach

The chiefs were asked to indicate the type of conflicts they handle in their palaces. The chiefs unanimously indicated that they handled various forms of cases except for criminal ones. For example, DC2 said:

> I and my people here handle almost all types of cases except that we are not to handle criminal cases. We get cases relating to fighting, debt, land, witchcraft accusations, bad treatment of widows and orphan, infidelity, issues involving husbands and wives, parents and children, and theft.

PC1 added that when it comes to marriage-related issues, they were not just about conflicts between couples, but some cases concerned issues with regard to the contract of customary marriages. He explained that they handle cases where people had married from where they were not allowed to marry from because it was considered a taboo. Other cases also border on some men marrying and not performing all the required customary practices or men marrying other men's wives.

This result corroborates Mensah-Bonsu (2012) when she opined that the traditional approach is used to handle all forms of conflicts including land and chieftaincy disputes,

marital conflicts, theft, family disputes and petty quarrels. The findings also corroborate the work of Okupa (2007) when he wrote that the traditional justice system is used to handle not only family matters, juvenile issues, inheritance or minor criminal offences, but also depending on the community: compensation for wrongful acts and accidental personal injury, liability for animals, inheritance (including oral wills and funeral rites), assignments of rights and duties, rights in land, taxation, contractual agreements, including matters relating to the exchange of goods, bailment, loans, employment and trade, matters relating to murder, acts of cruelty and punishment.

All the chiefs, however, indicated that, though they are not expected to handle criminal cases, but for the purpose of restoring and sustaining relationships, they sometimes intervene to assist people to amicably get to an agreement in order not to get to law courts. In their view, because of the kind of sanctions usually given at courts, disputants' relationships could be harmed and result in rather dire consequences. It was made clear by the chiefs that they only intervene in the criminal cases with the prior permission by the parties involved in the disputes. DC2 went further to indicate that, as chiefs, they were permitted to apply and make a request to take cases out of police and courts for settlement at home. One can, therefore, conclude that the Nabdam traditional approach to conflicts resolution exercises jurisdiction over a wide range of civil and criminal matters with just a little between the two concepts. The main expectation is to through the traditional justice forum consider the dispute or the specific conduct in question only as wrongful. This reflected the nature of the customary law, the disputants' need to resolve the entire conflict in one proceeding, and the fact that a satisfactory outcome needs to include aspects that are both restorative and punitive.

Judging from the findings on the above themes discussed, it can be conveniently concluded that the Nabdam approach to conflict resolution employs restorative and transformative principles in conflict resolution. The approach is process-oriented, rather than rule-based. Its emphasis is on the processes of achieving peaceful resolutions of disputes rather than on adherence to rules as the basis of determining disputes. This finding is in line with Armstrong et al (1993) when they held that the African justice system is based on processes leading to successful achievement of peace but not a strict adherence to rules to deal with disputes. A fair and just judgment must take into account a wider range of facts and interests, including that of the community, without necessarily compromising the facts of the matter in dispute and the rights of the litigants.

The findings also agree with Nsereko (1992) when he notes that African customary legal processes "focused mainly on the victim rather than on the offender" as the Nabdam approach only seeks to address the fault but not to punish the one at fault. The approach is focused on vindicating the victim and protecting his/her rights.

The forfeiture of the filing fee as a punishment on the offender was designed to bring about the healing of the victim rather than to punish the offender. Also, it serves to provide apology and atonement by the offender to the victim and the community.

The findings to research question one (1) provides supportive grounds to the theoretical conception that human beings naturally have human rights. The fact that the Nabdam traditional approach to conflict resolution which was developed so many years does protect the rights of disputants, it means the approach was developed with human rights in mind. This makes the Nabdam approach to conflict resolution human focused and human rights

embedded. The development of an approach to deal with conflict also shows the desire to maintain the natural peacefulness and orderliness of human beings.

4.6.1The Nabdam Traditional Conflicts Resolution Approach and Human Rights

The second research question of the study sought to examine how the Nabdam traditional approach to conflicts resolution protects and or abuses the rights of disputants. The information obtained is discussed in the following two themes.

4.6.1 The Nabdam Traditional Conflicts Resolution and the Protection of the Human Rights of Disputants

The International Covenant on Civil and Political Rights (1966) has a number of provisions relating to human rights in the administration of justice. Its article 14 has provisions relating to fair trial, in particular the right to equality before the courts; the entitlement to a fair and public hearing; a competent, independent and impartial tribunal established by law, the presumption of innocence, the right to be tried without undue delay, the right to remain silent and not to be compelled to testify against oneself or confess guilt, the right to a lawyer and to have legal counsel appointed without payment if the accused cannot pay and the interests of justice so required, the right to judicial review of one's sentence and conviction, and the prohibition of being tried or punished more than once for an offence for which one has been finally convicted or acquitted.

This provision may seem directed at the law courts, but the Human Rights Committee in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, stated that Article 14 is relevant when "a State, in its legal order, recognizes courts based on customary law, or religious courts, to carry out … judicial tasks." Again,

the Dakar Declaration on the Right to a Fair Trial in Africa, adopted by the African Commission on Human and Peoples' Rights in 1999, also addressed this as follows: "Traditional courts are not exempt from the provisions of the African Charter relating to a fair trial" (para. 4).

This part of my work was therefore set out to examine how the rights of disputants as contained in human rights instruments were protected within the Nabdam traditional conflicts resolution process.

4.6.1.1 Fair trial

The United Nation Commission on Human Rights (2016) contends that the structure and procedures of traditional justice systems pose concerns for the fulfilment of the right to a fair trial. The commission argues that traditional justice systems appear in some ways to be incompatible with fair trial standards as contained in the International Covenant on Civil and Political Rights (1966). The major actors in the Nabdam traditional conflicts resolution and justice system rarely have legal training and as a result, often have little or no understanding of the written law and human rights documents. They apply much of oral customary law and prior experiences in dealing with similar cases. Nonetheless, the data gathered from the interviews give a clear indication that the approach offers disputants fair trial.

The chiefs in the Nabdam area contended that the process is one that is fair. This is what DC2 had to say about fair trial with the Nabdam traditional conflicts resolution process

> This practice is very fair. We offer all disputants the same opportunity to present their views and concerns, and we subject everyone through the same

> process that often results in one of the disputants conceding fault. This is unarguably one of the best fair trial practices in the world. We are respected men in this community that our people look up to and we handle cases involving our own people. How will I feel after I have compromised my conscience to facilitate a wrong decision against my own people? How would they respect me again if my elders and I betray the confidence and trust that our people have imposed on us? And how will we be able to face the anger of our ancestors when they begin to deal with us for not giving everyone the due treatment? Our closed relationship network too makes it impossible to subject someone to unfair treatment when they have cases to be settled.

This view expressed by the chiefs indicates the people in the Nabdam area are seen to have horizontal and vertical network relationships where the horizontal network relationship extends laterally to include all other members of a given local community. This explains why community members mourn with others who are bereaved and rejoice with them in times of joy and happiness. The vertical network relationship flows to include all deceased members of the family and the unborn ones as well.

Though the impartiality of traditional justice mechanisms is difficult to assess, the Nabdam traditional approach is structured in a manner that emphasizes and even relies on traditional leaders' familiarity with the disputants. The use of the knowledge of the parties often helped to establish facts and provide relevant information on the background of the disputants.

The Nabdam traditional approach at the levels of chiefs does not employ trial by ordeal or trial based on evidence derived from spiritual rituals or other types of inherently unreliable evidence as with some countries. In Liberia, for example, despite trial by ordeal having

been outlawed by jurisprudence since 1916, the United Nations Human Rights Commission (2016), reports that non-violent forms of trial by ordeal appear to be still practised in parts of the country and permitted by regulations known as the Hinterland Regulations. The most common form is designed to incite individuals to tell the truth and may involve identifying a guilty person by supernatural means or through a process called "kafu", where all parties to a complaint share food specifically prepared so that those who do not tell the truth will suffer supernatural consequences.

4.6.1.2 Right to be tried without undue delay

The International Convention on Civil and Political Rights provides for the right to be tried without undue delay (Article 14.3(c). To a large extent, the Nabdam traditional approach satisfies this as the chiefs indicated that they get to commence proceedings as early as the disputants may be available from when a case is reported. Most cases brought before chiefs and elders in the Nabdam traditional area are usually resolved within a day, however, some cases take a number of days to be dealt with.

This was cogently expressed by DC1 as follows:

> We do not delay in getting down to beginning the processing of cases reported here. Often I and my elders are around, so when a case is reported, we try to process it quickly. A quick resolution will promote good relationship and give peace of mind to the people. I usually desire to finish cases very fast to foster a good relationship and harmonious living among my people

DC2 confirmed that most cases were resolved within a day. He, however, indicated that the nature of the case can delay the time it is dealt with. He noted that, if in handling a case

there are connections made to some people who are not around, the case has to be adjourned for the people to be called to come and assist the process to a successful end. This makes the Nabdam traditional justice system adequately comply with human rights standards to a far great extent.

4.6.1.3 Right to appeal

The right to an appeal in criminal cases as contained in the International Covenant on Civil and Political Rights may be in jeopardy in systems which do not have an appellate mechanism or where parties do not have access to a formal court to challenge the proceedings and judgment rendered in a traditional justice forum. The lack of paper records and written legal decisions with many traditional justice systems make review difficult or indeed impossible. Indeed, if the accused is not satisfied with the result of the traditional justice process and the outcome is not binding in the domestic legal order, he or she can in principle challenge the result.

As indicated early on, traditional authority in the Nabdam area is structured from the family head level to the paramount chief level. Disputants had the opportunity to make an appeal to the next level up to the paramount chief's level if they were not satisfied with a decision made by a traditional court. The final level is the paramount chief's. This is similar to the formal court system where authority is structured from the circuit court level to the Supreme Court level and appeals could be made up to the Supreme court. Both DC1 and DC2 indicated that any party to a dispute who is not satisfied with the decision reached can appeal at the paramount chief's level. DC1 specifically said:

> In the event that the disputants did not get to reach decisions by themselves as to who is wrong and who is right, and as a result, the verdict of the chief and elders is expressed, any party who is not satisfied can appeal at the paramountcy.

Also, disputants could also take their cases to the formal court for determination if they were not satisfied with the decision reached by chiefs and elders at any level of the traditional justice system.

4.6.1.4 Prohibition of torture and other forms of ill-treatment or punishment

The International Covenant on Civil and Political Rights (1966) provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Art. 7). This to a very large extent is respected with the traditional approach to conflicts among the Nabdam people. The chiefs contended that torture, cruel, inhuman and degrading treatment were not used with the Nabdam traditional justice system. All the chiefs and elders indicated that the sanctions or punishment with the Nabdam traditional conflicts resolution process included forfeiture of the filing fee, animals and money. DC1 had this to say concerning torture and other ill-treatment with the traditional approach:

> No torturous and humiliating actions such as beating are given. As a chief, I am a father to everyone and must care for all. If I allow for such things, others will certainly abuse it which can lead to harm or death and I will be held responsible. Therefore, our sanctions end with the filing fee, fine of money, animal(s) or a combination.

This was corroborated by disputants who have used the traditional approach through the interview:

> Our forefathers had great wisdom and appropriate value for humans. Our traditional approach to conflict resolution from the beginning to the end has no humiliating, dehumanizing, degrading or torturous elements. Parties to a dispute are assisted by being taken through the process for them to settle their differences. In the end, they share food and drinks before leaving for home. Even the one who is determined to have been at fault only forfeits the filing fee and if the offence is grief, a little fine is added (DCD5).

This finding presents a different perspective which contrasts the report of the Human Rights Committee where they found other forms of ill-treatment used by traditional justice systems, such as corporal punishment are happening in some parts of Africa which are a violation of the Covenant's prohibition of cruel, inhuman and degrading treatment or punishment. It must, however, be noted that, historically, corporal punishment in the form of whipping has been used by the Nabdam traditional justice approach as with other traditional justice systems in Africa.

On banishment, the chiefs and elders indicated that it was one option of sanction strictly for notorious witches and wizards. They, however, said that this was rarely used. This practice, in my opinion, constitutes cruel, inhuman and degrading treatment or punishment and hence violates the meaning of Article 12 of the International Covenant on Civil and Political Rights (1966). Article 12 provides that "everyone lawfully within the territory of a State shall, within that territory, have the right of liberty of movement and freedom to choose his residence". It should be noted, however, that the rights under Article 12 can be restricted, inter alia, for reasons of public order or to protect the rights and freedoms of others.

This bit of the traditional approach of conflicts resolution among the Nabdam is opposed to the case in South Africa which has taken the position that banishment should not be used as a sanction. It is however, in line with the case in Columbia where a court upheld the practice of banishment of a person by an indigenous justice mechanism from a specific indigenous territory, reasoning that it was a culturally protected sanction and limited in scope, given that the banishment was limited to a specific indigenous territory and that the individual could live in other indigenous territories or non-indigenous areas of Colombia.

4.6.1.5 Right to life

The right to life has been protected by various human rights instruments and constitutions. The United Nations Charter on the Human Rights (1945), International Covenant on Civil and Political Rights (1966), The African Charter on Human and Peoples Rights (1981) and the Republican Constitution of Ghana (1992) have all guaranteed the right to life. The chiefs and elders in the Nabdam area indicated that they cannot under any circumstance put any person's right to life to harm. They pointed out that their authority is for protection but not for harm. DC1 expressed it as follows:

> I am only a human being with flesh and blood like all others. It is only God who gives and takes life and so, therefore, I cannot under any circumstance through my word, action, inaction, or supervision allow for anything that will harm the life of a fellow human being. I and all chiefs have no power to harm a person's life. Every person's life is as valuable and precious as mine and should not be harmed. It is the Almighty God, our ancestors and nature that can harm a person's life.

This is different from the case in Madagascar where there is the existence of a system of customary justice (Dina) through which summary executions had been perpetrated on the strength of Dina decisions. It is also similar to customary proceedings in Somalia where families of murder victims have the right to choose between compensation and the execution of the perpetrators.

4.6.1.6 Freedom of religion or belief

The Nabdam approach to conflict resolution allows for individuals to enjoy their freedom of religion or belief. This is in line with the Republican Constitution, 1992 as contained in Article 21(c). From interview session, DC2 pointed the follows:

> This is a customary practice but not a religious one and people in the Nabdam area belong to different religions. The process in itself is neutral to religion and everyone appearing here is free to manifest any religious belief. No reference is made to any religion here and no limitation is put on anyone who wishes to manifest any religious faith and belief; every religion is permitted.

The views of the main actors with the Nabdam traditional approach to conflicts resolution as expressed by DC2 above indicate an awareness of a distinction between a cultural practice and a religious practice which is refreshing. Some people in the Nabdam area just as other areas especially the Charismatic and Pentecostal churches' members erroneously equate customary or cultural practices to African Traditional practices and proceed on that wrong assumption to condemn them describing them as barbaric, fetish, and devilish. This is a clear case of giving the dog a bad name and hanging it. It is on the basis of this that the view expressed by PCE3 below is very appropriate when he was asked if the Nabdam

traditional approach to conflict resolution allows for expression of religious beliefs by disputants?

> Absolutely yes!!! At no time have we considered religious beliefs and practice as issues here. Unfortunately, some people confuse cultural or customary practices with African Traditional Religious practices. Cultural practices are different from African Traditional practices. Neither sitting down on the floor to greet a chief nor clapping your hands when the chief is speaking is African Religious practice. These are cultural!!! The Nabdam people have a culture which we put to practice here and we do not prevent anyone from manifesting any faith here.

This is similar to what happens in state courts system where person appearing are made to swear according to his or her faith and make references or comments that are attributive to his or her faith. Even in the case of the state courts, it is limited to only Christianity and Islam.

4.6.1.7 Right to equality and non-discrimination

The International Covenant on Civil and Political Rights sets forth the applicable legal standard for the right to equality and non-discrimination: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law" (Article 26). Bias in the justice system, whether hidden or explicit, can threaten this right in several ways.

Generally, it has been claimed that traditional justice systems tend to reinforce existing power relations in a community and, in some cases, may discriminate against certain groups. Groups that face discrimination on the basis of gender, race, colour, age, property, birth, disability or national or social origin are some of those that may have difficulties in

traditional justice systems. Many have argued that even if the substantive and procedural customary law is not in itself discriminatory against persons belonging to certain groups, its application may be. This is attributed to the unwritten nature of most customary law. It is argued that the unwritten nature presents a high risk as it could be applied unfairly or unevenly.

This section explored how the Nabdam traditional approach dealt with equality and non-discrimination. Discrimination can manifest with the procedure and judgment. The chiefs and elders indicated that the judgments given on cases brought were not influenced by any other factor than the merits. They contended that all cases were taken through the same procedure and decisions reached based on the evidence provided by parties to the dispute

The chiefs and elders through the interview sessions indicated that the homogeneity of the Nabdam traditional justice system limits discrimination on the basis of ethnicity as all or virtually all of the members of the community share the same ethnic background.

PC2 expressed this with the following:

> We apply the rules, procedure, and approaches to all disputants before us in this court. We don't discriminate against anyone as to whether they are males or females, young or old, rich or poor, educated or uneducated, couple or close relatives, natives or foreigners and first time or more than first time appearance. The focus at all time is to establish the truth, serve justice, maintain peace and restore the relationship.

The interview results from the chiefs, elders, and disputants indicated that the Nabdam traditional process to conflict resolution is positive in the light of the non-discrimination

clauses of the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women's ban on discrimination on the basis of sex. The Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil, or any other field" (Article 1). Article 16 of the same convention even enjoins all State parties to "take all appropriate measures to eliminate discrimination against women", for instance, in matters of rights and responsibilities upon marriage and divorce, and in the "ownership, acquisition, management, administration, enjoyment and disposition of property."

The views from the chiefs, elders and disputants pointed to the fact that the approach was impartial and did not discriminate against women. The following statement by a female disputant (PCD) in an interview summarizes this point:

> I am a woman but I can say that with my knowledge and personal experience of the approach, it does not discriminate against women when it is being applied. The procedure for resolving a conflict is established and all cases regardless who is involved are taken through that same established process. By subjecting every disputant to the same procedure, the truth emerges. If you are a man or woman and you have a bad case, the process will expose you and if you are a woman with a good case, the process will exonerate you. Who can hide the truth with this process which is very transparent because you are a woman? When it comes to the sanctions, the

> approach is neutral and impartial because it is often the forfeiture of the filing fee.

In terms of direct roles of women in the Nabdam traditional conflicts resolution process, however, there is discrimination against women. The level of female leadership and involvement remains low, although there is evidence of positive developments in recent years resulting from a directive from the National House of Chiefs. In the Nabdam traditional area, there is no corresponding female position to the chief and since the process is manned by chiefs, women are completely left out. The none or low involvement of women in traditional authority and hence, conflict resolution process is different from what Ubink (2011) reports of Namibia, where for example, since independence women have had a much greater role in traditional court meetings and been encouraged to play an active role, and have had leadership roles in certain villages. Nonetheless, the chiefs and elders in the Nabdam area indicated that men and women were treated equally before traditional courts and had an equal chance to obtain a fair decision.

The findings from the chiefs and elders during Focus-Group Discussion indicate that the Nabdam traditional approach to conflict resolution also provides equal grounds for children to have their conflicts resolved favourably as all cases are taken through the same procedure and processes.

> We know that our children today are those who by tomorrow will be in charge of affairs and we owe it a responsibility to train them to become capable adults. Part of that our responsibility is to be fair to them and protect them to make them feel they are human beings and have what it takes to be successful and make a difference. As a result, as much as possible, we don't say or do anything that will subject the child to emotional or physical torture or that which will make them feel degraded.

Another chief DC2 at the Focus-Group Discussion pointed out that:

> Children are among the vulnerable in our society and we with the authority have to protect them but not to abuse them. We recognize their immaturity, so we rather protect and also charge their parents to train properly to grow into useful adults.

The Nabdam traditional conflicts resolution approach tends to be more available to children and their families and provide for less formal means of conflict resolution than the formal courts. It uses more accessible language, has a greater potential for healing, is less costly and promotes more direct involvement between the accused and the victim, as well as between their families.

In the Nabdam area, a child involved in case normally appears at the chief palace for proceedings with a member or members of his or her family, and the focus tends to be on reparation, reconciliation and ensuring the child remains part of the community. This finding disagrees with Opasina (2017) when he found that some people in Nigeria indicated a child of the commoner is not likely to get fair justice in the traditional system and that justice is sometimes delivered on the basis of "the son of whom you are.

The finding of the study as examined under the various sub-themes above reveal that the Nabdam traditional conflict resolution approach very much recognizes, respects, and protects the human rights of disputants. This is in line with the view expressed by Elechi (2004) that with African indigenous justice system, the rights of the victim, offender, and the community are respected and protected. Findings from his study indicate that the restoration of rights, dignity, interests and wellbeing of victims, offenders, and the entire community is the goal of African indigenous justice system. Indeed, the opportunity for

the achievement of justice is higher under the Nabdam traditional justice system than with the state criminal justice system, partly because, the empowerment of victims, offenders, and the community is the central principle of African justice. As a victim-centred justice system, the first priority of Nabdam justice is the safety of victims. Assistance is given to victims to restore their injury, property lost, and their sense of security and dignity. Again, the victims' needs for information, validation, social support, vindication, are the starting points of Nabdam justice approach.

Underlying this approach is a belief that all human beings are important and are not expendable. Healing must go deep to the centre of the problem, to the soul of the person. In addition, it is generally believed that human beings are naturally good and are capable of change when they make mistakes. African justice system is negotiative and democratic, hence it empowers victims, offenders, their families and the entire community to participate in the identification, definition of harm and the search for restoration, healing, responsibility and prevention. Justice-making is an opportunity for dialogue amongst the victim, offender, their families and friends, and the community. When the primary stakeholders to a conflict participate in the definition of harm and potential repair, all complaints and issues relevant to the case are openly discussed. The thorough airing of complaints "facilitates gaining insight into and the unlearning of idiosyncratic behaviour which is socially disruptive" (Gibbs, 1973:374). If participants are free to express their feelings in an environment devoid of power, there is nothing left to embitter leading to a more enduring peace. Further, when people involved in a conflict participate and are part of the decision-making process, they are more likely to accept and abide by the resolution.

Again, conflict provides opportunities for stakeholders to examine and bring about changes to the society's social, institutional and economic structure.

4.6.2 The Nabdam Traditional Conflict Resolution Approach and the Abuse of the Human Rights of Disputants

The next focus was to elicit from the chiefs and elders as well as the disputants who have used the approach before how the Nabdam traditional conflict resolution approach abuses the rights of disputants. The responses from the chiefs through interview sessions held with them generally indicated that the approach so much respects the rights of all persons and does not, to a large extent, abuse them. They indicated that the rights to life, personal liberties, personal dignity, equity and non-discrimination, and properties of all persons employing the traditional approach to resolve their disputes were well protected throughout the process.

One form of abuse with the Nabdam traditional approach to conflict resolution as indicated by DC2 was the use of threats. He indicated that, sometimes, threats are used to get the truth from disputants. This can put fear and intimidation on the disputants. This was used sparingly since the processes of the approach allowed disputants to be comfortable to go through the process of resolving their conflicts.

From the discussion on the Nabdam traditional approach to conflict resolution and the protection of human rights above, one can see that the approach fairs well with the various human right indicators. It was strongly articulated that the approach provides a fair trial to disputants. As a result, all disputants are offered the same opportunity to present their views and concerns. They are all spoken to with respect and dignity, and all the disputants are

subjected to the same procedure that often results in one of the disputants conceding fault. A fair hearing is provided through this process and the disputants enjoy the rule of natural justice which requires that an individual in a case must be heard before judgment is passed. This, the chiefs and elders argued, does not in any way abuse the disputants.

Again, the approach was described to be positive rather than negative to many other human rights indicators. The chiefs contended that the approach fairs extremely well when it comes to the use of torture, cruel, inhuman and degrading treatment. This is a very significant discovery as this aspect of the Nabdam traditional approach to conflict resolution provides a counter situation to what happens with other traditional justice fora in parts of Africa. It also opposes the popular view that traditional justice systems come with elements of torturous, degrading and dehumanizing punishments. All the chiefs and elders indicated that that sanctions or punishment with the Nabdam traditional conflict resolution process included forfeiture of the filing fee, animals and money.

Furthermore, on right to life, the approach is resolute. The chiefs and elders in the Nabdam area indicated that no one's life is put to harm with the approach. They emphasized that the approach is for the protection of life, personality, and properties. This also protects the rights of the disputants, hence, no abuse.

On the right to religion and beliefs, the approach also measures to international requirement. It does allow for every person to manifest his or her belief. The process in itself is neutral to religion and everyone appearing at the traditional court is free to manifest any religious belief. There is no reference to any religion and no limitation is put on anyone who wishes to manifest any religious faith and belief; every religion is permitted. The

approach from the chiefs, elders, and disputants is positive in the light of the non-discrimination. All persons: men, women, and children; husbands and wives; parents and children; natives and foreigners; the rich and the poor; well-educated and less educated; and first-time appearance and more than first-time appearance persons are taken through the same process to get the truth.

These indicators and many more with the Nabdam traditional approach to conflict resolution strongly object the view of Donnelly (1985) and Howard (1986) when they suggested that traditional African political systems did not possess the idea of rights. It, however, enforces the position that there has always been a notion of rights in Africa (Mojekwu, 1980; Cobbah 1987; Asante, 1967).

The findings to the second research question also provides support to the fact that human beings naturally have human rights, are by nature peace and orderly, and in conflict. The development of the approach recognizes the inevitability of conflicts in human life. As the approach is proven to recognize and respect the rights of disputants shows it is recognizes the natural attribute of human rights of persons.

4.7 Prospects of the Nabdam Traditional Conflicts Resolution Approach

The next research question of the study was on the prospects of the Nabdam traditional conflict resolution model, especially with the religious proliferation and modernity. Results from the interview sessions with the chiefs, elders and disputants pointed to a great prospect of the model into the future notwithstanding the increasing rates of modernity and religious proliferation. The chiefs, elders and disputants pointed out similar points to explain their position. These points included cost, proximity, accessibility, legal provision, speedy

processing of cases, trust for the model and the influence of culture and tradition on the model. DC1 expressed strong conviction on the prospect of the Nabdam traditional model in the following words:

> There is a great prospect for the Nabdam traditional conflicts resolution approach using the chiefs and elders because it is based on the culture and tradition of our people and no matter what, we will continue to have our culture and tradition. People's culture and tradition cannot just be done away like that. Also, chiefs will continue to be leaders of various communities in our area and as leaders, they will be expected to perform certain functions as leaders in all societies do, and one such important function will be to assist their followers to resolve their disputes in an amicable manner and in a way so as to foster unity. The approach also has prospect because it costs less to use it to process conflicts especially in our part of the country where many of our people are poor. Again, the traditional approach is accessible to our people. Let me also add that the approach has prospects because it is backed by law (the 1992 Republican Constitution and the Chieftaincy Act) and we work with the Local Government Ministry.

PC2 on his part indicated the following:

> Our traditional approach to conflict resolution may be challenged by modernity and religious proliferations but it has prospects into the future due to some advantages it has. In the first place, chiefs are considered to be transparent in our society and as a result, the approach enjoys trust from the people. What is therefore important is that the chiefs must endeavor to live to the confidence put on them by the people as being transparent. Also, our approach to conflict resolution is relatively cheap. When employing our approach, there is no cost in hiring the services of lawyers and in disputants transporting themselves and witnesses since they live with their chiefs in their communities. Finally, the approach has prospect because it takes a relatively short time to process disputes and the sanctions given under the

> approach are a minimal and foster relationship which you will not have with the modern court's system in our country.

D1 corroborated the views as expressed by DC1 and PC2 as he was positive on the prospects of the Nabdam traditional approach to conflict resolution into the future characterized with modernity and religious proliferation. In his view:

> As long as we continue to recognize tradition, and continue to have chiefs enskinned with the authority to resolve disputes, people will continue to employ the approach. Also, the more we continue to hear the reports of rots in the form of bribery and misuse of power leading to miscarriage of justice form the modern courts system, people will develop even more trust and confidence with the traditional approach which is believed to be transparent and fair because the gods and ancestors of the area are always part of the process. The practical reality of police and courts referring cases to chiefs to process gives credibility to the traditional approach and as a result, it will still be a major option for disputes processing in the Nabdam area. More so, the relatively cheap cost of processing cases with the traditional approach and the advantage of proximity for the people will continue to largely influence the people to depend on the approach.

The views from the chiefs, elders, and disputants give a significant indication that the Nabdam traditional approach to conflict resolution will still be very much patronized. The views are rooted in practical factors. In the first place, administration of justice under the Nabdam traditional method is quicker and cheaper than in the modern legal system where cases can take a very long time to settle. The cost of hiring a legal practitioner could also be very expensive for some people. Thus, the traditional method is easier for many people to use.DC6 from this viewpoint indicated that "*Besides the fact that they are easily*

accessible, traditional courts are cheap in terms of transport costs and the court's levy only minimal fees which may be payable in kind. Further, since legal practitioners are not permitted in these courts, justice is affordable".

It can also be noted from the responses from the chiefs, elders and disputants that the prospect of the traditional approach is in its emphasis on restitution and reconciliation by the approach. Efforts are usually made to reach an agreement that is acceptable to both the complainant and the accused. As Olusanya (1989) noted, the modern court may fine or imprison a thief without the complainant getting back the stolen items. This may explain the reluctance of some members of contemporary society to go to court. The finding on the resiliency of Nabdam traditional approach to conflict resolution resonates with Myers and Shinn (2010) when they indicated that "the Western Justice System is individualistic, retributive and emphasizes a winner-loser paradigm in resolution of disputes whereas the African justice systems focus on the restoration of social harmony and social bonds between disputants".

Another important factor noted for the prospects of the traditional approach is the reservations some members of the society have about the modern court's system to conflict resolution. This factor has led to the belief that 'legal justice' may be different from 'social justice'. Under the modern legal system, a thief may be discharged and acquitted on technical grounds, even if he was caught in the act. While this may seem reasonable from the legal point of view, it may be difficult for the victim to accept the reason for this. For these reasons, some people in the Nabdam area will not bother to go to the modern court, believing that they may not get 'justice'.

On accessibility, the argument expressed by PC3 was that "Traditional courts exist in almost every part of the area under a traditional leader which means that virtually every village has a court within reach of most inhabitants. People do not have to travel long distances to magistrate's courts at district headquarters. The courts are also accessible in terms of social distance. Since the presiding chief and his elders who constitute the court are not very different in terms of social status, wealth or education, disputants do not feel as intimidated by the chief's court as they would in a western-type court".

The point of familiarity with the law was another factor considered by the respondents in deciding the prospect of the Nabdam traditional approach to conflicts resolution. They contended that the Nabdam traditional court applies the customary law which consists of rules and customs of the community. PCE2, therefore, concluded that

> Ordinary people understand it and relate to it much more than the largely imported common law or the statutory law applied in the regular courts. Although the Nabdam society has been changing over the decades, the people still identify with their customary law rather than other laws which baffle the learned and the ordinary people alike. The absence of lawyers in these courts has ensured that principles of customary law and practice remain structurally and conceptually simple, which in turn encourages popular participation in the exposition of the law.

This explains what Bowd (2009: 2), meant when he said "traditional courts are often favoured in rural areas because of; their relatively informal nature, their use of local languages and vernacular, and their close proximity to users"

The chiefs, elders, and disputants also referred to the simplicity and informality of the traditional approach on its prospects into the future. They maintained that the Nabdam traditional approach to conflicts resolution is simple, informal, and flexible. DC3 had the following words to say:

The procedure in traditional courts is simple, flexible and expeditious. The procedural informality of African traditional courts has been held out as a major advantage over the western-style courts which sometimes get bogged down in technicalities. The procedure allows for the parties to present their cases and have their witnesses give their versions of events. After each party or witness has made a statement, the chief and elders can question them. Even members of the public (adult males) are allowed to question the parties and the witnesses and to express opinions. This informality makes these courts user-friendly and public participation makes the process popular in the sense of regarding it as their own and not something imposed from above.

One thing that makes the approach familiar is the language used during proceedings. The fact that the language of the court is invariably the local language of the disputants, with no risk of distortion through interpreting, makes these courts attractive to their users and gives greater satisfaction to the participants in the process as compared to regular courts where the language used is not understood by the majority.

The finding to this research question which indicates the approach to conflict resolution has prospect into the future again shows the desire of the people to maintain the natural attribute of peace and order.

4.8 Measures to Make the Nabdam Traditional Conflict Resolution Approach to Adequately Protect the Human Rights of People

Views on the measures to be employed to make the Nabdam approach to conflict resolution adequately protect the human rights were elicited from the chiefs, elders and disputants. Largely, these people contended that the approach in its current practice protects the rights

of disputants as human beings as the approach does not compromise on the value and dignity of any person. However, suggestions from the chiefs, elders and disputants on ways to improve on the protection of human rights centred on the provision of education, information and training in human for traditional leaders, and increased activities by civil society organizations in conflict resolution and human rights in the Nabdam area.

PC1fin an interview indicated that:

> There should be capacity building and training on conflict resolution and human rights for traditional leaders in the Nabdam area. This will not only update our knowledge and skills but will remind us to always balance the process of resolving conflicts with human rights. Human rights training for traditional leaders could be a fertile avenue to provide for technical assistance and competence to traditional leaders to get them to go about assisting people to resolve their dispute in a human right friendly manner. The focus such capacity building and training should be on the State's Constitution and laws, the African Charter and its protocols, and international human rights treaties.

Indeed, building the capacity of the traditional leaders on human rights and conflict resolution is an important step to take as indicated by PC1 above. The Ministry for Culture and Chieftaincy Affairs should, therefore, work with the National and Regional Houses of Chiefs to develop a framework for a training course for traditional leaders. Participation in such training courses could be a condition for traditional leaders to continue to exercise their functions in traditional justice mechanisms. Such courses will present the traditional leaders an awareness of the provisions in various national and international human rights documents and ideas as to how to appropriately incorporate them into the traditional

approach to resolving conflicts so as to make the traditional approach measure to international standard.

DC2 on his part suggested during a Focused-Group Discussion that Non-Governmental Organizations should come out with initiatives and programs to empower individuals and groups, to have a better knowledge of their legal rights, and to exercise those rights when employing traditional justice mechanisms. These initiatives and programs by NGOs could also include conflict resolution and human rights training for traditional leaders, with a view to ensuring that they have a better understanding of when customary norms are incompatible with human rights and how to deal with it.

Generally, traditional leaders must be encouraged to include commitments to protect and promote human rights, combat impunity, and pursue transitional justice in peace agreements.

It was also the view of the chiefs and elders that one way to make the Nabdam traditional approach to conflict resolution and all other traditional authorities is the state recognition of traditional justice systems and incorporating them into their legal framework. PC1 for example contended that such recognition and incorporation into the state's legal framework will improve compliance with human rights. This may, however, undermine the voluntary nature of the traditional process, and defeat the concept of social consensus. From the interest of protection of human rights of people especially those employing it to resolve their disputes, the incorporation of the two systems can make them complementary, hence, enhanced opportunities to protect human rights. This is important because the Nabdam

traditional approach appears to function as a type of alternative dispute resolution mechanism that has a number of positive features for the parties.

Though the concern from the chiefs and elders for the state to incorporate traditional approaches to the legal framework so as to enhance the protection of human rights, this must be with care as not to make the traditional justice approaches to lose their positive aspects. Again, it must be done without getting the authority of the traditional leaders undermined, but rather such leaders can exercise their authority to adequately protect and respect the human in proceedings before them. Any such legal framework providing for state recognition should provide the option for any party to such proceedings to oppose his or her participation and have the matter tried in the formal courts, particularly in cases where a fundamental right protected by the constitution or a regional or international human rights instrument is concerned.

PCE4 and DC2 contended that the existing case of jurisdictional limitation on practice where the traditional courts cannot process criminal cases which have the potential to pose threats to human rights standards is very laudable and, hence, one means by which the state can limit the potential for human rights violations of person using traditional approaches including the Nabdam one to process the disputes. In Ghana, serious criminal offences are to be tried in the formal courts and, if such offences are initially brought before traditional justice mechanisms, they must be transferred to the formal courts. This approach should be embraced as it ensures that persons charged with serious crimes receive the full procedural protections of the formal courts.

The finding to this research question shows the Nabdam traditional approach to conflict resolution adequately recognizes the natural attribute of human rights, hence, seeks to maintain the peace and order attribute by resolving conflicts which is also a natural attribute.

4.9.1 Similarities with the Nabdam Traditional Conflicts Resolution Approach and the Court's System in Ghana

Another item on the interview guide sought to determine the similarities with the traditional conflicts resolution and the state courts system of resolving conflicts. The responses from the respondents indicated some common features that are similar to the two approaches. The chiefs, elders, and disputants indicated that similar features included: filing or registration of cases, open hearing of cases, a panel of arbitrators, evidence taking, adjournment of the hearing, witnesses appearance, and sanctioning or fining the guilty person. This was well expressed by DC2 when he said the following:

> With both models evidence is taken in determining the merit of the case, witnesses are allowed to appear, there is an adjournment of the hearing, there is fine, and even the kind of fines are different.

Similarly, PC1 mentioned filing of cases, the appearance of witnesses, adjournment of cases, and the presence of president arbitrator as similarities that exist between the Nabdam traditional approach to conflicts resolution and the state courts' approach.

Though these similarities have been identified, it can be argued that how some of these similarities feature may be different. The process of filing a case with the

Nabdam traditional conflicts resolution approach is done with an elder by the complainant. The filing fee is animals with or without money but with the court system, the filing is with the registrar of the court through the complainant's legal counsel. The filing fee is purely money. Similarly, the arbitrators with the Nabdam traditional approach are the chiefs and council of elders. That of the court is either a judge or a number of judges. Again, whiles the main sanction with the Nabdam traditional approach is a forfeiture of the filing fee, that of the court system can be a fine of money, imprisonment or both.

4.9.2 Differences with the Nabdam Traditional Conflicts Resolution Approach and the Court's System in Ghana

On differences with the Nabdam traditional conflicts resolution, the responses from the chiefs, elders and disputants through interview sessions identified a number. These included the involvement of lawyers with the state's courts system but self-representation with the Nabdam traditional approach; lots of restrictions and procedures with the courts but fewer restrictions with the traditional approach; financial cost with the court's system but the absence of that with the traditional approach; and the kind of sanctions. D1 expressed this in the following:

> There are differences between the two approaches. With the courts, disputants have to hire the services of a legal practitioner to represent and talk for them but with the Nabdam traditional approach, the disputants represent and talk for themselves throughout the process. There are so many procedural restrictions when cases are being processed with the court's system but there is less of such procedural restrictions with the Nabdam traditional approach. Again, evidence with the Nabdam traditional approach

> is largely oral but extends to include visuals and audio-visuals with the court system. Finally, the kinds of sanctions are different. With the traditional approach, sanctions are limited to animals (fowl, goat, sheep, and cattle or a combination depending on the gravity of the case) but with the court system, it is money. Again, there is also an option of imprisonment with the court system but not with the Nabdam traditional approach.

D2 on his part contended that the focus of the Nabdam traditional conflicts resolution approach is on the complainant, respondent, and the society since the aim is to restore the relationship and keep the society in harmony. As a result, we process cases with a balanced mindset, concerning ourselves with the best possible way under the circumstance to process the case that would satisfy all the three elements involved. This is therefore different from the court system where attempts are made to determine who is wrong and subsequently punish that person and who is right and probably reward him or her.

> The Nabdam traditional approach to conflicts resolution focuses on not just the complainant and the respondent, but the good of the society at large. All chiefs in our area are determined to always appreciate the need for a balanced, cordial relationship and that we are the fathers of the land and therefore have a responsibility to handle affairs including disputes in such a way as to promote peace, harmony, cohesion, and social stability. This is one of the things that make our indigenous approach to conflicts resolution different from the western model that somehow breaks up society by way of how it processes disputes; punishing offenders and rewarding victors.

This is similar to what Elias (1963) talked about the "maintenance of social equilibrium" (p 15). He indicated that among the Yoruba of Nigeria, the parties to the proceedings are

the victim/complainant and the accused person and the traditional court is specifically enjoined to consider the interests of the victim, the accused person, and the society.

In the view of PC2, a main difference between the Nabdam traditional approach to conflict resolution and the court system is how the individuals with disputes are viewed. He contended that with the Nabdam traditional approach, all persons appearing before the court are considered equal and taken through the same procedure to get to the final determination of the case. Everyone is therefore equal before the law. Though he agrees the same is said about the court system, in his view, reportage of discrimination and bribery against judicial officials point to a phenomenon of some individuals are considered more important and above the law and, hence, treated differently. This opinion of the chief is a counter to Soyombo (1986) when he wrote that the position of individuals in the justice delivery system has become a critical concern. He says that to a large extent, the principle that no person is above the law exists with both the traditional as the court systems, in some cases, with both approaches, the reality may be different; some people may seem to be above the law by virtue of their positions. Soyombo (1986) further stated that with the traditional approach, as with the modem legal system, in principle, an accused was deemed innocent until proved guilty. Thus, with the traditional approach, an accused person is usually subjected to the 'due' process of law, although the type of evidence required for the proof of guilt may differ.

For DC1, one difference between the Nabdam traditional approach and the modern court system is the amount of evidence that may be considered sufficient. Mostly oral evidence is taken with the Nabdam traditional approach but with the court system, evidence can extend to include technological assisted acquired ones. The case with the traditional

approach in the Nabdam area may be attributable to the less possibility to use technological gadgets for evidence due to the very low level of technology in the area. But with the proliferation of mobile phone with its various functions visual and audio-visual forms of evidence may find consideration and acceptance in the traditional courts in Nabdam. Nonetheless, the view of the chief shows the general assertion that the traditional system would accept anything that may throw light on the issue at hand, including hearsay evidence.

The finding to this research question shows though the two approaches to conflict resolution have similarities and differences, they both are focused on resolving the natural attribute of conflict so as to enhance the protection the human rights of the people and thereby maintain peace and order.

4.10 Summary

This chapter presented and discussed data obtained from the respondents through the administration of the research instruments according to the research questions for the study. As a result data and analysis of the structural and procedural aspects of the Nabdam traditional conflicts resolution, the protection and abuses of disputants rights under the approach, similarities and differences with the Nabdam traditional approach to conflicts resolution and the court system, and the prospects of the Nabdam traditional approach in an era of religious proliferation and modernity were made. The next chapter will cover summary of findings, conclusions and recommendation.

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the main findings from the data analyzed in Chapter Four, conclusions derived from the findings and recommendations based on the conclusions. The summary of findings is in line with the research questions which were designed to explore the structural and procedural aspects of the Nabdam traditional approach to conflict resolution, how the approach protects and or abuses the rights of the disputants employing it to resolve their disputes, the prospect of the approach in the wage of modernity and increasing religious proliferation in the Nabdam area, the differences and similarities with the Nabdam traditional approach to conflict resolution and the court system, and measures to enhance the traditional approach's protection of the rights of disputants.

Subsequently, data were gathered to the structural and procedural nature of the Nabdam traditional to conflicts resolution, how the traditional approach to resolving conflicts in the area protects and or abuses the rights of the disputants, the prospects of the approach into the future in the face of increasing modernization and religious proliferations with intense criticisms against tradition and culture in the area, and measures to be employed to enhance the protection of the rights of disputants in the process of resolving their conflicts with the traditional method.

5.2 Summary of Findings

The findings from the study are presented below according to the research questions for the study.

5.2.1 Structural and Procedural Aspects of the Nabdam Traditional Conflict Resolution Approach

The first research question elicited data on the structural and procedural aspects of the Nabdam traditional approach to conflict resolution. The study revealed through the views expressed by the chiefs, elders and disputants in the Nabdam area involved in the study that the Nabdam traditional approach to conflicts resolution has a well-developed structure and procedure which can be grouped into the Initiation Stage, Processing Stage, Concluding Stage, and Consolidation Stage.

The Initiation Stage mainly involves the filing of the case through an elder to the palace by an aggrieved person desiring the attention of the chiefs and elders to assist him or her to settle a dispute with another person. The second part of the Initiation Stage is the summoning of the respondent through the Royal Errand person. This stage is where the complainant demonstrates a clear desire for the resolution of a dispute and a commitment to getting it done. As a result, the person files the case with a fee which he or she knows very well he or she will forfeit if she or she loses. The Processing Stage begins on the day of first appearance where the chief with his elders assist the disputants to establish the truth in the case this involves hearing from disputants, taking of evidence, disputants' cross-examination of each other, and questioning by chiefs and elders. The Concluding Stage is where a determination is reached as to who is at fault and who is not either through a concession by the disputants or a pronouncement of judgment by the chief and elders. The Consolidation Stage usually includes merry making in the form of sharing of drinks, cola,

and food, and private negotiation for consideration and return of part of the filing fee, and disputants visiting each other.

All together therefore, the process of conflicts resolution with the Nabdam traditional approach to conflict resolution involves filing the case at the palace through an elder by the complainant; serving notice to and summoning of the respondent through the Royal Errand person; appearance and hearing of the case; reaching a conclusion either by concession by the disputants or by a judgment by the chief and elders and sharing food or drink to consolidate the agreement reached.

The study also revealed that processing cases through the Nabdam traditional approach is always done in public. On the day of hearing, the elder who received the case and reported to the chief is asked to call the case for consideration. When he is through calling the case, the complainant is called upon to present his or her side of the case first, after which the defendant takes his or her turn to present his or her side of the case. This public hearing of cases engender public trust, fairness, and acceptance.

The Nabdam approach to conflict resolution allows for evidence(s) giving, cross-examination, and witness(es) appearance. Traditionally, evidence with the approach was oral, but with modernization, audio, visual, and audio visual evidences are now accepted. Cross-examination aspect of the approach helped disputants get to understand how each feels about the issue as disputants are able to raise various concerns they have. This subsequently assists in amicably resolution of disputes. The witness(es) to a case is/are either brought in by the disputants to provide testimonies in support of their side or invited

by the traditional court if they consider those persons' views relevant to settling the disputes following what the disputants said.

Concluding a case with the Nabdam traditional approach to conflicts resolution takes two forms. From the study, the common form is where the disputants are taken through the process and one of them gets to concede fault. This is what gives the approach its uniqueness and relevance. This is because, it puts the disputants themselves at the centre of resolving their own conflicts as Tyler (1997) contends that disputants are highly satisfied with a process of disputes resolution where parties present their positions and engage each other. The second form is where none of the disputants concedes and the chief and his elders have to pronounce judgment based on the narrations presented by the disputants, evidences given, cross-examination, accounts by witnesses if any, and the responses to the questions from the chief and his elders. A significant feature with the second form is that the chief does not join the elders to move into private and take final decision. This is to isolate the chief from accusations of bias especially by the one judged to be at fault.

The study also revealed that unlike other groups in Ghana like the Akan, Ewe, and Dagomba where all levels of traditional authority have corresponding female actors, the Nabdam traditional structure has no such role for female. As such, females do not take active part in the process of conflict resolution using the Nabdam traditional approach. This makes the approach a male oriented where chiefs with their elders (none of which is a female) form the major actors who assist disputants to resolve their conflicts with the traditional approach. There are women leaders known as "Mangaazien" in the Nabdam area due to their personal leadership qualities but not one based on traditional authority.

The ‘Mangaazien” only come in to assist on cases involving women that have been referred to them by the chief. Whatever a ‘Mangaazien’ does is therefore reported to the chiefs and elders.

5.2.2 The Nabdam Traditional Conflict Resolution Approach and Human Rights

The third research question explored how the Nabdam traditional conflict resolution approach protects and or abuses the human rights of disputants. The study found out that the traditional approach largely recognizes and respects the rights of disputants. Contrary to the concern of the United Nation Commission on Human Rights (2016) that the structure and procedures of traditional justice systems pose concerns for the fulfillment of the right to a fair trial, the Nabdam traditional approach adequately addresses the issue of fair trial.

Trial with the approach is fair due to the traditional leaders’ familiarity with the disputants as a result of the homogenous nature or closed relationship network of the society. Again, the approach gives fair trial due to the belief of the chiefs, elders and the people of the Nabdam area that, the gods and ancestors of the land take part in the process of resolving conflicts. All persons appearing at the palace for their conflict to be processed are taken through the same procedure with the main purpose of establishing the truth of the case.

The study also revealed that the Nabdam traditional approach satisfies the International Convention on Civil and Political Rights provision on the right to be tried without undue delay (Article 14.3(c). It was revealed that chiefs and elders get to commence proceedings on cases as early as the disputants are available from when a case is reported. Most cases brought before chiefs and elders in the Nabdam traditional area are usually resolved within a day. Some cases, however, take a number of days to be dealt with. The trial without undue

delay nature of the approach is based on the view by traditional leaders that it is their responsibility to assist their people to quickly resolve the disputes so as to restore relationship and foster social harmony.

The International Covenant on Civil and Political Rights provides that disputants have the right to appeal when they are not satisfied with an outcome. The Nabdam traditional approach though informal, provides for the disputants who are not satisfied with the outcome at a traditional court to appeal. This is because traditional authority is structured from the family head to the paramount chief. Disputants therefore, had the opportunity to make appeal to the next level up to the paramount chief's level if they were not satisfied with a decision made by a traditional court. The final level is the paramount chief's. Also, disputants could also take their cases to the formal court for determination if they were not satisfied with the decision reached by chiefs and elders at any level of the traditional justice system.

It however became clear that it was on rare occasions that appeals were made because the process of the approach often led to disputants themselves conceding on who is at fault. This results in acceptance of the outcome. On the instances where the chiefs and elders come out with their decisions, the disputants most of the time accept them because of the opened and transparent nature of the process.

On torturous, degrading, dehumanizing, and other forms of ill-treatment or punishment, the study shows that the Nabdam Traditional approach does not use them. Sanctions or punishment with the Nabdam traditional conflicts resolution process include forfeiture of filing fee (animals and/or money) and maybe an extra fine depending on the case. The

chiefs contended that, torture, cruel, inhuman and degrading treatment were not used with the Nabdam traditional justice system.

The right to life is one of such fundamental human rights of persons which is well protected with the Nabdam traditional approach to conflict resolution. The chiefs and elders in the area consider the life of every person to be sacrosanct and hence do nothing to abuse it. The chiefs and elders see their authority as one for protection.

On freedom of religion and belief, the Nabdam approach to conflicts resolution allows for the individual to enjoy their freedom of religion or belief. This is in line with the Republican Constitution, 1992 provision for the enjoyment of one's freedom to religion as contained in Article 21. The actors acknowledge that the approach is a customary practice but not a religious one and people in the Nabdam area belong to different religions. The process in itself is neutral to religion but everyone using it is free to manifest any religious belief. No reference is made to any religion and no limitation is put on anyone who wishes to manifest any religious faith and belief; every religion is permitted.

Another aspect of the Nabdam traditional conflict resolution and human rights is non-discrimination. It has generally been claimed that traditional justice systems tend to reinforce existing power relations in a community and, in some cases, may discriminate against certain groups. Many have argued that even if the substantive and procedural customary law is not in itself discriminatory against persons belonging to certain groups, its application may be. This is attributed to the unwritten nature of most customary law. The study revealed that with the Nabdam traditional approach to conflicts resolution, all cases were taken though the same procedure and decisions were reached based on the

evidence provided by parties to the dispute. It was made clear by the chiefs, elders, and disputants that the homogeneity of the Nabdam traditional area limits discrimination on the basis of ethnicity as all or virtually all of the members of the community share the same ethnic background. It was made clear that all cases were taken though the same procedure and decisions reached based on the evidence provided by parties to the dispute. Same rules, procedure, and approaches were applied to all disputants brought before the court. There is no discrimination against anyone as to whether they are males or females, young or old, rich or poor, educated or uneducated, couple or close relatives, natives or foreigners and first time or more than first time appearing. The focus at all time was to establish the truth, serve justice, maintain peace and restore relationship.

Specific on discrimination against women, the study discovered that the Nabdam traditional approach does not discriminate on gender bases and for that matter against women as all cases were taken through the same procedure to determine the truth. This makes the Nabdam approach to conflict resolution positively compliant to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women ban on discrimination on the basis of sex. The Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil, or any other field" (art. 1). This further gives a positive score to the Nabdam approach to conflict resolution as Article 16 of the same convention even enjoins all State

parties to “take all appropriate measures to eliminate discrimination against women”, for instance, in matters of rights and responsibilities upon marriage and divorce, and in the “ownership, acquisition, management, administration, enjoyment and disposition of property.” However, when it comes to direct role in resolving conflicts, the approach shows a clear discrimination as women have no direct place in the authority structure and in the conflict resolution process.

Similarly, the study revealed that the Nabdam traditional approach to conflict resolution provide equal grounds for children to have their conflicts resolved favorably as all cases are taken through the same procedure and processes. The Nabdam traditional conflicts resolution approach tends to be more available to children and their families and provides for less formal means of conflict resolution than the formal courts. In the Nabdam area, a child involved in case normally appears at the chief palace for proceedings with a member or members of his or her family, and the focus tends to be on reparation, reconciliation and ensuring the child remains part of the community.

Findings from the study indicated that the approach respects the rights of all persons and does not abuse them. It was made clear that the rights to life, personal liberties, personal dignity, equity and non-discrimination, and properties of all persons employing the traditional approach to resolve their disputes were well protected throughout the process. Sanctions with the approach remain limited to the forfeiture of filing items and maybe a fine. The only identified issue of abuse as was identified by the chiefs, elders, and disputants is the use of threats sometimes to get the truth from.

5.2.3 Prospects of the Nabdam Traditional Conflicts Resolution Approach

This research question was framed to explore the prospects of the Nabdam traditional approach to conflict resolution into the future especially with the proliferation of religion in the area and modernity.

The study revealed that the approach has a great prospect into the future notwithstanding the increasing rates of modernity and religious proliferation in the area. Cost, proximity, accessibility, legal provision, speedy processing of cases, trust for the model and the influence of culture and tradition on the model were identified as the accounting factors that for the great prospect the traditional approach holds. The approach is based on the culture and tradition of the Nabdam people and no matter what, the people will continue to have their culture and tradition. Again, chiefs will continue to be leaders of various communities in the Nabdam area and as leaders, they will be expected to perform certain functions as leaders in all societies do, and one such important function will be to assist their followers to resolve their disputes in an amicable manner and in a way so as to foster unity. The approach also has prospect because it costs less to use the traditional model to process conflicts especially in the Nabdam part of the country where many of the people are poor. Again, the traditional approach is accessible to the people. Finally, the approach has prospect because it is backed by law (the 1992 Republican Constitution and the Chieftaincy Act).

Chiefs are considered to be transparent in the Nabdam society and as result, the approach enjoys trust from the people. What is therefore important is the chiefs must endeavour to live to the confidence put on them by the people as been transparent. Also, the traditional

approach to conflicts resolution is relatively cheap. The approach does not come with cost in hiring the services of lawyers and in disputants transporting themselves and witnesses since they live with their chiefs in their communities. Again, the approach has prospect because it takes a relatively short time to process disputes and the sanctions given under the approach are minimal and foster relationship which you will not have with the modern courts system in our country.

Another important factor noted for the prospects of the traditional approach is the reservations some members of the society have about the modern courts system to conflicts resolution. This factor has led to the belief that 'legal justice' may be different from 'social justice'. Under the modern legal system, a thief may be discharged and acquitted on technical grounds, even if he was caught in the act. While this may seem reasonable from the legal point of view, it may be difficult for the victim to accept the reason for this.

One other important factor that gives the Nabdam traditional approach to conflicts resolution great prospect into the future is its emphasis on restitution and reconciliation by the approach. Unlike the modern court system, the Nabdam traditional approach procedure usually deploys efforts to reach an agreement that is acceptable to both the complainant and the accused.

5.2.4 Measures to Make the Nabdam Traditional Conflicts Resolution Approach Adequately Protect the Human Rights of Disputants

It was found out that there was need to employ some measures to make the Nabdam traditional model to conflict resolution adequately protect the rights of disputants. In the first place, many of the chiefs and elders work without formal training on human rights.

They employ experiences from handling previous cases based solely on customary and traditional processes. Therefore, there should be training for chiefs and elders on human rights. Human rights training for traditional leaders could be another promising avenue for technical assistance. The focus should be on a State's Constitution and laws, the African Charter and its protocols, and international human rights treaties. Secondly, technical assistance on human rights issues to traditional communities could improve the protection of human rights. It is important to provide advisory services on economic, social and cultural rights, the rights of women, children and persons with disabilities, as well as on civil and political rights to chiefs, elders and the general populate to create awareness and to enhance protection of these rights.

Again, there must be NGOs initiatives focused on human rights training programmes for traditional leaders, with a view to ensuring that they have a better understanding of when customary norms are incompatible with human rights. Furthermore, there is no place for women in the Nabdam traditional structure as pertains in other parts of Ghana. This does not only limits access to traditional justice in the area, but is also perpetuation of discrimination. There must be formal inclusion of women in the traditional structure of power in the Nabdam traditional area to increase access to justice.

5.2.5 Similarities and Differences with the Nabdam Traditional Conflict Resolution Approach and the Court System in Ghana

The second research question aimed at determining the similarities and differences with the Nabdam traditional conflict resolution approach and the state court system. It emerged from the study that the Nabdam traditional approach to conflict resolution has similarities

and differences with the court system. On similarities, it emerged that: filing or registration of cases, open hearing of cases, panel of arbitrators, evidence taking, adjournment of hearing, witnesses appearance, and sanctioning or fining the guilty person are some features that are similar to the Nabdam traditional conflict resolution approach and the state court system.

On differences, the responses from the chiefs, elders and disputants through interview sessions identified a number. These included the involvement of lawyers with the state's courts system but self-representation with the Nabdam traditional approach; lots of restrictions and procedures with the courts but less restrictions with the traditional approach; and financial cost with the courts system but absence of that with the traditional approach. Hence, with the courts, disputants have to hire the services of a legal practitioner to represent and talk for them but with the Nabdam traditional approach, the disputants represent and talk for themselves throughout the process. There is so much procedural restrictions when cases are been processed with the courts system but here is less of such procedural restrictions with the Nabdam traditional approach. Again, evidences with the Nabdam traditional approach is largely oral but extends to include visuals and audio-visuals with the court system. Finally the kinds of sanctions are different. With the traditional approach, sanctions are limited to animals (fowl, goat, sheep, and cattle or a combination depending on the gravity of the case) but with the court system, it is money.

Again, there is also an option of imprisonment with the court system but not with the Nabdam traditional approach. The focus of the Nabdam traditional conflicts resolution approach is on the complainant, respondent, and the society since the aim is to restore relationship and keep the society in harmony whiles with the court system, attempts are

made to determine who is wrong and subsequently punish that person and who is right and probably reward him or her.

5.3 Conclusions

Legal pluralism, where formal and traditional justice systems complement each other, is the best option for the people in the Nabdam area for the processing of their interpersonal conflicts. These systems complement each other to provide justice for the people. The Nabdam traditional mechanism is effectively employed to handle various civil disputes in traditional communities, while serious criminal offences require the procedural safeguards of the formal courts. Both the formal courts and traditional justice forums, must serve the needs of the population while upholding human rights standards.

The Nabdam traditional conflict resolution model is a well-structured, time proven practice that is proactively employed to process conflicts between persons and to foster peace and harmony. The approach has well developed structural and procedural aspects that are followed. The approach is rooted in the tradition and custom of the people. It receives great patronage and as a result, people over the time have relied on the approach to handle their disputes.

The approach is employed to practically deal with all forms of disputes ranging from fights, theft, lands cases, marital disputes, child neglect, witchcraft, widows and orphans treatment related issues, etc. It has to be pointed out that, criminal cases are by law not allowed to be processed outside the formal court, but due to the main focus of the traditional approach to restore relationships and foster peace and unity, the people in the area sometimes employ the approach to deal with criminal cases. This shows that Nabdam traditional institutions

have shown resilience in the face of modernity. This corroborate previous findings of Lutz and Linder (2004), which assume that despite modern structures, traditional systems have remained relevant, particularly in local or rural areas..

Both the Nabdam traditional conflicts resolution approach and the state court system have their strength and weaknesses. They provide opportunities for people to process their conflicts towards peaceful co-existence. There must therefore be attempt to foster deeper collaboration between them for conflict resolution so as to potentially alleviate the complexity associated with the formal justice procedures and guarantee more satisfactory verdicts based on cultural, sociological and psychological factors. This is similar to the recommendation of Clements (2008), when he advocated for the adoption of grounded legitimacy, a term he used in describing the ways of looking for positive means of connecting the formal system of governance with local realities, and of tapping into the resilience and problem-solving capacities of local communities.

The Nabdam traditional approach is dominated by men. It is majorly manned by chiefs with their councils of elders. This is rooted in the patriarchal nature of the area just like many other African societies. This can be argued to mean that women are considered as weak, unintelligent, and incapable in the area. Main actors of the Nabdam traditional are regarded as people with dignity who will at all-time hold to the truth. Hence, the chiefs and elders always endeavor to be impartial and just in dealing with disputes brought before them. This is further enhanced by the closed relationship nature of the people in various communities in the Nabdam area that the chiefs and elders control. The exclusion of women from the traditional authority, hence, the traditional process to conflict resolution

is an indication that women are considered to be incapable. This is not only unfair but also, undermining and discriminatory.

The Nabdam traditional approach to conflict resolution is very opened, transparent and fair. It is partly because of the fact that people in various communities in the Nabdam area are either related to or well-known by the chiefs and elders. This makes the approach to have the fairness it is characterized with as chiefs and elders find it difficult to be unfair towards people they are related to or know too well.

The Nabdam traditional approach to conflict resolution is characterized by a certain degree of flexibility due to the fact that it has not be written down and codified. The main actors basically depend on traditional knowledge, wisdom, and experiences to handle disputes brought before them since there is no written down procedure on the traditional approach.

All persons hold their human rights at all times. These rights as a matter of fact must be respected and upheld by all persons. Accordingly, disputants are human beings and have rights which have to be respected. The Nabdam traditional approach largely recognizes and respects the rights of disputants. It recognizes the right to life, dignity, and respect, equality of all human beings, property, religion, conscience, and non-discrimination of disputants. As a result, all cases are taken through the same processes to determine the truth regardless who and who are involved. The sanctions with the approach include forfeiture of fee and fine but not such as flogging, killing, banishment, etc.

The Nabdam area has experienced modernity and proliferation of various religious bodies some of which preach against a lot of traditional practices and institutions including the traditional approach to conflicts resolution and the chieftaincy institution. Nonetheless, the

Nabdam traditional approach holds a great prospect into the future. This is due to the physical and financial accessibility, the belief and trust the people have that I t is and impartial, the quick manner conflict processing occurs, and the desire to maintain harmony through win-win end nature of the approach.

Societies are dynamic, hence, undergo changes over time. The Nabdam traditional approach to conflicts resolution requires certain measures to further enhance the recognition, respect, and protection of the rights of disputants. Key among these measures include training the chiefs and elders on disputes processing and human rights, providing information to the people in the Nabdam area on human rights, and the involvement of Non-Governmental Organizations and other Civil Society Organizations in traditional justice delivery in the Nabdam area.

5.4 Recommendations

Following the findings and literature, I have come out with the following recommendations. The recommendations are intended to make the Nabdam traditional approach measure to provisions in national and international human rights instruments and also adequately protect the rights of disputants.

In the first place, chiefs and elders are the main actors with the Nabdam traditional approach. Though some of them are educated, hence, can read and write; others are uneducated. The various national and international human rights documents are in writing in English Language. Certainly, those chiefs and elders who cannot read and write would have challenges with knowing what is required of them from these documents. Even those who can read and write, it is not certain that they would read these documents, understand

the contents and apply them. I recommend that the government through the Ministries of Justice; and Culture and Chieftaincy Affairs working with the National and Regional Houses of Chiefs carry out education for chiefs and elders on the provisions in national and international human rights instruments on human rights. This can start from training Trainer of Trainers from various traditional areas who will then train the rest of chiefs and elders.

Furthermore, information on human rights should be generally made available to all citizens of the Nabdam area. This will provide the people with the requisite knowledge to demand for, and defend their rights whenever they are denied, threatened to be abused or abused while they are processing their disputes with the chiefs and elders. After all "For lack of knowledge my people perish". The enjoyment of our human rights is very much based on our individual responsibilities. One of such responsibilities is to learn to know and demand, and defend our rights. This should be carry out by the Commission on Human Rights and Administrative Justice (CHRAJ) in the Nabdam District.

Women play a major role in the survival and continuity of societies. They have the tact in managing issues to the desired end. Recognizing the fact that women are in the majority in the Nabdam area as reported in the 2010 Population and Housing Census and the fact that in the Akan, Dagomba, Ewe and other traditions in Ghana, women are given a role in the traditional authority structure and they are performing it effectively, and again, so as not to be regarded as a society that is attributed with gender discrimination against women, I also recommend that Nabdam Traditional Council should immediately include women in the traditional authority and power structure to enable them bring their knowledge and ideas

to bear in processing disputes in the area especially those disputes involving women and girls so as to facilitate peaceful and cordial relationships among people in the Nabdam area.

Finally, processes towards selecting person to become chiefs in the Nabdam area must be free and fair. This will lead to qualified persons been enskinned as chiefs, hence, generally accepted by the people. This will further enhance the acceptance of the authority of chiefs to continue to operationalize the long time proven traditional approach to conflicts resolution in the Nabdam area for peaceful and harmonious living.

5.5 Research Limitations

In this section, I am highlighting the factors that might have influenced the study that I as the researcher had no control over.

The first limitation was the inability to involve all the chiefs especially the Divisional Chiefs in the Nabdam area in the study. This would have made the study a very comprehensive one and the finding appropriately attributed to the traditional conflicts resolution approach in the area. Practically, this was not possible as there are so many Divisional Chiefs in the Nabdam area that time and resources availability could support me to reach out to all.

A second limitation was translating what was said at the interview in Nabt (the language of the Nabdam people) into the English Language. Translating some statements especially proverbs and idiomatic expression appropriately from Nabt to English was pretty difficult. The use of proverbs and idiomatic expressions was also common as the interviews involved chiefs and elders of the area who are the custodians of the culture of the people. As a native

and with assistance from others, I managed to translate these statements to as close as possible.

A third challenge had to do with the fear by some of the chiefs and elders that I was working for security agencies, hence, whatever they told me could be used against them as individuals and the community as a whole. This had the likely effect of making the respondents to falsify the information they were providing to me. But I used myself as a native of the area who would not want to give a bad report of my area and people and who would not want to put my own people into trouble. This explanation managed that challenge largely.

5.6 Contribution to Knowledge

This section presents the contribution of this work to existing knowledge and literature as academic research is expected to fill identified gabs. The following are the contributions of this work:

In the first place, this study provides the public a vivid description of the structural and procedural aspects of the traditional approach to conflict resolution among the Nabdam of the Upper East Region of the Ghana. This allows for a good understanding of the model and a comparison of the model with other traditional models of conflict resolution in Ghana and African societies.

Secondly, this study reveals that the Nabdam traditional society and its authority structure does not have corresponding female actors as is the case with some societies in Ghana. This reflects the extent of patriarchy in the Nabdam area. This knowledge is significant

because other patriarchy societies across Ghana and Africa have positions for women in their traditional authority and power structures.

Furthermore, this study reveals the time proven and practiced conflicts resolution model of the Nabdam people recognizes and respects the human rights of disputants. This is significant because some scholar especially of Western origin argue that the concept of human right is alien to Non-Western cultures such as African's. This tells the world that the Nabdam have had as part of their tradition and practice human rights embedded.

Finally, this study informs the world that unlike many traditional practices in the Nabdam area in particular and other Ghanaian societies in general either been modified or abandoned due to modernity and religious influences, the traditional conflict resolution model has prospects into the future due to the belief the people in the area have the practice is influenced by the hands of their ancestors, cost, proximity, and the short time spent when employing it to resolve conflicts.

5.7 Suggestions for Further Studies

The Nabdam traditional conflicts resolution approach has being used over the years to assist disputing parties to resolve their difference to continue to live together. This as all other aspects of the Nabdam tradition lacks literature and researched information. With this work focusing on the Nabdam traditional approach to conflict resolution and human rights, further studies could focus on the following:

1. A comparison of the Nabdam traditional conflict resolution approach with the modern court system. This study can highlight the similarities and the differences with the two approaches to conflict resolution.

2. The effectiveness of the Nabdam traditional approach to conflict resolution in actually resolving disputes among disputants.

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APPENDIXES

Appendix A: Interview Schedule for Chiefs

UNIVERSITY OF EDUCATION, WINNEBA
FACULTY OF SOCIAL SCIENCE EDUCATION
DEPARTMENT OF SOCIAL STUDIES

INTERVIEW PROTOCOLE FOR CHIEFS

My name is David Naya Zuure, a Doctor of Philosophy (PhD) student in the Department of Social Studies, Faculty of Social Science Education, University of Education, Winneba. My area of specialization is Human Rights. A major requirement for the award of a PhD degree in the university is the conduct of a research resulting in the writing of a thesis. As a result, I am under taking a study on the topic "Legal Pluralism, Conflicts Resolution and Human Rights: Examination of Conflicts Resolution among the Nabdam of Ghana".

This interview guide is prepared to collect information related to legal pluralism, conflict resolution and human rights among the Nabdam of Ghana. You have been identified as key a person to provide significant and useful information to make the study effective. The information collected through this interview will only be used for academic purposes. I therefore, kindly request you to participate actively and voluntarily in all the processes of providing responses and sharing your experiences on the issues to be raised for discussion as the quality of this study greatly depends on your genuine responses.

Thank you in advance for your kind cooperation.

Questions

1) Kindly take me through the laws that govern the chieftaincy institution and its practices in Ghana.
2) What categories of conflicts do you with your elders handle in your palace?
3) Who are the major actors involved in the traditional conflicts resolution process in the Nabdam area?
4) Kindly take me through how cases are reported to you for processing.
5) How are hearings conducted when processing disputes using the traditional approach to conflicts resolution?
6) How are evidences taken or admitted when conflicts cases are been considered under the traditional approach?
7) How are final decisions taken on disputes handled through the traditional approach?
8) What are the forms of judgment/ sanctions given under the traditional approach?
9) How are your decisions or judgments on cases delivered and enforced?
10) Are there substantive considerations in cases involving:
    a. Males and females?
    b. The elderly and the young?
    c. The well-educated and less or uneducated?
    d. The rich and the poor?
    e. Different social statuses?
    f. Natives and foreigners?
    g. First timers and more than first timers?
    h. Married couples?
    i. Close relatives?

11) Are parties to a dispute under processing at the palace under the traditional approach able to get representation?

12) If yes, under what circumstances?

13) If no, why?

14) Describe how parties to a dispute get heard during a dispute processing at the palace when using the traditional approach.

15) Are there any rituals involved? If yes, let us talk about them.

16) Can a dissatisfied party seek appeal on a settled decision under the traditional approach? If yes, how is it done?

17) Let us talk about some rules and regulations that govern the traditional approach to conflicts resolution.

18) In what ways would you say the traditional conflicts resolution approach protects the human rights of the disputants?

19) What would you say are the ways the traditional approach to conflicts resolution abused the rights of the disputants?

20) Share with me the checks and balances that govern or characterize the traditional approach to conflicts resolution.

21) What are the prospects of the traditional approach in the face of modernization and proliferated religious activities in the Nabdam area?

22) What suggestions would you offer to make the traditional approach better protect the rights of disputants?

23) What makes people to opt for the resolution of their inter-personal conflicts with you?

Thank you very much, I am grateful.

Appendix B: Interview Schedule for Disputants

UNIVERSITY OF EDUCATION, WINNEBA
FACULTY OF SOCIAL SCIENCE EDUCATION
DEPARTMENT OF SOCIAL STUDIES

INTERVIEW PROTOCOLE FOR DISPUTANTS

My name is David Naya Zuure, a Doctor of Philosophy (PhD) student in the Department of Social Studies, Faculty of Social Science Education, University of Education, Winneba. My area of specialization is Human Rights. A major requirement for the award of a PhD degree in the university is the conduct of a research resulting in the writing of a thesis. As a result, I am under taking a study on the topic "Legal Pluralism, Conflicts Resolution and Human Rights: Examination of the traditional conflicts resolution among the Nabdam of Ghana".

This interview guide is prepared to collect information related to legal pluralism, conflict resolution and human rights among the Nabdam of Ghana. You have been identified as key a person to provide significant and useful information to make the study effective. The information collected through this interview will only be used for academic purposes. I therefore, kindly request you to participate actively and voluntarily in all the processes of providing responses and sharing your experiences on the issues to be raised for discussion as the quality of this study greatly depends on your genuine responses.

Thank you in advance for your kind cooperation.

Questions

1) What would make you resort to the chief and his elders to resolve your inter-personal conflicts with others?
2) Share with me your knowledge of the traditional approach to conflicts resolution using chiefs and elders.
3) How was your experience with the traditional approach to conflicts resolution?
4) How effective is the traditional approach in resolving interpersonal conflicts?
5) Who are the major actors in the traditional conflicts resolution approach and what roles do they play?
6) How was/were your case(s) reported at the palace for processing?
7) How were evidences admitted during the processing of your dispute(s) with the traditional approach?
8) How was hearing on your case(s) conducted?
9) How was the judgment reached by the chief and elders under the traditional approach delivered?
10) What kinds of sanctions do the chiefs and elders often give under the traditional approach to conflicts resolution?
11) Per your experience(s) with the traditional conflicts resolution process, what can you say about fair hearing of disputants?
12) Do disputing parties have opportunity to be represented under the traditional approach? If yes, under what circumstances?

13) What do you have to say about discrimination when using the traditional approach to conflicts resolution in the lines of gender, age, social status, natives and non-natives, closed relations (eg couple)?

14) How would you describe how the chiefs and elders talk to disputants when processing their cases under the traditional approach?

15) What are your views on the kinds of sanctions delivered by the chiefs and elders under the traditional approach and how they are enforced?

16) How free are disputants to express themselves when using the traditional approach to conflicts resolution?

17) Do disputants have the freedom to express/manifest their religious beliefs when using the traditional approach to process their disputes?

18) What aspects of the traditional approach to conflicts resolution would want changed?

19) What new things would you like to be introduced into the traditional approach to conflicts resolution?

20) In what ways would you say the traditional conflicts resolution approach protects the human rights of disputants?

21) In what ways would you say the approach to conflicts resolution abuses the human rights of disputants?

22) Do you find any similarities with the traditional conflicts resolution approach and the courts system in Ghana?

23) Do you find any differences between the traditional conflicts resolution approach and the courts systems in Ghana?

24) Would you opt for the traditional approach to resolve your interpersonal conflicts in future if any arises?
25) Do you think the traditional approach to conflicts resolution has prospects into the future?
26) What aspects of the traditional conflicts resolution approach would you want changed?
27) What suggestions would you offer to make the traditional conflicts resolution approach better protect the rights of disputants?

Thank you very much; I am grateful for your time and insight.

Appendix C: Observational Guide

1. Procedure
2. Use of Words /Tones
3. Use of Proverbs
4. Idiomatic Expressions
5. Gestures and Signs
6. Religious Rituals
7. Use of Threats
8. Forms of Sanctions