The Effects of Colonialism on Indigenous Conflict Resolution Systems Among Pokot and Turkana Communities

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ABSTRACT

Colonialism impacted local cultures far beyond their infrastructure, government and geography. In addition to eroding indigenous power structures, the structural violence inflicted during colonialism left native populations with lasting self-doubt and rejection of traditional practices. Among these rejected traditions are informal processes of resolving conflict. Conflict resolution methods in different cultures often vary greatly in underlying values and perceptions. Western judicial systems reflect individualistic, highly uncertainty avoidant, low-context tendencies, while indigenous conflict resolution methods reflect collectivistic, minimally uncertainty avoidant, high-context tendencies. Research into the current state of formal courts and informal justice forums in Pokot and Turkana Counties provides case study-based evidence arguing that the transition from restorative justice (*Lapai*) offered by indigenous justice mechanisms to retributive justice catalyzed by colonialism has effectively weakened both the Turkana and Pokot systems of justice. Due to impacted value systems, neither the restorative,

social harmony focus of traditional processes, nor the retributive, compensatory justice focus of the formal judicial system make the available forums wholly appropriate or adequate resources. This has left the two communities torn between two distinct choices, the western and indigenous approaches in conflict management. The main objective of this research was to investigate the effects of colonialism on indigenous conflict management in Pokot and Turkana counties. These were both positive and negative effects. To achieve this objective the overarching question that guided this research was; "how did colonialism affect the indigenous approaches of conflict management in Pokot and Turkana counties? The research was designed to apply qualitative research methods. Both structured and less structured interviews were conducted along the Turkana-Pokot borders. This paper proposes a hybrid model in conflict management not only for the Pokot and Turkana pastoral communities but also to other pastoral communities with similar set-ups.

Key words: Lapai, formal, informal, indigenous, Kokwo, tree of men, restorative, punitive, retributive--Justice, communities, Pokot and Turkana

This study focuses on the bloody violent ethnic conflict between two pastoral/nomadic communities, Pokot and Turkana communities, along the Turkana and West Pokot counties' border in north rift Kenya. Although there are other intra conflicts, the inter conflict across their community's border was used in analysis of the effects of colonialism on the indigenous justice systems.

This study was inspired by interactions with some of my friends living along the pokot-turkana conflict corridor, which is also the two communities border. David not real his name was born in 1950 in *Ombolion* Village along west Pokot and Turkana counties. He was brought up at a time when the elders solely led indigenous justice system. From his story the council of elders (kokwo)[1] was key in conflict management. Family disputes, marital conflicts, intra and inter community conflicts were settled by the council of elders. He could not understand why the government seemed to emphasize on judicial processes that divided the communities with murder cases that would take decades to be solved. He would go further to claim that even when such cases were solved, there was no healing of the affected families. This only led to carrying grudges, and planning for retaliation by the looser of the case against the winners and thus creating unending cycle of conflict.

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[1] Kokwo- Refers to the Pokot council of elders. Elders are chosen from men of good repute and their integrity in beyond reproach. They are form dispute resolution council and their verdict is final.

David would argue that with the country attaining its independence in 1963, the question of have a formal justice system applied to all regardless of the indigenous justice system that held communities together prior to colonial 'laws". David was of the idea that hybrid approach to conflict management was not an option but the best approach. He also gave preference to indigenous justice system over liberal approaches to conflict management arguing that cut and paste approach that liberal approach uses is not healthy for their nomadic communities that have better approaches in place.

This engagement with David led to my research question; "What were the effects of colonialism on indigenous justice systems in Kenya? To carry out the research this paper is divided into three main parts. These are: Pre-colonial Pokot and Turkana counties, colonial period and post-colonial period. The pokot and turkana communities' background and the existing literature review provide the reader with a clear understanding of the communities under study.

Definition of terms used in this study

Indigenous justice systems are culturally established processes of addressing conflict with intention to resolve, contain or manage it that have existed since pre-colonial times and are generally still in Pokot and Turkana counties**.**

Western justice systems or **formal conflict resolution systems** refer to processes of addressing conflict created and run by the state. These may include systems such as the police, and the courts. They are usually perceived local communities as colonial approach in conflict management as opposed to indigenous approaches.

Kokwo or ekuko **(councils of elders)** in Pokot and Turkana respectively are an elected body of community members who serve a governing function at the local level. A main task of these councils is to arbitrate -through council sittings (*kikao*) in a mediation process-- between local disputants in a dispute, frequently fining one or both parties for their failure to keep the integrity of the community.

Ngimurok are medicine men in Turkana who are believed to have supernatural powers and supervise rituals and sacrificial ceremonies in the Turkana community. Ngimurok are consulted before and after a raid and work closely with kraal leaders.

"Lapai' customary law in Pokot and Turkana communities is exercised by council of elders, when a person from the community kills a person from the same community. It is a way of compensating the bereaved family by the killer's family or clan, and compensation is in terms of livestock.

Nyumba Kumi translated as ten homes, is an initiative by the Kenyan government aimed at creating awareness to citizens of who are their neighbors for security purposes

Background to the study

In Kenya, the pastoralist communities occupy the largest percentage (70%) of the countries' total land area. The population of the livestock keeping pastoralist communities in Kenya is estimated at about 20% of the total population of the country. According to Central Bureau of Statistics, Kenya 1999 population and housing census. Most of these people occupy the vast arid and semi-arid region of northern Kenya. The Turkana and Pokot communities are among the Kenyan pastoralists. They are nomadic ethnic groups that are highly mobile. They move from one area to another in search of water and pasture for their livestock. Their movements are not restricted to one area or even country. They move in and out of the neighboring countries such as Ethiopia, Sudan and Uganda. These movements are one of the major sources of misunderstanding and conflict between them and their neighbors. The vastness and remoteness of the area, inadequate road networks and scarcity of resources goes hand in hand with a lapse in security, occasioning frequent misunderstandings and conflicts among them and other pastoral communities. For decades, these communities relied largely on their indigenous justice system to resolve and manage their conflicts. However these justice systems have been weakened and even eroded in some parts of the two counties especially near the cities. In their studies on the pokot-turkana conflict Adan and Pkalya (2004:106) and Kirimi (2003: 45) have proposed the strengthening of the indigenous conflict management approaches. Other scholars such as John Ahere mention the various indigenous peace agreements that have been ratified between the Turkana and the Matheniko, the Pokot and the Turkana. However these scholars fail to explain why the parties in conflict chose indigenous approaches over the judicial court system provided for by the government.

Thus, the study will be investigating the rational underlying the choices parties in conflict make when confronted with different opportunities to resolving conflict. What informs their decisions and of what significance are those decisions in relation to the communities affected.

According to Azarya (1996:2), pastoralism refers to an economy that is based on raising livestock, which could be undertaken by sedentary or nomadic groups. Pastoralists include those who earn part of their living from livestock and

livestock products. They include those who are still connected to pastoralist culture, even if livestock does not provide their main source of income (Humanitarian policy group 2009: 2). Pastoralism in all its forms is more than just a mode of production. It involves a certain mode of social organization and cultural patterns and practices (Markakis, 2004:4). Nomadism on the other hand refers to the extent of spatial movement of pastoralists; therefore, pastoral production is conceptually different from the extent of residential mobility. The Turkana and Pokot are both pastoralists inhabiting the extreme North Rift region with historic conflict and clashes over animals pasture and protracted violent ethnic oriented conflict (McCabe 2004:90). According to Mwaniki et al (2007:19) this area is characterized by high poverty levels and illiteracy, with life expectancy ranging from 57 years among the Turkana to 66 among the Pokot. Moreover, Mwaniki et al (2007:19; Goldsmith, Ahmed and Babiker 2007:39; Greiner, 2013:224) argue that cattle rustling bear a histo-cultural face among these communities, pointing out that since 1992, and the activity has become commercialized.

As pastoralism revolves around livestock, the conflicts are predominantly about livestock and related productive assets namely; pasture-land and water. These resources closely tie conflicts to the violent and theft of livestock, referred to as raiding, which are both a contributing factor and an articulation of conflict. Mwangi (2006:81-91) argues that raiding leads to distrust between communities which is a pre-requisite for conflict, and Schilling et al, (2012:13) seems to support this argument by explaining that communities use raiding to articulate their hostility toward enemy communities.

The partition and scramble for Africa had tremendous changes in the social-economic set-up of the pastoral communities. Their free movements were curtailed, as they needed pass/permit to travel from one village to the other. In addition their way of resolving conflicts were regarded as primitive and thus the need to replace them with western/liberal approaches which were considered superior. While it is true that when reading any colonial literature to know who is speaking and who is listening, the nomadic communities here were regarded as the subaltern and needed an outside voice to speak on their behalf, to define them, and provide their destiny.

Research design

The study used a cross-sectional study design. This study design was suitable for this study because it aimed at finding out the effects of colonialism on indigenous conflict management approaches in Pokot and the Turkana counties by taking a

cross-section of the population. The researchers did this by taking a cross-sectional of both the study population and the time of investigation. The cross-section of the population was chosen from district peace committees, chiefs, non-governmental organizations, community based organizations and faith based organizations.

Interview guides were used to gather data from a cross-section of youth leaders, men, women, village elders, medicine men, businessmen and politicians. Focus group discussions were also carried out to gather more information from a cross-section of groups of women, men and the youth. This formed the primary data for this study.

(i)   Interviews

This study used both structured and less structured interviews or formal and informal interviews. According to Lieberman conducting a productive research begins with good preparations, which includes but is not limited to "converting one's research design to "to get" or " to do " list. In regard to this we prepared a list of those to be interviewed in both communities through a survey that was conducted prior to fieldwork. The list included local chiefs and other state officials, NGO personnel, Religious leaders, elders, county representatives, women, youths and other political leaders in the two communities.

(ii) Categories of Analysis

The researchers organized the data by categorizing it in themes and sub-themes. The researchers also labeled it in groups of questionnaires for the target groups. The labeled and grouped data was coded with answers for specific questions. The data was analyzed using descriptive narratives and illustrations presented in form of tables and graphs. (See appendices A&B).

Literature review

Colonial literature is full of binaries, such as the colonized and the colonizer, the rulers and the ruled. In this context the Pokot and Turkana communities are hereby referred as the colonized. Seeing through the lens of the colonizer the two communities were perceived as backward, uncivilized and therefore the indigenous conflict management systems were weakened by the introduction of western liberal approaches in conflict management. For similar explorations of these themes in the larger international relations literature, Campbell (1992, 1998), Chowdhry (2007), Chowdhry and Nair (2002), Darby (2004), Inayatullah

and Blaney (2004), Muppidi (2012), Seth (2011, 2012), Shilliam (2011), Shinko (2008), and Vasilaki (2012).

This sort of interrogation is not an uncommon line of inquiry in postcolonial studies, for example, Asad (2003), Bhabha (2004), Chatterjee (2010), Fanon (1963), Hall (2007), Mitchell (1991), Morrison (1992), Said (1978, 1981, 1993), Spivak (1988). Chakrabarty (2000) interrogates these binaries as well as their political implications as they have emerged from a "historicizing" modernist discourse that consigns "rude" nations (like Indians or Africans) to an imaginary waiting room of history—waiting until they move out of their anachronistic "pre-political" stage to the stage of the "modern citizen." "Historicism—and even the modern, European idea of history—one might say, came to non-European peoples in the nineteenth century as somebody's way of saying 'not yet' to somebody else….Mill's historicist argument thus consigned Indians, Africans, and other 'rude' nations to an imaginary waiting room of history. In doing so, it converted history itself into a version of this waiting room. We were all headed for the same destination, Mill averred, but some people were to arrive earlier than others. That was what historicist consciousness was: a recommendation to the colonized to wait". Interpreted in the pokot-Turkana context the attitude of the 'marginalized" being in waiting room has had far reaching effects in incorporating their indigenous justice system into the mainstream peace building approaches. However this study while answering the question; what leads to the choices between either western liberal approaches or indigenous or hybrid approach, is a way of moving the indigenous approaches from the periphery as it has been pushed by history to the center.

The Subaltern Studies Group that was a part of [a group of primarily South Asian postcolonial scholars focused on the role of non-elites—the "subaltern" who do not have access to the instruments of cultural imperialism being "outside" of the hegemonic discourse—as agents of political and social change] critiqued the idea of "peasant consciousness" as "pre-political" instead suggesting that "the nature of collective action by peasants in modern India was such that it effectively stretched the category of the 'political' far beyond the boundaries assigned to it in European political thought" . "It did not follow the logic of secular-rational calculations inherent the modern conception of the political. This peasant-but-modern political sphere was not bereft of the agency of gods, spirits, and other supernatural beings. Social scientists may classify such agencies under the rubric of 'peasant beliefs,' but the peasant-as-citizen did not partake of the ontological assumptions that the social sciences take for granted" (12-13). Destabilizing categories like the "political" was the point of Subaltern Studies, writing "the subaltern classes into the history of nationalism and the

nation, and to combat all elitist biases in the writing of history. To make the subaltern the sovereign subject of history, to listen to their voices, to take their experiences and thoughts (and not just their material circumstances) seriously" (102).

According to Mahmood Mamdani, African historian and political scholar, claims that colonialism left a lasting impact on the cultural structures of the colonized. Mamdani's expertise on the subject gives weight to his theory of decentralized despotism, a crucial concept of the political structure used by colonists to wield racialized power (Mamdani (1996:21). This is manifested in Kenyan communities, where there was adaptation of western conflict management approaches at the expense of weakening of indigenous conflict management structures.

The state's exploitation of indigenous vulnerability calls upon Tatum's theory of internal colonialism that sheds light in ways in which colonialism impacted identity in the long- term. Internal colonialism as Tatum reveals is one of the main factors contributing to the depreciated state of indigenous justice systems in Pokot and Turkana counties in Kenya today

How did colonialism affect the collective identity so powerfully, and what is the evidence to show that it did so? In response to this question David an elder in sarmach village claimed, "…the state used customary authority to disempower natives and fragment indigenous society along tribal lines. For example the colonialists created the current conflict along the Pokot-Turkana border, even our inability to resolve these conflicts is basically due to the perception created during colonial era that we are different". He also argued that prior to colonialism 'our fore fathers lived together and used indigenous approaches to manage conflicts, (both inter and as well as intra-conflicts). This simply weakened the customary governing structure, albeit while creating a segregated system to determine first- and second-class citizens.

According to Patrick, a justice and peace officer in the Catholic Diocese of Kitale working along the Turkana-Border responding to the same question argued that, "…institutions and rules established by the colony, provided a platform in which colonialism transformed the perceptions and identity of Pokot and Turkana communities". His sentiments concur with Tatum who held that, people who have suffered from internal colonialism incorporate the lingering state of their subordinate, colonized status through political, economic and social ramifications (Tatum, 2002).

Although, the indigenous conflict management is still in existence in Turkana and Pokot communities, the alternative form of justice mechanism put in place by the colonialists weakened the indigenous approaches by providing an alternative. The perception that elders are the sole "coffers" of truth in terms of conflict management is no-longer tenable as both victims and perpetrators can seek redress from courts. The concept of *lapai*[2] or paying of fines between the two communities was a deterrent factor for both intra and inter-community conflicts before colonialism. However, according to Domongu'ra it has become difficult to pay *Lapai* for the inter-community conflict, a problem he attributed to the era of colonialism. He postulates that, the wage that was created by the colonialism between the two communities left lasting effects; we always interpret things and events from different lenses, of "we vs. them". This is also reflected on our choices on which we turn to in resolving the conflicts. As Chinua Achebe (1958) would put it "they have put a knife on the things that held us together and things have fallen apart". Colonialism weakened the community's bond from collective responsibility to individual choices. And by extension weakened the indigenous conflict management approaches, first by creating two centers of power that never existed before and also portraying the western legal system as superior. This can be better understood through the existing narratives of the Pokot and Turkana communities' prior, during and post-colonial period.

Pre-colonial pokot and turkana counties

Prior to colonial period, livestock transactions served to maintain social interactions that cut across ethnic boundaries and linked neighboring ethnic groups. That was grown out of mutual economic interests between groups that lived near each other. According to Mkutu (2003:13) Turkana district established dependent relationships with the Pokot and Karamoja, which allowed them access to dry season grazing across the border with Uganda. He adds that such relationships were very beneficial in securing individual survival in the event of disasters such as raids, drought, and diseases. However, poverty occurred whenever this system of reciprocity broke down. The Pokots and Turkanas with other Pastoral communities in the region such as Dassenech or Merile, and Toposa would freely graze their animals in their neighbors'' territory, guided by the indigenous structures. The elders had to give permission to the other community to graze in their territory. The same arrangement is today still in place

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[2] *Lapai*- killing of a kinsman in pokot community is the worst form of crime. Indigenous justice system calls for restorative as well as punitive justice to the offenders, which is done in a ritual called lapai. Lapai simply means paying of fine agreed by the elders for the crime committed. In matters involving death the criminal is also banished from the community. The fine is considered restorative justice while banishment is punitive.

but has been disrupted by fixed borders that were established by the colonialists (Muwonge J, 2009:6 and Bevan, 2007:34). The key to this arrangement was the indigenous institutions that were mandated to resolve any disputes arising due to non-compliance to the established rules; payment of fines or Lapai was the norm for failure to keep the rules especially when death occurred as a result caused by the conflict.

Colonial pokot and turkana counties

The indigenous structures and institutions were affected during the colonial era mainly with border fixity that separated communities across newly created countries and even within the same countries for British self-interest of divide and rule tactic. For example, the British colonial government in Kenya adopted policies that contributed to the economic and political marginalization of pastoral communities during colonial rule. The colonial governments favoured the establishment of agricultural white settlers and a plantation economy at the expense of peasant production. Colonial officials regarded pastoralism as a primitive mode of production and efforts were made to discourage it. Mkutu, (2003:13) and Leff, (2009:192) Postulates that, the creation of fixed ethnic borders did not only limit free access to grazing land and water, but also increased territorial ethnic land area, and social conflict among the pastoral Africans. This would not only affect the movement of the pastoralists but also created the notion of difference among the Pokot, Turkana and other pastoralists. Such difference would today complicate the use of *Lapai*/fine in indigenous conflict management in inter-community conflict, which was not the case before colonialism. With the modern formal education, which is a product of western influence some community opinion leaders from both sides would prefer court process rather than indigenous approach in conflict resolution.

Post-colonial pokot and turkana counties

It is arguable that the state of marginalization among the pastoralists in the northern Kenya did not end with independence. As Pavenelo argues, 'policies pursued by post-colonial governments failed to reduce the exclusion of pastoralists from mainstream national development'. There has been a tendency to neglect the needs of pastoralists and even to envisage the gradual eradication of pastoralism. More attention has been paid to the interests of agriculture and urban dwellers (Pavanello, 2013:5). In addition, the post-colonial period has seen a further weakening of traditional governance institutions in pastoral community areas in Pokot and Turkana counties. This is partly due to the failure of the

Kenyan and Ugandan governments to realize the role of the traditional institutions in management at the community level. (Ngeiywa and Benson, 2008:27).

At the Pokot-Turkana border the erosion of traditional governance institutions has weakened the ability of community elders to exercise control over young men especially in cattle raid. While "eldership" was a merit prior to colonization, today it can be attained by wealth, and youth are often well positioned to attain wealth if they can gain access to guns. Elders now have to 'negotiate' with such youth in a way that has not been the case in the past. While in article 159 of the Kenyan constitution 2010 mentions of the alternative justice systems and the role of elders in conflict management little has been done to empower them. At the same time, official administrative governance structures since post-colonial period have usually been unrepresentative. Kendagor claims that, collaboration and co-ordination between the governments and their Border societies are relatively rare unless a raid takes place. The authorities have undermined traditional structures without 'modern' alternatives being established to replace them (Kendagor, 2005:7).

Research findings

We don't want to [use only their systems] because we know that they are weapons they use to take away what is ours. [John and Mary residents of Sarmach-Pokot County] they were arguing within the context of government legal proceedings that ends up in a win loose situation.

Indigenous conflict resolution systems have roots as old as the tribes of people who crafted them. The outside influence of trade, missions and inter-group warfare is palpable, yet for the most part conflict resolution forums remained unchanged throughout centuries of heterogeneous cultural interaction. As long as the values of society held firm, definitions of conflict and sanctioned methods of resolution served societies well without change. Colonialism, with its new governing body and legal structure, imposed differences that went deeper than structural change. The very foundations of indigenous society were shaken to the core during colonization. Opposing values were present in all parts of colonial society, and the native culture reeled from the confrontation.

Nowhere is the impact of the cultural collision between colonists and colonized were more evident than in the deterioration of indigenous conflict resolution systems. In Pokot and Turkana counties, traditional councils the *kokwo*

and *ekuko* [3] (tree of men) respectively, which had formerly fulfilled the responsibility of resolving conflicts were now weakened and people were torn between either choosing the indigenous or western approaches. The colonial government declaring the then west Pokot District a "closed district" worsened the situation because the colonial government perceived the community as hostile and primitive and heightened the need to change their cultural practices by imposing western rule of law. Recent assessments done in Sarmach and Kainuk villages along the Pokot-turkana border indicated that most community members recognized the main function of the village council of elders was to maintain peace (58%), but also noted that the council did not treat everyone equally, mostly due to favoritism (while handling intra-conflicts) and tribalism (in inter-community conflicts) (see Appendices A & B). A significant portion (39%) of the youths themselves cited lack of faith in council process as the main reason that community members would take a dispute to an alternate forum (see Appendix C). One reformed warrior stated that he thought people wouldn't take a dispute to the village council of elders (kokwo) if they thought the council wouldn't handle the matter well.

A common regret shared by some young elites was the lack of community respect for the council. A female worker with an NGO in the region voiced support for training so that "the council of elders could get respect. This will help reclaim the lost glory". She also argued that the western approaches alone are not sufficient in community dispute management referring to the Kenyan constitution, 2010, which empowers the indigenous conflict resolution mechanisms as an alternative.

How did the traditional council system stray so far from the steadfastness it must have had to remain effective for many generations prior to the onset of colonialism? And how far has it changed? In response to this questions, some members of the formal justice system in Kapenguria town implied that the reason people came to the court to solve disputes was that they would fail to receive 'justice' at the hands of the local council. A woman peacemaker from Kacheliba village while explaining a case where the local chief and some elders had been compromised by the perpetrator of a domestic violence said, "Justice is more lasting, more credible in court" (peace ambassadors interview 18 October 2015). It would appear a contradiction from this case where the lady was calling for a judicial process while the majority within the same region would prefer

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[3] *Kokwo and ekuko* means the same thing----council of elders. While Pokot calls it *Kokwo* turkana refers to the same as *ekuko* translated as tree of men. Turkana council of elders literary sits under a tree that provides shade in the south of Sahara desert while deliberating on the future of their community or when resolving disputes

indigenous system. Another peacemaker concurred, "Generally we all know why courts exist, it is for justice. Even the common man knows that. That is where they can seek justice especially when the elders have failed!" (Peace ambassadors interview 18 October 2015). A third woman peacemaker, when questioned about alternative justice forums, shared:

> "To an extent, some are effective. Some are not effective. The traditional council is not a court. It does not have coercive power and it cannot command people to attend. People have to attend based on sheer will. Neither can it handle conflicts of huge magnitude."

The traditional council's decisions are not binding, and they cannot be enforced. The councils have no army or police to enforce their decisions. This is why Hybrid model is important (Finn Church Aid NGO officer interview, 14 June, 2015.

The suggestion that voluntary attendance is a weakness exemplifies how colonialism reframed ideas of power and authenticity. Before colonialism, the only option for conflict resolution was a traditional council, an institution that was too established and respected to be voluntary. The imposition of formal justice systems rebranded council of elders and reconciliation ceremonies as 'informal' and far less authentic and recognized than the Western alternative. In contrast, formal justice systems could issue court orders or summons; though in practice these are hardly more effective than the council calling a participant to attend a mediation. Due to its formal nature the Western system is assumed to wield more power. Thus appearing superior compared to indigenous justice system.

Many of the members of the formal justice system referred to the traditional councils as "quasi-judicial forums." The title alludes to the moral and legal inferiority that those in the formal justice system equate with the indigenous one. Even the concept of 'justice' itself is one over, which the Western system, and those certified in its practice, retain a monopoly. In addition to the usual condemnation, an elite working for an NGO in the region expressed anger and frustration at the inadequacy and dishonesty of the indigenous courts (*Kokwo and ekuko* respectively) he argued; the council of elders are not a court or anything. They have no jurisdiction over anything. Their job is just a civic duty, like peacekeeping, and best as part of "*Nyumba kumi*" initiative. Unfortunately we have some elders who are "politicians puppets" and water down the true role of elders. And they are so corrupt! How many times have you seen some elders crowning a politician as a community kingpin and a few days later another group of elders comes up and disowns the others and calls them fake" (Local chief

interview, 16 July 2015)

In Pokot and Turkana, the traditional system of *kokwo poyi* and *ekuko* in which the community would witness and support the restorative justice and reconciliation of a fractured relationship is still in use today. Though in most cases, the performance of these reconciliation council rituals holds very little of the same meaning that it did previously before the colonization. The lack of meaning is apparent in the reality that *Kokwo and ekuko sittings* are today incapable of reconciling inter-ethnic relationships; specifically it has been a challenge to use *lapai* in the inter-conflict between Pokot and Turkana communities, something that was common before colonialism. In the event where it was attempted people participated in them but their attitudes and perspectives remained unaffected by the process. The restoration of relationships used to be the main purpose of these *Kokwo-Poyi sittings*, and the reason for their conception. Now that they fail to produce the intended result, the *lapai* is merely a superficial charade of a once-meaningful event in lieu of inter-ethnic conflict. However, it is worth noting that the success of these *lapai* in intra-conflicts in the two communities cannot be understated.

Among the Pokot the cursing ceremonies are a necessary part of customary conflict resolution due to their longevity and effectiveness. Africans in general believed in the existence of curses but in a more unique way Pokot and Turkana communities invoke curses in a ritual (burying the hatchet) as the last resort in resolving conflicts. These rituals have been used in the past conflicts to seal the peace agreements among other pastoralist communities. This is not unique among pastoralists as it is a common tradition in other pastoralist counties split in myriad ways across geographic, linguistic and tribal lines. The fact is that these ceremonies speak to these communities' original value and efficacy prior to colonial period.

The Turkana and Pokot regard the burying hatchet ceremony as a non-negotiable step in the process of managing and resolving conflict. They act as a seal and a culmination of the indigenous peace processes and agreement. In addition the interviewees claimed that indigenous rituals marked closure of conflicts among many African communities. For even the few issues that were brought to the police, society would require a custom ceremony to ritualistically acknowledge the resolution of the conflict. In a part of the world that was once rife with violent tribal clashes, people revered *muuma/cursing* ceremonies and universally regarded them as the tool to keep communities healthy and just.
At the present day communities in Pokot and Turkana still regularly use *Kokwo Poyi sittings* for resolving conflict at the community level, often without success.

Reasons cited include but not limited to "lack of seriousness and trust that was invested in the council of elders". The purpose of paying *lapai* is to restore the damaged relationship between disputing parties through public offerings of compensation on both sides. *Lapai* give the impression of protecting social harmony upon which tight-knit, collectivistic societies such as those in Pokot and Turkana survive. Yet these sittings fail to produce the same outcome as originally intended. No longer satisfied with a restorative mechanism, disputants do not attend *kokwo sittings* with intention to forgive or to prioritize the relationship. Participants in *Kokwo* sittings reported that it has turned to merely a formality and a shadow of the original sittings where the elders were strictly referred as the 'coffers of truth' and their word was final. The bottom line being there is an alternative of going to court, which was not there before colonialism. Lapai declared by the Kokwo was only aimed at material restoration since the parties involved in case of killing a kinsman during the conflict were banished from the community. This was meant to instill fear among those who would be perpetrators and enhance social harmony. (Interview with Lengosiwa, July 2015)

The informal conflict resolution systems of traditional councils grew from a local, collective concept of justice derived of what society thought was fair and equal; these notions had obviously been greatly impacted by both colonialism itself and the example set by the Western justice systems. Former standards stemming from indigenous society had relied on collective meaning and collective priorities to form a conflict resolution process that met the need for restoring social balance.

According to Zartman, Conflict management in these cases can take advantage of referents in values, authority and community to anchor its efforts; it is essentially calling the offender to order, preserving the community and hierarchy and restoring the harmony of society. This context is particularly important. (Zartman, 2000: 8)

The ideas of equality and fairness had changed as a consequence of the imposition and standardization of Western norms, in which property was paramount, violations, required restitution and criminals were bad members of society who must be jailed and excluded, for the good of society. The prior process, using a traditional arbitrator who relied on knowledge of a past relationship, context and the collective belief in the importance of a continued relationship in order to reconcile parties lost the confidence of the locals in the community. The restorative penalties favored by indigenous justice processes seemed inferior and not aligned to the newly discovered standards of the local population. Perhaps the issue is not that the traditional system became ineffective,

but that the evolved cultural needs are not truly understood. In his book *Culture and Conflict Resolution,* Kevin Avruch explores the difference between conflict resolution and other forms of conflict management. Conflict resolution is so called because of its aim "somehow to get to the root causes of a conflict and not merely treat its episodic or symptomatic manifestation" (Avruch, 1998: 26). The indigenous system at one time aimed to directly address the root causes of conflict the broken relationship in a community. Outside influence and natural evolution have changed indigenous cultural values to the point that the process does not hold the broken relationship to be the root cause of the conflict.

Dissatisfaction with the indigenous forms of conflict resolution is a form of grievance with the structures of governance and community. Conflicts between disputants lead to conflict with the resolution process. Negotiation expert William Zartman refers to this situation as "neither authority-neutral nor authority-reinforcing but authority-destroying," while noting that these types of conflicts are the most difficult to handle. (Zartman, 2000: 9) The de-legitimization of tribal authorities and customs, a secondary objective of the colonists, remains a consistent problem.

In the new system due process focused only on the act of someone being wronged, and the power of the state to 'correct' that wrong, and as a result restorative penalties and processes were simply not what people wanted. Compensation used to be rehabilitative as well as punitive; the party found guilty in Pokot and Turkana communities was required to pay the *lapai* fine of goats to the complainant. This process enabled the dishonored to rise to an honorable status. The public nature of the apology and fining also provided a strong social influence to follow through on one's promise to forgive (Abu-Nimer, 1996*).* Yet the rehabilitative focus of these penalties is no longer one that seems to satisfy local communities. After colonial courts taught a new framework through which to see the problem, one is right, the other must pay the old compensatory system became inapplicable to a great extend. Framed around the subject of peace-building processes, Mac Ginty argues that: Instead of reciprocation and sustainable resource sharing, there was the imposition of Western models of peace and peace making, including surrender and re-grant, formal written peace treaties and the violent suppression of indigenous groups and appropriation of their resources. Indigenous social structures and inter-group relations were often eroded over a long period through the introduction of firearms, missionaries and money trading. Thus weakened, indigenous groups' customary norms of peace-making no longer retained their power. (Mac Ginty, 2008: 153)
Following this loss of power, traditional peace-making or conflict resolution systems exist only as a souvenir of what they once were. Not only have the

concepts of justice, fairness, and resolution changed, the local definition of a conflict has changed. The pattern of social reactions to conflict situations is not uniform, and neither are the connotations that people and societies attach to denotative meanings of conflict (Kruglanski, Bar-Tal, & Klar, 1993).

Conflict and identity

It can arguably be held that cultural identity is a major cause of conflict. Identity crisis or crash has in the past led to protracted conflict in different communities. Cultural identity was but one of the many basic needs deprived in the structural violence of colonialism. The loss of a former collective identity was only one of many changes in formerly collective meaning and social understanding. One such collective meaning was the group definition of conflict; what constitutes errant behavior is culturally defined and reflects cultural consensus. Native understanding of what defined conflict, and what defined proper resolution of conflict, was a key indicator of the change in cultural standards.

An example of the shifting paradigm of conflict is the increase in border disputes, a serious problem along the Pokot- Turkana border. Before colonialism, there were few troubles over boundaries and there was nothing like personal land among the two communities. Colonialism brought with it the Western perception of ownership as an individual, unalienable right (Universal declaration of Human rights); the collectivistic nature of ownership was destroyed or weakened at behest of the colonialists divide and rule tactics of survival. Western ideas of ownership have influenced local landowners' need to aggressively defend or pursue their disputed property in courts of law. Land dispute cases are handled by a Western, position-based system, which results in a fixed outcome. Whether the land is divided or awarded only to one party, neither is satisfied with the distributive process, which divides the outcome and leaves the parties' identities without reconciliation. This is what some politicians are advocating for as a solution to the border conflict between the Turkana and Pokot. An indication of how colonial legacy has continued shaping and influencing People's thinking.
How a society defines problems reflects their self-understanding; responding to a stimulus with action or inaction indicates whether the source of the problem is considered internal or external (Criss & Johnson, 1993). Definitions of conflict or crime are subjective. There are only acts that are given certain meaning within social frameworks, and the meaning attributed to these acts is suggestive of certain features of a society (Gabiddon, 2010). Dispute resolution in any culture reflects values, psychological imperatives, history, and economic, political, and social organization (Jandt & Pedersen, 1996b). Social and personal identity is wound up in perceptions of conflict, and thus identity is a vital part of the

resolution of conflicts.

Human needs, including identity, are a basic necessity for survival and positive peace (Galtung, 1969). Edward Azar's theory of how the deprivation of human needs is a direct factor in protracted social conflict includes social identity (Azar, 1986). "It is the denial of human needs, of which ethnic identity is merely one, that finally emerges as the source of conflict" (Azar, 1986: 29-30). Colonialism's indifference to ethnic identity, evident through the many and diverse ways in which this identity was minimized, is no small part of the environment of negative peace.

Identity is central to conflict, and reconciliation must address identity, transforming if necessary the aspects of identity that are linked to the conflict (Schirch, 2001). In high-context, collectivistic cultures such as Pokot and Turkana with relationships and social bonds, in effect, the connections between people are what define identity. Especially in indigenous societies, conflict resolution is linked to identity formation and maintenance (Mac Ginty, 2008). The transformation of identity out of conflict would require renewing or reinforcing social connections between disputants. Turkana and Pokot communities prioritized the *Kokwo-poyi* sittings, which determined the compensation of the aggrieved parties. Before colonialism these indigenous councils kept these conflict resolution systems functioning effectively.

While conflict resolution involves an active focusing on the conflict interpretation in ways that may lead to a reassessment of its validity, conflict resolution may occur when the conflict schema is put out of the focus of attention and moved into relative obscurity...It follows that a conflict interpretation left inactive for long periods of time might become relatively inaccessible and thus cease to exert any appreciable influence on judgments and behavior. (Kruglanski, Bar-Tal, & Klar, 1993: 53)

Inactivity of the prior interpretation of conflict and resolution made the traditional conflict resolution system on which it was based ineffective. High-context cultures had formerly seen conflict as part of the ongoing holistic relationship of all society. In the new framework after colonialism, conflict became instead something that was inherently negative and needed to be removed from society while being handled only by those deemed worthy of the task. This "elitising" conflict management by the western approaches only served to weaken the existing indigenous mechanisms. Conflict resolution became results-orientated rather than process-focused, and the concept of social harmony was no longer a concern now that reconciliation ceased to be a central goal.

The new Western judicial system further added to the problem of human needs deprivation. Lacking ownership over an effective conflict resolution process left the indigenous struggling to meet their basic needs. Not only did the Western legal system fail to meet these needs, the natives' own original forums had become ineffective. The tools once employed to meet native needs were now futile due to the change in cultural perception. In a way the colonialists had succeeded in diving the community.

Without their own definition of conflict, the locals had lost their definition of themselves and were forced to search for a new identity within the new western framework. Along with this new framework came a host of problems with traditional and modern justice systems.

Conclusion and recommendation

As presented in this research's arguments and claims it can be concluded that formal justice system weakened the indigenous conflict management mechanisms to a great extend. Social harmony among the Turkana and Pokot communities was based on the long-standing indigenous resolution systems built upon restorative justice. However the effects of colonialism cannot be underscored as highlighted in the paper. Colonialism superimposed a system of justice premised on completely different social values. While the indigenous justice system mainly ended in a win- win situation the western approaches and processes led to a win-loose situation. The collision of these two opposing cultural perspectives on conflict resolution left post-colonial societies with functioning but inadequate options.

Although Africa has self determination colonialism is ever present, lingering in today's many conflict resolution forums in post-independent states. Whether the indigenous systems of justice now condemned as biased; ritual reconciliation ceremonies now failing to resolve deeply rooted conflicts; or Western institutions of justice unable to serve the population adequately, local communities are without a single effective, reliable means to conflict

management. The research points out clearly that there is no one 'fit-all' conflict situation approaches and 'cut and paste' approaches are bound to fail. Western approaches should not be imposed on every situation but rather they should be tailor-made to take to account the local needs, as each conflict is unique.

Interviews in the research for this work show that concepts of justice and people's desire for fair and fitting dispute resolution have altered drastically since colonialism. The change in perceptions of conflict resolution options meant that the basic human need of means to a peaceful society was unmet. The understanding of notions such as unbiased justice, fair compensation and the purpose of penalties have all shifted in response to Western framing. The reconfiguration of native identity and the corresponding cultural values has caused successful conflict resolution to remain elusive in post-independent states. The need for restorative justice makes Western courts unfathomable, while the new ideas of justice based on the retributive system of the colonists render traditional forums substandard.

To reduce all the comments and perceptions in this exploratory research to a single point, there is a basic similarity between native dissatisfaction with informal and formal justice systems alike. The current indigenous systems seem insufficient, while the formal justice system lacks indigenous values. Neither system fits perfectly because neither one is a product of cultural expression and ownership. As such, neither fully meets basic human needs, without which internal and systemic conflict is standing by. It is arguable that the lack of cultural ownership is the main factor influencing informal and formal conflict resolution systems' inadequacy. How could either of these systems one from an untouched world, one a foreign import fit changing values? Any conflict resolution system that attempts to successfully serve a population must originate from the people themselves, according to their specific values and beliefs. For example the conflict between the Turkana and Pokots of North rift Kenya can well be addressed basing on their existing cultural values, however these too have been infiltrated by western values that are still alien to indigenous people.
The ultimate goal for successful conflict resolution post-independence is a system by which all people are satisfied. With this objective in mind, it is simple to identify the weaknesses in the current conflict resolution options. Formal systems that bear the mark of colonial imposition fail to recognize and respect the culture of the indigenous.

Based on these arguments the research recommends a hybrid approach of both western and indigenous systems. For Pokot and Turkana, none of the currently established systems are wholly accurate for conflict resolution.

Communities should be allowed to identify and correct the inefficiencies and inadequacies in the conflict resolution systems designed to serve their needs. These systems will have to be reformed or a new system created if there is to be social order, harmony, and positive peace.

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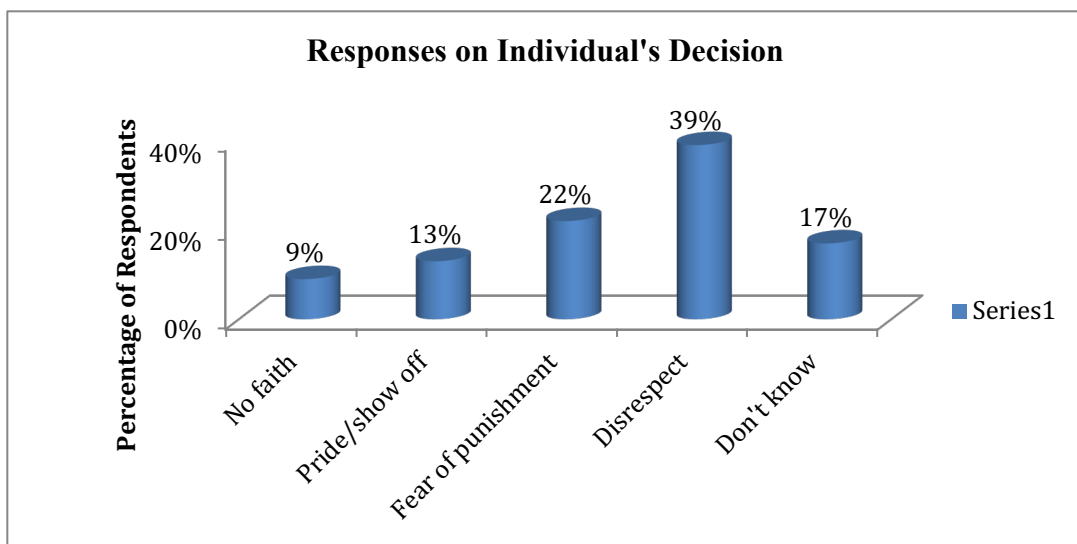
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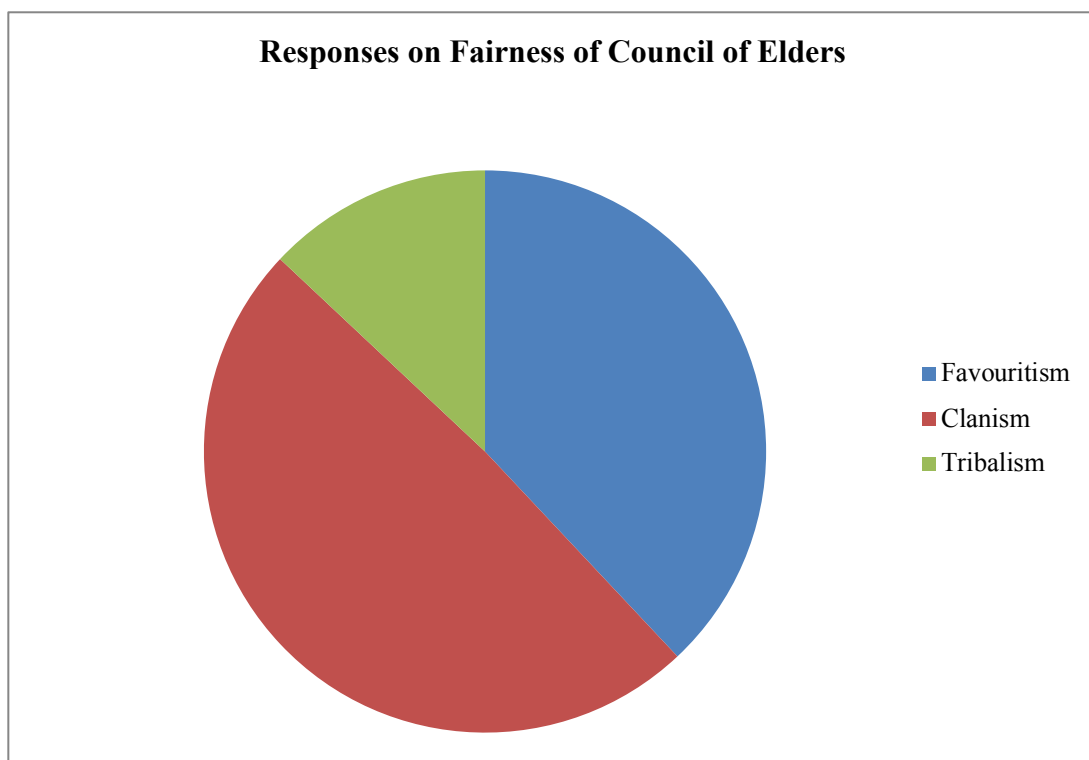
Appendix: A- *what affects the fairness in the council of elders*
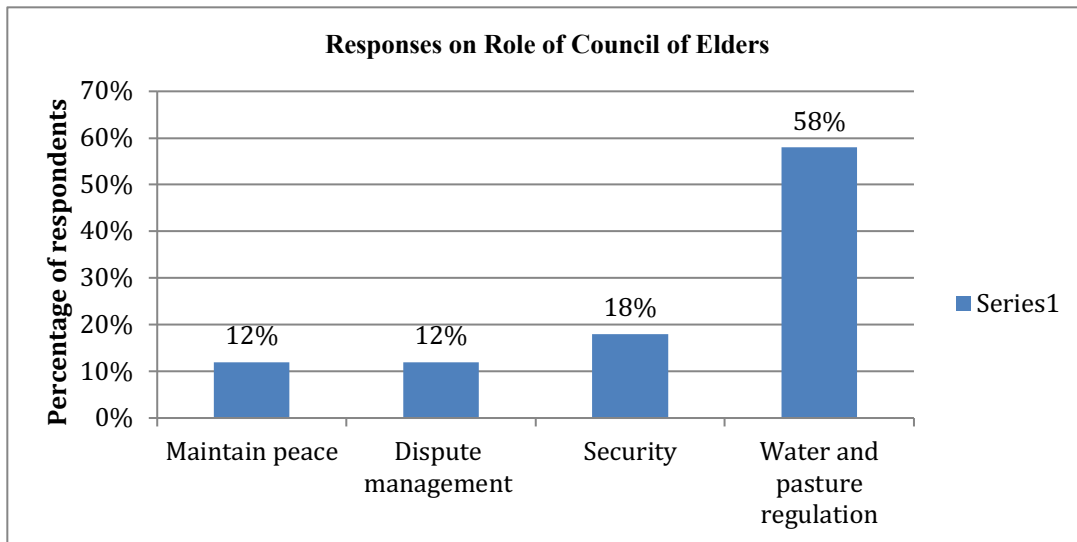
Appendix: B- *what are the roles of the council of elders*

Appendix: C- *what necessitates individuals' decision to go to elders or court for arbitration?*