

Law, Religion and Reconciliation in Africa



Edited by
M. Christian Green
Jean-Baptiste Sourou
Célestin Gnonzont



1 THE PALAVER TREE AND RECONCILIATION IN AFRICA: THE CASE OF THE IVORIAN MILITARY-POLITICAL CRISIS FROM 2002 TO 2011

Komoé Guy-Roland Kossonou¹

INTRODUCTION

“*Homo homine lupus*”, that is, “Man is a wolf to man.”² This quote from the great English philosopher Thomas Hobbes allows us to understand that war is, in a way, inherent to the human species. Almost everywhere, peoples and nations are perpetually in conflict as to their social positions and interests. Some want to dominate; others want to command. In Africa, crises have intensified in the political arena since the dawn of independence,³ as was the case with the assassination by the military of Togolese leader Sylvanus Olympio, the father of independence.⁴ Thus began the vicious cycle of bloody coups in Africa. While Africa’s political crises have many consequences – including loss of life and destruction of property and other material goods – it must be recognised that escaping them in the direction of a definitive peace is another matter, a real obstacle course. It is clear that any process of reconciliation in Africa is always difficult, and sometimes unlikely, because of many burdens.⁵ It is in this context that the subject of reconciliation, the subject of the analysis in this chapter, finds its full meaning.

To better understand the meaning of this subject, we will proceed to define the fundamental concepts under focus in this chapter: the palaver tree and reconciliation. In the African context, the palaver tree is an expression that designates a veritable court of justice whose fundamental role is to arbitrate disputes. Established since the beginning of African societies, this court has withstood events and remains relevant

1 Associate Professor in the History of Institutions, Training and Research Unit in Legal, Administrative and Political Sciences (UFR-SJAP), Alassane Ouattara University of Bouaké, Republic of Côte d’Ivoire.

2 Lavroff DL. 1997. *Histoire des Idées Politiques de l’antiquité à la fin du XVIIIème siècle* [History of Political Ideas from Antiquity to the End of the Eighteenth Century]. Third Edition. Paris: Dalloz, 100.

3 They are numerous and multifaceted. Originally, these were simple misunderstandings, antagonisms that quickly turned into fratricidal wars, as was the case in Liberia in the late 1980s and in Côte d’Ivoire between 1999 and 2011.

4 Sylvanus Olympio (6 September 1902 – 13 January 1963) was a Togolese politician who served as the first President of the Togolese Republic from 15 April 1961 to 13 January 1963.

5 These are internal burdens, linked to deep dissension between local political actors, and to external pressures, including the instrumentalisation of conflicts for their benefit by powerful states, the United Nations or the international community.

in contemporary societies, especially in villages. It is a sacred space.⁶ In fact, the tree under which the discussions take place was usually planted by the founding ancestor to commemorate the special place where he exercised his functions as a sacred judge. Following the common African sensibility, the spirit of these ancestral judges, even though they are dead and past, is still present in this mythical place, where it guides decisions today. In this regard, one can agree with the Ivorian writer Amadou Koné, who in his book, *Le respect des morts* [Respect for the Dead], quotes Senegalese poet Birago Diop's words that in Africa "those who died have never left ... the dead are not dead",⁷ because they are found in waters, mountains, trees, sacred places – even under the palaver tree.

Reconciliation refers to the means, methods and, above all, strategies that make it possible to put an end to a dispute or any other form of misunderstanding that divides people, as is currently the case in the Sudan between Generals Burhan and Hemedti. Through this crisis, we are witnessing a deep tear in the social fabric. This is why it is necessary to consider reconciliation by bringing together all the pieces of the social fabric to revitalise social cohesion. For the purposes of this study, we will draw mainly on the Ivorian military-political crisis that lasted from September 2002 to April 2011. This choice can be justified by the fact that the military-political crisis in Côte d'Ivoire, which occurred on the night of 18 to 19 September 2002, still bears witness to the difficulties faced by Africans in general and Ivorians in particular, who must find for themselves the internal or local resources to emerge from the crisis through reconciliation.

Indeed, to get out of this acute crisis, solutions have not been easy to find. However, there was no shortage of original conflict resolution strategies. To achieve this, the belligerents had to undertake numerous journeys across Africa and the world. The first authority to grasp the equation was the late president of Togo, Étienne Gnassingbé Eyadema. With all the esteem he enjoyed as a great mediator and his strong personality in the world, particularly in West Africa, the most optimistic Ivorians firmly believed in this exceptional political figure. To say he was great is really conveying what he was. Indeed, he was a faithful companion and friend of the first Ivorian president Félix Houphouët-Boigny, and the two authorities succeeded through their friendship in bringing the Ivorian and Togolese peoples closer together through the many visits they frequently made to each other. Moreover, in 2002, Eyadema and the former president of Benin, Matthieu Kérékou, were both friends of the "old man",⁸ as Houphouët-Boigny was known, then still alive in West Africa.

Despite all his efforts and good will, the Togolese solution was not enough to get out of the crisis. In the context of African solidarity, it was not the many meetings

6 The sacred, it will never cease to be emphasised, constitutes the epicentre, the driving force of African traditional institutions through the strict observance of ancestral law (custom).

7 Koné A. 2002. *Le respect des morts* [Respect for the dead]. Paris: Hatier International, 7.

8 A term of endearment by which Ivorians referred to their first president.

in Dakar, Senegal, Accra, Ghana and Pretoria, South Africa, not to mention those in Linas-Marcoussis in France and the United Nations in New York, that were able to save the Ivorians. It was finally in Ouagadougou, Burkina Faso, on March 4, 2007, under the aegis of the former head of state, President Blaise Compaoré, that Ivorians finally smoked the peace pipe. Even so, numerous agreements, treaties and resolutions have continued to rain down on Côte d'Ivoire, as evidenced by the Linas-Marcoussis agreement,⁹ the strengthening of the United Nations presence in the country¹⁰ and the arms embargo and the individual sanctions imposed,¹¹ following the Pretoria Agreement of 6 April 2005.¹² Given the painful consequences of the post-electoral crisis from November 2010 to April 2011, Ouagadougou was certainly a very decisive but not a definitive step in the resolution of the Ivorian crisis, because after the end of the conflict, the most difficult thing is to achieve reconciliation. In this vein, the famous French poet and politician, Alphonse de Lamartine observed: "Il est plus facile de détruire que de construire" [it is easier to destroy than to build].¹³

When we look around us, particularly in Côte d'Ivoire, relevant and original solutions could have played a leading role in overcoming the crisis. This could include the involvement of the traditional chieftaincy through the National Chamber of Kings and Traditional Chiefs of Côte d'Ivoire as recognised in the Constitution of the Republic of Côte d'Ivoire, 2016.¹⁴ This is a source of power that might give Africans the necessary rudiments to establish a genuine African court of justice, a genuine African palaver tree capable of saving the whole of Africa from the effective resolution of the multifaceted and asymmetrical conflicts that raise concerns in problematic terms. Thus, the questions are: What is the role of the African palaver tree in crisis resolution? Better yet, what are its original methods and how can they be organised to serve the cause of true reconciliation in Africa?

The palaver tree, in fact, is a veritable African court of justice capable of ensuring reconciliation, a guarantee of peace and social cohesion provided that its main actors, the kings and traditional chiefs who are sacred judges, display their

9 United Nations Security Council. 2003. Resolution 1464 of 4 February [on the situation in Côte d'Ivoire]. S/RES/1464 (2003) (endorsing the Linas-Marcoussis Agreement).

10 United Nations Security Council. 2003. Resolution 1479 of 13 May [on the situation in Côte d'Ivoire]. S/RES/1464 (2003) (establish, for an initial period of six months, a United Nations Mission in Côte d'Ivoire (MINUCI); United Nations Security Council. 2004. Resolution 1528 [Côte d'Ivoire]. S/RES/1528 (2004) (establishing the United Nations Operation in Côte d'Ivoire (UNOCI)).

11 United Nations Security Council. 2004. Resolution 1572 of 15 November. S/RES/1572 (2004) (providing for an arms embargo as well as restrictions on movement and freezing of assets of designated individuals).

12 United Nations Security Council. 2005. Resolution 1603 of 3 June. S/RES/1603(2005) (endorsing the Pretoria Agreement on the on the situation in Côte d'Ivoire).

13 De Lamartine A. <https://citation-celebre.leparisien.fr/citation/108195>

14 See Constitution of the Republic of Côte d'Ivoire, 2016, Law No. 2016-886, tit XIV, arts 175-176.

impartiality. This is why the sovereign authorities must effectively play their role as accompanists and guarantors of tradition, for as the Ivorian playwright and essayist François-Joseph Amon D'Aby pointed out: "As the custodian of custom, the king also remains the supreme judge and his decisions are final."¹⁵

In the era of globalisation, states increasingly need to integrate this "global village" with their own values. It would therefore be interesting for Africans to rely on themselves, on their intrinsic values like Europeans, Americans and Asians, to bounce back in the concert of nations. To this end, the plan of study for this chapter is to examine, first, the African palaver tree as a genuine means of conflict resolution, and second, palaver tree as a performance and strategy for sustainable reconciliation and peace in Africa.

THE AFRICAN PALAVER TREE AS AN AUTHENTIC MEANS OF CONFLICT RESOLUTION

In conflict resolution in pre-colonial Africa, that is, before Western colonial conquest, Africans washed their dirty linen as a family in a spirit of love and truth. Both of these elements are also present in the use of the African palaver tree as a means of conflict resolution. Both are part of the performance and strategy of the palaver.

Washing dirty laundry in the family

Washing dirty laundry in the family is an original way of resolving conflicts in Africa. In Africa, since the dawn of time, the idea of family was not a light notion, as it appears today. Indeed, each individual's life has meaning only because they are attached or connected to their biological family. The rule of law takes into account, in its formation, the communitarian character of African society, as Ivorian legal scholar Séraphin Néné Bi rightly reminds us: "The traditional legal system considers problems in relation to the community and not in relation to the individual, and it is the interests of the community that come first."¹⁶ Thus, one is born into a family, and there one receives a most demanding and rigorous education. After all, no family wants to pay for the misconduct of one of its members. In other words, when a member of a family is implicated, it is the whole family that is questioned and judged as to the quality of the education it has given to its unscrupulous or recalcitrant member.

Society was so well organised that everything was done by and with the head of the family, as was the role that the *pater familias* played in ancient Rome with regard to all those who lived *alieni juris* under his roof, including his wife, offspring and slave. As such, he alone exercised paternal authority and legal capacity, which

15 D'Aby FJA. 1988. *Le problème des chefferies traditionnelles en Côte d'Ivoire* [The Problem of Traditional Chiefdoms in Côte d'Ivoire]. Abidjan: Les Nouvelles Editions Africaines, 18.

16 Néné Bi S. 2023. *Histoire du droit et des institutions méditerranéennes et africaines. Des origines à la fin du Moyen Âge européen* [History of Mediterranean and African Law and Institutions. From the Origins to the End of the European Middle Ages]. Abidjan: ABC Editions, 115.

enabled him to bring legal proceedings. He also enjoyed the right of life and death over them. In Africa, too, marriages were celebrated within the family or, rather, between the two heads of the family. In the same way, when a dispute arises within the family, an effort is made to find appropriate solutions within the group, within the kinship. However, when the palaver went beyond the family, recourse was had to the village chief, the head of the “largest family”, that is, the village, hence the expression: “Dirty linen is washed in the family.”¹⁷

But, in fact, in the family, everything is done with love, and in love the linen will, of course, be rid of all its impurities away from outside eyes. As far as the latter are concerned, it must be recognised that they are not always irreproachable in a world where the interplay of interests tends to take precedence over everything. When someone comes from the outside and offers mediation or good offices, we don’t always know their real intentions or ambitions. These are often ignored. Maybe the person is pulling the strings to satisfy their petty unacknowledged interests, or maybe they are acting in good faith. Very often, this air of peacemaker, facilitator or negotiator presents itself as a lamb when it is a real wolf who, lurking in the shadows, devours everything in its path.

In view of all the above, it can be stressed that the sacred character of the palaver tree, a mythical place or space, given that the tree under which the trial takes place was planted by the founding ancestor and that its presence is supposed to be invisible, reinforces, on the one hand, the authority of the sacred judge whose decision is clothed with the authority of *res judicata* and, on the other hand, ensures the acceptance of this decision by the parties. So much so that the African Court of Justice enjoyed credibility, because those who broke the rules of procedure exposed themselves to their tutelary judgment. While it is obvious that the washing of dirty linen in the family is an active part in the effective resolution of conflicts, it must also be recognised that the use of immaterial means – especially love and truth – is a vital necessity.

The need for love and truth in the resolution of African conflicts

There is also a need for love and truth in the resolution of African conflicts. Love is a feeling that cannot be decreed; it is lived in the concreteness of human relationships. When we love someone, we wish them the greatest possible good, as the biblical passage eloquently from the Gospel of Matthew states: “Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”¹⁸ And this feeling is clearly expressed, even when it comes to raising children. When a child misbehaved in pre-colonial Africa, one did not wait for the opinion of his biological parents to give him an exemplary correction. But today, this is no longer the case, because this authentic love tends

17 In the family, we can say everything to each other in trust. Outside the family, we can’t say everything because there are sometimes situations that are considered taboo. Thus, out of fear or modesty, we remain silent about certain social actions or behaviours.

18 Bible. Matthew 7:12 (King James Version).

to disappear in our African societies, where it is now the idea of “every man for himself, and God for us all”¹⁹ that prevails.

With love as the authentic means, the solution to the conflict is found frankly and truthfully. Moreover, in the case of a serious breach of public order, the supreme punishment must sometimes lead to the death of the criminal. In this case, the entire group, including the criminal’s family members, convicts the offender. Sometimes, it is even members of his own family who start throwing stones at him, because they are convinced that the decision has been made clearly and in the most absolute transparency. In other words, the decision satisfies the entire social group, including the victim. Moreover, the supreme sanction, that is, the death penalty, was rare. It generally applied in the context where the criminal was not committing his first crime, but was committing a crime of the same nature for the second or third time. Thus, the decision to put him to death allowed the whole of society to get rid of a permanent social danger.

In love imbued with truth, when the holy African judge renders his verdict, the purpose of the verdict is not to divide the social group, but to allow it to continue to live in harmony in spite of everything.²⁰ For this reason, the penalties were not often severe. Indeed, in some acephalous societies, such as the Bété and the Gouro of Côte d’Ivoire, simple taunts allowed the offender to atone for his punishments. As Séraphin Néné Bi reminds us, “it will sometimes be a ‘satirical sanction’, laughter and mockery are very effective in few societies where the notion of honour is an important value”.²¹ The less severe nature of the sanctions is in some ways a testament to the genuine love felt in these groups where one avoids harming the other. On the basis of this fact, it can be forcefully asserted that African traditional justice has had a cathartic role, that is, a role in purifying society as a whole. In other societies, on the other hand, the sanction must be proportionate to the fault, so that after the judge’s verdict it is difficult to find the litigants jointly and severally, united as was the case before the dissension.

In Africa today, the most difficult conflicts to resolve are political conflicts, given that it is not only difficult to make political authorities listen to reason, but also that all members of society will be labelled politically. Often, these allegations are not necessarily substantiated. Indeed, since politics has infiltrated all areas of life (school, religion, ethnicity), it is enough to be from the same region as a political leader and you are confused with him, given that political parties are usually created on an ethnic or tribal basis. However, in the effective management of political conflicts, it would be ideal for them to be resolved by neutral and impartial persons. This mediating rôle could be played by the National Chamber of Kings and Traditional

19 Heywood J. 1874. *The Proverbs of John Heywood*. [1546] London: George Bell and Sons.

20 For the African, it is the forces of evil that drive the individual to commit a crime. The main objective of the sanction is to give him a better chance of reintegration into the social fabric. It is therefore not the sanction of the fault that takes precedence, but rather the eventual “reparation” (socialisation) of the individual.

21 Néné Bi, *Histoire du droit et des institutions méditerranéennes et africaines*, 37.

Chiefs of Côte d'Ivoire. Indeed, composed of representatives of the different chiefdoms of the country, this traditional institution, which the Constitution of the Republic of Côte d'Ivoire, 2016, recognises as the guarantor of habits and customs, can be a good manager of conflicts.²² Chiefs can better contribute their expertise to conflict resolution by employing the palaver-tree technique, which promotes the amicable settlement of misunderstandings under the authority of supernatural powers, such as genies and fetishes, who act as invisible witnesses.

Sometimes, the presence of these forces contributes to the manifestation of the truth and to the final settlement of the conflict. In Africa, all societies are aware of this reality, from which there can be no derogation. After the decision of the sacred judges, if the guilty person refuses to admit his wrong, he may be attacked by mystical forces. As a result, chiefs can, in fact, play the role of good offices in conflicts between political authorities, even if in Côte d'Ivoire, as things stand, their missions are clearly specified in the fundamental law: "The traditional chieftaincy is represented by the National Chamber of Kings and Traditional Chiefs It is responsible, *inter alia*, for the non-judicial settlement of conflicts in villages and between communities."²³ With this in mind, they can set up a large forum that would bring together all the other African chiefdoms. In this regard, there are already customary and religious authorities who are quietly making a great effort to reconcile politicians in Africa. In Burkina Faso, for example, the Mogho Naba, the supreme leader of the Mossi, often manages to get politicians to sit down at the negotiating table. In Senegal, the Touba Mourides leader played a very important role between former President Abdoulaye Wade and current President Macky Sall when the tensions rose between them. There are also other authorities who enjoy undisputed prestige and aura, such as the king of the Zulus in South Africa, the king of the Ashantis in Ghana, and others – and when they intervene, they are well listened to. But even with these institutional and even constitutional supports for traditional leadership in effect, it is still necessary to find the appropriate means to make the palaver effective as an African court of justice.

PERFORMANCE STRATEGIES OF THE AFRICAN PALAVER TREE

The African palaver tree can be a real bulwark for peace in Africa. However, in order to succeed in this important peace mission, it is necessary to create the conditions for an improvement in the functioning of this traditional court of justice. In order to restore the image of the traditional African court and to restore it to its great function of dissolving social tensions, the traditional and political authorities must combine their efforts by creating the conditions for mutual trust. To this end, the custodians of tradition must increase their credibility by demonstrating impartiality and the sovereign authorities must create the conditions for the rehabilitation of traditional African courts.

²² See Constitution of the Republic of Côte d'Ivoire, 2016, arts 175-176.

²³ See Constitution of the Republic of Côte d'Ivoire, 2016, art 175.

The impartiality of the “judges” of the African palaver tree

For Africans, tradition or custom is a set of beliefs, practices and behaviours bequeathed by the founders of communities and perpetuated from generation to generation. In traditional Africa, where only barter was practised and material goods had no absolute value in human relations, chiefs retained their dignity and respectability. As a result, they were adored and respected by their subjects. As such, they were considered sacred figures.

Moreover, above the fray, they kept a certain distance from their subjects to the point of not taking anything away from them, such as movable property, real estate, finances, women or slaves. Their authority was not questioned, and everything was regulated by custom. Today, most chiefs have unfortunately compromised themselves in the face of this stumbling and sonorous species – that is, money. In some villages, chiefs have been deposed, particularly in southern Côte d’Ivoire, after squandering the common good, including land. As a result, their authority is increasingly flouted. In principle, when the chief draws up a deed of sale or transfer of a parcel of land, his signature must be authentic. Unfortunately, his actions are questioned by the administration because often the chief has had to give up the same piece of land to several people at the same time. Such a leader, by this indelicate act, compromises himself forever and no one can respect him. In Côte d’Ivoire, there is an expression that describes such a leader: “He sold his dignity.” To be credible, some African traditional authorities need to rethink their approach. In this way, they will be able to animate their different jurisdictions, their palaver trees in complete impartiality. For this to work, sovereign authorities must also contribute.

The “rehabilitation” of the African palaver tree by the sovereign authorities

Palaver exists in most African societies. What sovereign authorities can do is help restore the image and authority of some traditional leaders. Therefore, politicians and opinion leaders can and must do everything possible to avoid exploiting these leaders, who are the real guarantors of our habits and customs. Indeed, in the current context of consolidation of the multi-party, democratic system, leaders must be apolitical and neutral with regard to the various political channels. This does not mean that they should refuse visits from politicians. On the contrary, leaders must be willing to welcome them, all of them, as much as they are; for they are all sons of the earth. However, they should not be suspected of belonging to one political party at the expense of another. They must remain impartial regardless of eventualities or circumstances.

In addition, the sovereign authorities must recognise the existence of traditional authorities through the constitutionalisation of traditional chiefdoms, as has been the case, since 2016, with the Ivorian Constitution and in the constitutions of many other countries. But their constitutional existence is not sufficient. They must be given the power to mediate and resolve disputes in advance. In other words, in the event of the occurrence of a conflict, including a political conflict, the traditional

leaders should have the onerous task of forming a special tribunal composed of representatives of chiefdoms from all over the country, and their decisions could be given the authority of *res judicata*. The African Union (AU) should be able to promote the establishment of strong and credible traditional courts. This would prevent the dirty laundry of Africans from traveling around the world.

CONCLUSION

At the end of the day, the relevant means of conflict resolution and reconciliation of peoples do exist in contemporary Africa. As a fruit of ancestral heritage, they are just as effective as any international instrument for the settlement of conflicts. The palaver tree can even play a dual role: to resolve all conflicts on the one hand, and to facilitate lasting reconciliation in Africa on the other.

The problem at this level lies in the behaviour of the Africans themselves, because blacks, having suffered the full force of colonisation, have generally managed to reject their identity. They like what comes from elsewhere to the detriment of the local product. However, it is better to rely on one's own means than those of others. In this logic, Montesquieu is right to admit that it is a matter of pure chance that the laws of a given people can suit another.