

## ***Adzina*: An Indigenous System of Trial by Jury on the Ghana-Togo Border**

# IKNotes

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In a recent article in this series, the author discussed the indigenous principles that undergird the maintenance of social control among Buems of Buem-Kator on the Ghana side of the Ghana-Togo border in the Buem Traditional Area in the Jasikan District in the Volta Region of Ghana. The current article, too, is about the same Buems. In this one, the author presents the indigenous Buem jury system, known as *adzina*. But before discussing the nature and process of *adzina*, he first discusses *bate kate*, which is the Buem forum for adjudication of which *adzina* is an integral part.

### **Bate Kate**

*Bate kate* can mean adjudication and can also mean arbitration. In the indigenous Buem conflict management system, *bate kate* is a means of external control which disputing parties seek from a third party. This form of control, which can be exercised by a lineage head or the town chief, becomes necessary when disputants can no longer rely on trust between them. The consequences of lack of trust are thus mitigated by the external control, which provides an alternative source of confidence that expectations will be met.

According to the Buem elders, Buems make it a point to try to avoid *bate kate* which they consider to be adversarial and time-consuming, not only to the disputants, but also to their respective kinsfolk who are customarily obliged to accompany them to hearings. Unlike *benyaogba ukpikator*—discussed in the article earlier mentioned—*bate kate* is a more elaborate process, which proceeds in stages and normally involves intensive cross-examination and assembling of witnesses and, where necessary, exhibits. In terms of monetary outlay too, *bate kate* can be expensive. This is because fines, and in some cases, costs are imposed on convicted parties.

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Cases that are submitted for *bate kate* normally include cases that either have failed to be resolved through the *benyaoḡba ukpikator* option or are constitutionally defined to be criminal. Criminal cases include murder, treason, and disparaging statements against chiefs or public officials. Infringements of well-revered taboos of the chiefdom are also a criminal case for which settlement must be sought at *bate kate*.

*Bate kate* suggests a number of characteristics of both procedure and content. It can be conducted either at a lineage head's court or the town chief's court, depending upon the gravity of the offence. In theory, *bate kate* can go through a number of steps before a dispute is finally settled. In other words, one or both parties to a dispute can express dissatisfaction with a settlement and may decide to forward the matter to a higher court. Appeals from lower courts have to be sent to the most immediate higher court. For example, an appeal from a lineage head's court has to be sent to the town chief's court and an appeal from the town chief's court must be forwarded to the court of the senior chief' of the area,

known as *akwamuhene*. The *akwamuhene* is the most senior divisional chief in Buem-Kator; hence the paramount chief's direct representative in the area. If settlement cannot be reached at the *akwamuhene*'s court then the case must be referred to the paramount chief's court in the traditional capital.

In practice, however, most disputes are settled at the town level, especially because of the costs (in terms of time and physical resources) that are incurred when cases are allowed to go through a number of steps before they are finally settled. There is the notion among the Buems that if a dispute can be settled at all, it must be possible for lineage heads or the town chief and his elders to settle it at the lowest possible level. Since kinsfolk of disputing parties are traditionally expected to support kin members and accompany them to all courts, they tend to prevail upon kith and kin to accept a settlement at the lowest possible court.

Deliberations at *bate kate* can be an elaborate process. In line with its usual procedure, each disputant presents his or her version of what has occurred. After both have been heard, adjudicators closely question each disputant on the basis of what he or she has said. The objective is to reach an agreement on a single story by eliminating ambiguous elements in the statements of the adversaries. There is an extensive use of evidence, witnesses, and cross-examination. Court deliberations are usually opened to the general public and everyone present has the privilege to cross-examine any of the disputants. Order at court is strictly enforced and the use of abusive language is discouraged as this can lead to contempt of court.

### Adzina

For the purpose of this paper, the word *adzina* may be translated as "going into seclusion to meditate on an issue." *Adzina* provides a mini forum within which a verdict (*badunkortor*) from *bate kate* proceedings is determined. This step in the *bate kate* process is primarily meant to ensure fairness to the adversarial parties or an accused person brought before a hearing. *Adzina* is said to offer the managers of *bate kate* an opportunity to "consult with the *abrewa*". *Abrewa* literally means grandmother or an old woman who is believed to be endowed with supernatural wisdom, an un-

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questionable sense of fairness, and the capabilities to preside over *adzina* deliberations.

As the Buem version of trial by jury, *Adzina* works this way: to arrive at a verdict in all manner of cases that come before a lineage head or town chief, some of the court participants, who have been present throughout the court hearing and have been following the proceedings, are selected at the end of the hearing to deliberate and come out with a verdict. The jury is normally made up, among others, of the respective representatives of the presiding judge, the adjudicating council, and the disputing parties. This newly appointed jury will then leave the courtroom and go and find a place where they are both out sight and ear reach of the other court attendants. There, they will deliberate among themselves until reaching a verdict. In doing so, they are said to be consulting with the *abrewa*.

When a verdict is reached, the jury will return to the courtroom and present their findings to the judge. Through the returning jurors, the *abrewa* will send words of admonition to the guilty party and words of consolation to the innocent. The verdict is either accepted wholly and a fine is imposed on the convicted party, or it is rejected and the case forwarded to a higher court.

The presiding judge will deliver the verdict this way:

*Abrewa onini, fula le temi libo emimi. Osu boda mi borsaka. Bokisi bobo mi nte. Osu ni bafouo. Osi mui, siwu tsuedi otlikpidi na onwa lelormi benu nkudor. Omui ni keny kenui kebo kuboryo* (Translated to mean that “according to the Old Woman’s verdict, to which they, the panel members, have agreed, so and so has been found guilty. The Old Woman has sent a message of admonition to the guilty party and words of consolation to the innocent”).

Once a case is settled, it is assumed that *lelorkalorbunu*, which represents the people’s concept of fairness and justice, has been attained. Fines (*banyinkortu*) are thus suggested. The fines are normally in kind, involving alcoholic beverages usually palm wine—called *kubo nte*—and livestock. The size of the fine depends on the gravity of the offence, the manner in which the convicted party has conducted himself or herself in the course of the deliberation, and previous offence records. Once the fines are paid, it is assumed that the

settlement has been accepted by the disputants. The drinks are used as a libation in order to propitiate the gods (*atibhuku*). It is poured by the fetish priest, in the absence of whom an elder will do it.

With a calabash of drinks in hand, the fetish priest will pour the libation accompanied by statements such as:

The almighty God up in the heavens, the earth on which we stand (*Oh! Atibhuku atsa kator, kalor kemenge*), with this drink, we beseech the gods to help us to restore peace between the adversarial parties. As both parties drink from this calabash, none should nurse malicious intentions against the other. Strike down whoever will nurse malicious intention towards the other, or flout the authority of the judges, or attempt to bring calamity into the community.

It must be noted that in more grievous cases, particularly cases in which a culprit was found to have used a weapon which is more harmful than the fist in a fight and, in doing so, has spilled the blood of a fellow Buem, the party is liable to fines, which involve livestock, usually a ram (*kofonu*). This fine is imposed whether the party is found guilty of the offence or not. In such a case, the fetish priest will pour a libation and call the spirits of the ancestors of the disputants three times, mention the earth (*kalor*) three times, and implore them to “cleanse the community of the sacrilege and danger” (*ntedie musue*) that the blood-spilling may bring upon the community. After this, the ram will be slaughtered at the very spot at which the human blood was spilled. Both the drink and the flesh of the animal will be shared among all those present. With this ritual ceremony, the gods are believed to have been propitiated and the earth and the parties cleansed.

### Analysis

Unlike the modern jury system, whereby jurors are selected before the start of the trial, jurors in the Buem *adzina* system are appointed after the prosecution and defense arguments are over. The benefit of this manner of selecting jurors derives from the fact since no one can tell who the jurors will be and since anyone present at the proceedings, and who are considered to be of good standing in the community can

be selected, everyone at the trial is compelled to attentively follow the process. Also, because members of the Buem communities live in close contact with each other and are connected by webs of ritual, political, and economic ties, jurors cannot afford to be deliberately biased.

The invocation of supernatural forces as a means of enforcing court decision among Buems shows that the people's conflict management methods provide not only the secular means and guidance to disputants to strive for reconciliation, but that the fora are also the media through which the gods are expected to sustain the rules of social control. This should not be surprising given the fact that the Buem politico-judicial system lacks any form of legally approved use or threat of use of physical coercion, normally carried out by the police and incarceration of the guilty, as associated with the state in the modern systems.

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