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Role of culture in conflict management- a case of Tetu sub-county, Kenya

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ABSTRACT

Since independence the Kenya government has effectively promoted western administrative and judicial systems in all parts of the country, including Tetu Sub-County of Nyeri County to enforce law and order as well as to dispense justice. However, various forms of conflicts have become more pronounced in the area in the last twenty years. These conflicts include gender-based violence, land related conflicts, family conflicts and value-based conflicts, among others. This study examined ADRMs (Alternative Dispute Resolution Mechanisms) among the Agikuyu of Tetu Sub-County. The objective of the study was to assess how ADRMs could be incorporated into modern legal system to manage disputes. The study employed the historical research design. It used primary and secondary data. Primary data was obtained from archival sources and from oral interviews with informants. The target population comprised one hundred and twenty two Agikuyu from Tetu Sub County. The informants comprised both elderly persons and the youth. The youth informants were identified through simple random sampling while the elders were identified through purposive and snowball sampling procedures. Secondary data was obtained from published works including journals and dissertations. The study affirmed that there is need for incorporating ADRMs in a better way than it is in the modern legal system today. The findings of the study have enriched Kenya's cultural history.

Keywords:Alternative dispute resolution mechanisms, Conflict management, Dispute, Agikuyu, Culture
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1 Introduction

In the last twenty years, various forms of conflict have continued to bedevil Tetu Sub County. These conflicts include land conflicts, gender based conflicts among others. Pre-colonial African societies had their own mechanisms of conflict resolution. These mechanisms included the use of local institutions and traditional community based judicial and legal decision making mechanisms to resolve conflicts within communities. These methods incorporated the elders as the main actors. In conflict resolution the elders' decisions emphasized a win- win outcome for all the parties in the case. The decisions were supported by the whole community. As such, the end result was a sense of unity, shared

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involvement, responsibility and dialogue among groups in conflict. Indigenous conflict resolution approaches were beneficial to the community because they were enduring and they assisted the community develop ownership of the process involved in a conflict. In addition, they were sustainable in terms of peace building and acknowledged the feelings of the actors creating opportunities to get to the root cause of the issue (Muigua, 2017). Colonial administration in Kenya marginalized the Council of Elders as an institution of social control and justice (Fergusson & Muncie, 2010). The two scholars further assert that elders were not dictators but mediators in conflicts and guardians of law and order in the pre-colonial period. Traditionally, the Agikuyu had equal rights and their form of government followed committee principle (Leakey, 2013). They acquired land, livestock, money and wives through lawful means (Kinoti, 2010). The Agikuyu system of administration of justice and conflict resolution methods respected and maintained human rights (Kenyatta, 2015). For instance, pre-colonial Agikuyu were aware of the inevitability of human conflict. They learnt that conflict was not only inevitable but could be destructive and threaten survival of the whole community. As such, the Agikuyu developed rules and regulations to ensure that conflict was minimized and controlled. The rules respected life as sacred (Kinoti, 2010). Today this heritage has been forsaken as evident in the large numbers of violent conflicts in the society. The traditional Agikuyu system of justice and conflict management was undermined by colonial administration, Christianity and Westernization. Although modern Western methods of conflict resolution emphasize professionalism and science, it is worth noting that the indigenous methods have been used by Africans from time immemorial (Malan, 1997). Over the last twenty years there have erupted inter-group conflict over land and other disputes in Tetu Sub County. However, increasing reliance on formal contracts to regulate relationships and create understanding and shifts in methods of conflict resolution to statutory approaches based on courts procedures have not mitigated the conflicts. Indigenous conflict resolution mechanisms focus on the principles of empathy, sharing and cooperation in dealing with common problems which underline the essence of humanity (Muriithi, 2006). Some societies have disregarded their indigenous methods because they are tainted with patriachalism which can no longer be tolerated by contemporary members of those societies. Yet, rather than abandoning the indigenous approaches in totality, it is possible to modify it from outdated elements (Malan, 1997). In the traditional Agikuyu culture, the elderly men and women in collaboration with the parents molded the youth. The youth were given special training especially during initiation to help them deal with the atrocities of this life. Conflict management must involve the people and their culture (Benson, 1964).

1.1 Statement of the Problem

The people of Tetu Sub-county of Nyeri County have witnessed an increase in social, economic and political conflicts in the area. Despite the use of the judicial state systems to resolve these conflicts, the conflicts continue across the sub-county. Some of these conflicts cannot be effectively resolved solely relying on the judicial courts hence the need to integrate culture in dispute resolution among the Agikuyu of Tetu Sub – County of Nyeri County in Kenya.

1.2 Objectives of the study

The objectives of this study were to:

- i. Assess how ADRMs can be incorporated into the modern legal systems in Tetu sub-county.
- ii. Examine the possible challenges in applying ADRMs in Tetu Sub-county.

1.3 Justification of the Study

Alternative dispute resolution mechanisms and traditional judicial system constitute vital means by which Kenyans have been accessing justice. Even though a large number of legal issues are settled using these justice systems, analysis on the practice of the two systems is largely un-documented in Kenya. The study aimed at consolidating information on these two areas and making concrete proposals for their improvement with a view to enhancing access to ways in which ADRMs could further complement modern justice mechanism for the Agikuyu in Tetu Sub-county.

It was imperative to undertake an in-depth research on the Agikuyu indigenous mechanisms of conflict resolution as well as their methods, techniques and process of conflict resolution because western methods have often proved ineffective in some conflicts. There are various court structures that serve Tetu Sub-county with qualified professionals who are mandated to solve conflicts and maintain peace in the Sub-county. Despite these efforts, gender-based violence and land conflicts among others are still rampant in the area. The study has contributed new knowledge in the area of ADRMs by assessing how Agikuyu indigenous mechanisms of conflict resolution could be further incorporated into the modern legal systems in the Sub-county.

1.4 Significance of the Study

The findings of the study will enable the judiciary personnel in evaluating the tools it has employed to manage disputes and incorporate other methods identified in the study. It was prudent to carry out the study because very few studies have been conducted on the incorporation of indigenous conflict management mechanisms in modern legal systems in Kenya. In the traditional society the Agikuyu council of elders and the age grade systems helped maintain harmony and develop a moral society. The institutions that were very important in maintaining peace and harmony at the grassroots among the Agikuyu of Tetu have not been emphasized and as a consequence crime rate has gone up. If the situation is not mitigated now, the Agikuyu ADRMs will be endangered. It was with this concern that the study examined how ADRMs could be further incorporated in modern legal system. The study findings will provide a database for use by policy makers, peace makers and the judiciary personnel concerned with the work of managing conflicts in Tetu Sub County. In this respect, the data derived from the study is invariably useful for modification of approaches used to manage conflict for peaceful co-existence. The study results are important tools for use by the government to reconsider the important role of the elders in conflict resolution.

1.5 Theoretical Framework

The study was informed by the indigenous political institutions perspective and the human needs theory. The study sought to establish to what extent the ADRMs can be used in the management of conflicts in Tetu Sub - county. Indigenous approaches to conflict resolution are important because they hinge on peoples' culture (Byrne & Irvin, 2000). Scholars of the indigenous political institutions perspective emphasize the need to interpret the world from the indigenous peoples' own perspective and purpose (Alfred & Wilmer, 1997; Ayittey, 1992; Smith, 2001).

Indigenous peoples' institutional theory can help scholars and researchers to explain the indigenous peoples' existence in contemporary society to counter western institutions and values that have been promoted all over the world at the expense of indigenous cultural systems. This theory is relevant to the study because it recognizes the role of culture in conflict management and it emphasizes on the need of the involvement of all the people in the community to solve conflicts. Secondly, the theory recommends a win - win outcome which prevents recurrence of conflicts in future. Conflicts hinder development hence the need to understand traditional conflict resolution mechanisms in Tetu Sub-county. On the other hand, the human needs theory (Burton, 1997; Rothman, 1992) holds that conflicts arise when non-negotiable needs for dignity, power, identity, safety, destiny and justice are threatened or frustrated. As such, individuals need recognition as persons to minimize different forms of violence and conflicts. In addition, ethnic minorities must be given an autonomous status if violence is to be avoided, decision-making systems must be non-adversarial if leadership roles are to be collaborative. Following this theory, if the needs of the people of Tetu Sub-county are satisfactorily satisfied conflicts in the region will reduce.

2 Traditional methods of conflict Resolution

Augsburger (1992) presents four basic propositions in regard to cross-cultural conflict. He posits that win-lose form of conflict resolution prevent people from searching for alternative solutions. The subjects of conflict can do very little to settle their own disputes. Methods of settling disputes like threats and litigation must be revised to accommodate more creative ways like mediation and negotiation. Augsburger further contends that there exist in traditional cultures time tested ways of

resolving conflict that are better than modern ways. As such, universal way of achieving conflict resolution would be inappropriate because there exist in every culture a way to resolve problems that work for them based on their values and history. In addition, Augsburger argues that it is important to decentralize from common sense in regards to conflict. Each culture will have a pattern of behaviors, a set of values and a set of laws to deal with conflict and thus they will vary from culture to culture. Ibhawoh (2000) asserts that Africa has been betrayed. Freedom from colonial rule has evolved into tyranny, arbitrary rule and denial of civil liberties, brutal suppression of dissent and violation of human rights. This betrayal drives the deep sense of disillusionment, despair and anger pervasive among Africans. The most painful betrayal was cultural insult. He further contends that European colonialists generally held indigenous African institutions and culture with contempt. But the African elite who replaced them were no better. They deprecated the indigenous as backward and primitive. In many cases the elites sought the destruction of indigenous by imposing alien systems to Africa. Moreover, new African leaders forced culturally alien ideologies on their people.

2.1 Agikuyu Traditional Methods of dispute Resolution

Kenyatta (2015) posits that the Agikuyu ethnic community's organization was based on three most important factors without which there can be no harmony in ethnic communities' activities. The first is family group (mbari), which brings together all those related by blood. The second is clan (mohiriga), which joins in one group several mbari units who have the same clan name and believed to have descended from one family group in the remote past. This facilitates the feeling of rendering mutual support in all the important matters for the welfare of mohiriga. The third principle unifying the Agikuyu is the system of age-grading (riika), which unites and solidifies the whole ethnic community in all activities. The activities of various age grades stabilize the Agikuyu community organization. In many cases the mother managed to get conciliation between the father and the children and avoid a conflict. The study has examined how well and important these institutions are regarded today in relation to peace maintenance in Tetu Sub-County. Now we turn to Research Methodology followed by research findings before we make conclusions and recommendations.

3 Research Methodology

The study was conducted in Tetu Sub-County of Nyeri County in Kenya. The Sub-County has a population of 80,100 and a population density 378 persons per km² (Tetu Sub-County Commissioner, 2015). The study adopted a historical approach. This involved the study of a problem that required collecting information from the past. It sought data that was already available. Documentary research involves the discovery and analysis of records of previous events, interpretation of trends and generalizations from these past events to help guide present or future behavior. The sources included primary and secondary sources. Primary sources comprised first-hand information from interviews and original documents. The secondary sources included published works. This approach helped in assessing how the Agikuyu applied indigenous conflict management mechanisms to resolve various conflicts. The target population of the study comprised the Agikuyu community of Tetu Sub-County. The target population included elderly men and women as well as the youth in three sampled wards. Informants included clan leaders, traditional religious leaders and Christian priests, youth leaders, women and men, officers of the Judicial Service Commission, chiefs and Sub-County officers in the Sub-County. Purposive sampling and snowballing methods were used to select the participants of this study. The study used interview schedules with key informants. The informants were assured of confidentiality of their contribution throughout the exercise and their names were not required or revealed to anyone. Pseudo names were used instead of the real names of informants to maintain confidentiality.

4 Research Findings

The interview schedules used to collect data contained items that sought to establish how ADRMs could be merged to the modern legal system to manage disputes. This was very important because when the two mechanisms are used together, much of the reported overwhelming cases to the judicial courts would reduce and become manageable. An informant who had fifteen years' experience as an advocate indicated that ADRMs save time and strengthen cohesiveness in the

community. He asserted that if ADRMs worked in harmony with the modern legal systems dispute resolution would become more effective in Tetu Sub-County.

In addition, incorporating ADRMs with the legal methods would allow participation of the people in the legal matters which would make legal procedures just and fair to all the victims. This would also reduce the element of delays of cases which often make people desperate and adopt violent methods against their opponents. Table 1 illustrates the identified ways of incorporating the ADR mechanisms into the legal methods of managing disputes and their percentage (%) rating in prediction of success.

Table 1.

Ways of incorporating ADRMs into the Modern Legal Methods of Dispute Management

Ways of merging the two Mechanisms	Percentage (%) Rating of success
Defining the roles of each dispute resolution mechanism.	21%
Incorporating the ADR mechanism in the constitution.	18%
Setting standards of duties and responsibilities for both mechanisms.	18%
Defining the qualifications of individuals in charge of the ADR.	19%
Recognizing traditional and religious leadership roles in the society.	24%

The data collected revealed that each mechanism must be well understood even by the public on what they are expected to handle as a dispute and what they are not expected to handle. This makes the people in the community sieve the disputes so that they know which one to take to the legal courts and which one to be addressed by ADRMs. It's worth noting that, one reason which makes people only opt to use legal court is because there is no clear definition of the roles of the two mechanisms and public awareness. The study findings indicate ways in which the ADRMs can be incorporated into the modern legal method to manage dispute. Defining the roles of each alternative dispute resolution mechanism and the modern legal mechanism emerged a better way. This includes outlining what dispute to use what method and the people to solve the dispute. The researcher established that it was very important to also establish the procedures to be followed and educate the public on the same.

Need for More Emphasis of ADRMs in the Constitution

The constitution of Kenya under article 170 (5) provides for the position of the Kadhis' court. The jurisdiction of this court is to determine matters relating to personal status, marriage, divorce or inheritance. Such recognition needs to be emphasized in ADRMs. This would make it possible to be able to build confidence among the members of the society so that they have no fear of using either of the mechanisms since they have the assurance that everything will be handled according to the constitution. Thus, since the legal judicial courts use the constitution to determine the fate of a victim in any case, then it would be helpful if the alternative mechanism is also emphasized as in the case with the Kadhis' court.

An informant told the researcher that the various elders available in the area of study could be blended with young representatives to make the ADRMs department. The overall leader would be a professional to guide the team on the requirements of the law. As such, ADRMs would be practiced without violating the law. Article 68 (c) of the constitution provides the legislation made by the parliament on land. The researcher established that the same procedure is implemented by the elders in Tetu Sub-County. A large percentage of the informants pointed out that if the elders were well recognized by the government and remunerated for their work, such would not be a burden to the judiciary or parliament. Article 11 of the constitution recognizes all forms of cultural expressions and using the ADRMs would be a good example. It outlines that every person has the right to use the

language and to participate in the cultural life, of the person's choice (article 44). Many informants were in support of resolving most disputes according to the Agikuyu culture. Although the constitution recognizes the alternative mechanisms in issues to do with marriage dowries and divorces, such was said to be a negligible percentage of recognition which cannot help solve the available disputes.

4.1 Duties and Responsibilities for both Mechanisms

Another suggestion brought forth in merging the two systems was the setting of standards of duties and responsibilities for both mechanisms. It was realized from the respondents that although sometimes the alternative mechanism has been used, their duties and responsibilities have not yet been made clear to the public. This is contrary to the judicial legal courts where its role is clear to the public. It was therefore noted that there would be a need to have the roles of the two mechanisms well defined to the public in order to enhance effectiveness in performance. This was also said to be able to help the members of the society to identify what dispute to take to which mechanism for resolution. One of the informants pointed out that in most cases people didn't know the procedure to use in cases of disputes. As such, they fight to resolve disputes there and then. As a result they end up killing one another or destroying property. If they were made aware of the different methods of resolving conflicts, perhaps they would choose the best to promote peace. Awareness could be carried out in the form of workshops and even sensitization in schools and churches.

4.2 Qualifications of Individuals in charge of the Alternative Mechanism

The fourth suggestion noted from the collected data was the defining of the individuals in charge of the alternative mechanism in dispute resolution. In fact, it was very clear that though they have been effective in one way or another, the alternative mechanisms have no clear definition of who is supposed to be in charge or working in implementing the mechanism. In the modern legal methods, the qualifications of the magistrates are well defined and their qualification into office is done in a very professional way. However, the alternative mechanisms officials may not be necessarily educated as in the legal method, but their qualification ought to be well defined in order to enable people in the community or the responsible body to vet them in office justly. This will also avoid discrimination and create confidence among the people that the people in office are well qualified for their given task.

4.3 Recognizing Traditional and Religious Leadership Roles in the Society

The last and the best ranked way of incorporating the two mechanisms was by recognizing traditional and religious leadership roles in the society. This was said to be the most effective alternative to dispute resolution but its effectiveness has been hampered by the fact that it had not been clearly defined as a successful method of solving disputes. An informant observed that this method was used to solve disputes in the early times before the coming of the modern legal methods, but slowly it has been ignored and people have chosen the latter than the former. A large number of informants identified a need to have those institutions strengthened and educational seminars on their usefulness conducted to the members of the community in the research case study.

4.4 Challenges of incorporating the ADRMS into the modern legal method

In the questionnaires and interview schedules used in the collection of data, there were items that sought to identify challenges encountered in applying the ADRMs procedures. This was very important since the challenges would bring out an understanding of the reason why applying the ADRMs has been marginalized despite its possible advantages. The following challenges were identified. It was noted that most individuals are only qualified by virtue of age and respect in the society. However, the age may not necessarily be the right qualification but there is need to set a standard of qualification in terms of academic background and past experience in implementing ADRMs among other qualifications. In addition, since the modern methods of dispute resolution require an academic and professional qualification, working with illiterate people in incorporating the two systems may prove difficult. Dispute resolution procedures require people to be educated to understand and interpret them correctly. In fact, the issue of pending cases, use of lawyers and several documentations before

the modern cases in court are cleared is a complicated procedure for the ADRMs facilitators to comprehend. This is because most of them use verbal judgment without the need of lawyers and documentations. As such, the ADR facilitators would need to be enlightened on the procedures for effective merging of the two systems. ADRMs facilitators will need sensitization to overcome biased judgment of the culprits. For instance, in some cases like early marriages and teenage pregnancies, instead of the ADRMs facilitators supporting the modern legal method and let the justice take its course, they instead support the accused for personal reasons or due to corruption. This has hindered the systems from working together and has instead become another dispute to handle all together. An informant posited that clitoridectomy was one area where the two systems differed with each other. While the Agikuyu tradition and culture supported clitoridectomy, the modern legal systems disagree and treat it as an inhuman act. With the spread of westernization, this practice is almost eradicated, though it is still being practiced in some places among this community.

4.5 Fear of Victimization and Enmity

An informant pointed out that in some cases; the elders in charge of the ADRMs have been attacked and killed by the victims or the family members of the victims. This is also combined with corruption among the members of the victims which finally brings mistrust of the elders by the members of the community. This challenge according to the informant can be overcome by an intensive awareness campaign on ADRMs among the members of the community and a workshop for the facilitators.

4.6 Standardized System of ADRMs Execution

The elders in charge of the ADRMs treat every case differently regardless of whether they look alike or not. This makes some victims to feel unjustly handled since their colleague with the same kind of case are treated leniently. If there were a standardized way of dealing with every issue, then the ADR system would be wholly accepted by the community. However this is not the case.

The modern legal systems of justice are however very different from the ADRMs. There is a standard for handling every case so that those who commit a particular type of crime face the same judgment as did their previous victims. For example, a murder case has the same judgment which is life imprisonment or death penalty depending on the stipulated extent of the case. Rape cases are treated the same everywhere so that all the magistrates and judges have a standard for treating every stipulated type of a case. An informant who was a lawyer argued that the ADR facilitators didn't look at the technicality of the cases and conflicts would arise if they were to be incorporated. He added that with the assistance of professionals, elders can come up with a standardized way of prosecuting wrong doers' constitutionally.

4.7 Modernization overshadowing the cultures and traditions

Most of the knowledgeable elders are dead and the ones remaining can only be utilized to pass on the honoured education to the young generation. It's worth noting that the current generation of members of the Agikuyu community is not even aware of the norms of the ethnic community. For this reason therefore, no one is ready to inherit the old way of handling issues. Because of the modern system of education, no one is ready to be taught the old way of doing things by the old leaders of the clans. Consequently, this important heritage may be lost. In other words, modernization has overshadowed the cultures and traditions which make the old leadership norms of the Agikuyu obsolete. It is therefore automatic that there is a big gap between the old generation of the members of the Agikuyu community and the younger generation. If anything is to be borrowed from the old, it can only be incorporated in the new which remains a phenomenon to be dealt with and solution obtained. In addition, some elders have lost their memory. This becomes the worst scenario so that even when there are interested people in taking the ADRMs as the option, the elders are unavailable. Those who are available are senile and cannot help anyone. The young generation thus has no alternative to the modern legal systems where they are sure of a solution no matter how long it will take to have it done. However an informant asserted that the government should tap the valuable

knowledge by utilizing the available elders in resolving disputes in tribunals together with the professionals.

4.8 Disregard by the Youths

An informant argued that the youth have no respect for the elders and many of them do not recognize the clan system. It is evident that the young generation does not value traditional practices and processes. For example, in traditional society the youth could not take beer until they were graduated by the elders when they reached a particular age. This is different today with most of the youth becoming alcoholics. Time is far gone when the old used to be respected by all. In fact, an informant reported that there have been cases of children fighting their fathers and mothers; young men raping the old grandmothers among others which were a taboo in the old indigenous cultures and traditions of the Agikuyu people. An elderly woman narrated how a young boy in class six attempted to rape her in her coffee garden. With education and awareness on the benefits of ADRMs, informants said the youths would learn to appreciate their traditions. However, they pointed out that elders needed to change and emulate their traditional role in the community which some seemed to have neglected.

5 Conclusion and Recommendations

From this study, the following conclusions are made to incorporate ADRMs to modern legal systems. First, the roles of each dispute resolution mechanism need to be defined. Second, the ADRMs should be more emphasized in the constitution and lastly, there is need to set the standard of duties and responsibilities for both mechanisms. We would also like to recommend that the ADRMs should be more emphasized in the Kenyan constitution than it is today and that more people in modern legal system should be trained on this mode of conflict resolution in Kenya.

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