RESTORATIVE JUSTICE AND PEACE CREATION
IN WESTERN KENYA

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Abstract. The article assesses the use of indigenous methods of conflict resolution embedded in restorative practices and seeks to establish the role that Mount Elgon's Residents Association played in peace-building in the area. The study adopts the theoretical work of Johan Galtung's conflict analysis model and John Paul Lederach's conflict transformation work on peace-building. The study reveals a yawning need for younger community members to be more involved in peace-building activities in the Mt Elgon area. It further reveals that community members aged between 35 and 54 years strongly believe that their traditional culture and indigenous practices is central to their peace-building efforts in their locality. The study found out that a majority of community members felt that their involvement has played an important role in disarming local militia groups and in peace-building. Overall, the community strongly pointed at land and "dirty politics" as issues being at the forefront of community conflict in Mt. Elgon.

Keywords: Community Conflict, Indigenous Practices, Restorative Justice, Peace-building

Introduction

Community conflicts usually have long and complex histories of different (ethnic, religious, political) group relationships, attacks and victimisation, are often accompanied by structural violence, and often lack mutual confidence-building and reconciliation efforts. That said, all over the world these types of conflicts emerge due to numerous reasons. At the local level, social changes occur very often as a result of these of conflicts. The impacts of such conflicts continue to leave communities distraught, economies destroyed, and create nervous political and social environment including what has been described as psychological suffering and an omnipresent fear. However, at the same time, it is possible to argue that on their own, conflicts are not automatically a harmful phenomenon; what matters most is the approach that communities take during and after the conflict. In our view, understanding the role that communities play in peace-building using restorative and indigenous approaches in the resolution of conflicts is vital in the stability and long-term sustainable growth and development of not just communities in Mount Elgon in Western Kenya, which are the focus of this article, or East Africa as a region but also the continent at large.

Generally speaking, conflicts in Africa continue to pose significant challenges to the security and prosperity of the continent's 1.2 billion population, which, according to the UN, accounts for about 16% of the world's total population (United Nations, 2019). That said, violent conflict is by no means unique to Africa; other regions of the world have also experienced and known wars and upheavals as well. Furthermore, Africa's conflicts, while having some common attributes, nevertheless differ in important details, reflecting the size, diversity, and complexity of Africa. Recent conflicts in the Eastern and central Africa region have led to serious societal problems such as internal displacement of communities creating at times refugee crisis in other countries. According to the United Nations Humanitarian

Commissioner of Refugees (UNHCR) report titled *Global Trends Forced Displacement Report*, the crises in several countries in the East African region have led to an increase in large numbers of refugees and internally displaced persons. The UNHCR also reported that Chad as a country was number ten in the world in terms of the number of refugees it hosted in 2015. The figure stood at 369,500 refugees by the end of 2015. Kenya, the report noted, had the seventh-largest refugee population worldwide, providing protection to 553,900 refugees, respectively (UNHCR, 2019).

Previous studies of post-conflict situations have often assumed that the main actors of peace-building are states, the United Nations or international NGOs. By comparison, community members were seen as mere recipients of outside intervention. Nowadays, it is fair to observe that community members are increasingly gaining attention as significant actors in peace-building. Having said that, the traditional negative models of peace continue to restrict how we can explain their involvement in the peace-building process. Consequently, the purpose of this paper is to assess the contribution of local community members, their local organisation and the traditional practices they use towards peace-building. In specific, the study argues that traditional approaches, embedded in the local communities' use of restorative and traditional or indigenous practices of the resolution of local conflicts, such as those found in the Mt Elgon crisis in western Kenya, play a crucial part in community transformation.

Looking at the modalities of the inter and intra-community violence in western Kenya, the conflict that took place in Mt Elgon between 2006 and 2008 was devastating in many ways; it left many dead and destroyed many a property. The human rights abuses meted by the Kenya's Defence Forces (KDF) soldiers and a community militia group known as the *Sabaot's Land Defense Force* (SLDF) left the local communities psychologically traumatized. But above all, the crisis tore the social fabric that bound the communities and clans together and resulted in feelings of hatred, mistrust, suspicion and in each community fearing the other. In an effort to develop peace-building in Mt Elgon, various actors embarked on post-conflict peace-building processes in the area. However, researchers have not paid much attention to establish the part that community members through community organizations such as the Mt Elgon Residents Association (MERA), using restorative and indigenous practices, played in restoring peace in the region.

Restorative and indigenous practices are very important but much neglected resources for peace-building, especially when notions of peace and sustainable development are concerned. The most important proposition of traditional methods of conflict management is the respect and dignity that they place on human beings as naturally cooperative and positive agents of change, arguing that it therefore makes sense especially for those in positions of authority to engage them, rather than to decide things for them (Nabudere, 2012). As pointed out by other researchers, the increasing processes of globalization have necessitated the incorporation of traditional approaches to conflict resolution into peace-building theories and practices, which have long been ignored by Western scholars on the basis that they lacked an empirical heritage.

Schiff (2013) has argued elsewhere that it is important for communities engaged in conflicts or recovering from a conflict to engage in restorative practices, as these practices help to build good relationships by redressing some of the imbalances that existed before – and, during the conflict, that might have caused the conflict in the first place. Restorative practices are aimed at addressing or redressing the wrongdoing.

Kenya, compared to her regional neighbors, remains an important engine of economic activity in the region's financial system. However, this perception of Kenya changed drastically following a number of community conflicts in the country. Most notable amongst these conflicts was the almost a decade long conflict in the Mt Elgon area that became

prominent in 2006 to 2008. The political meltdown that erupted following the disputed general elections of December 2007 (Wanda, 2008) also profoundly affected the Mt Elgon crisis. The crisis led to Kenya's status as the East Africa's most stable country being questioned, as well as its ability to manage local or its own internal community conflicts. At that time, Kenyan scholar Gilbert Khadiagala went on to question the region's institutions, such as the East African Community (EAC) and the Intergovernmental Authority on Development (IGAD), in failing to address the situation in Kenya. Khadiagala quoted Rwanda's president Paul Kagame expressing worries felt by other regional leaders that the Kenyan army should have done more to prevent a similar situation that befell Rwanda in 1994 (Khadiagala, 2009: 432). The Kenyan situation aside, the nature of conflicts in the continent remains complex and varied, and their resolutions also remain mixed.

The Nature of Community Conflicts in Africa

A recent World Economic Forum's report titled 'Global Risk Report' (2019) has observed that the world is reproaching the protest levels that were witnessed in the 1980s, caused by different protests in different parts of the world, such as the Anti-apartheid movement in South Africa, the East and West Cold War apprehension and so forth. The report also noted that technological progress as well as changing demographic patterns and climate change politics have all played a role in the transformation. The report further noted that the escalating terrorist attacks in countries such as Kenya and Africa in general continue to cause problems in terms of human and economic capital.

Some researchers have gone on to place the blame for the increasing number of conflicts on an increasing problem of identity politics (Kottak and Kozaitis, 1999). They have pointed out that almost all societies in the world communities are divided along ethnic lines. Historically, as Richard Leone (1998) has pointed out, ethnicity has remained one of the major forms of identity that plays a significant role in exacerbating conflicts. While conflicts based on ethnicity remain an old problem globally, in Africa, according to Nigerian scholar Adebayo Adedeji (1999), it has been a serious issue making the region one of the worst of the world's continents. The African continent has had far too many conflicts in the recent past.

In East Africa, a number of scholars (Murunga 2014; Karuri 2014; Nyongo 2010; and Simiyu 2008) interested in understanding community conflicts and subsequent peace-building efforts have deliberated on the question of ethnicity and politics. Despite the centrality of local community institutions such as the Mt Elgon Residents Association (MERA) in Mt Elgon in the western part of Kenya in resolving community disputes, few resources have been devoted by the international scholarly community or local scholars to supporting community peace-building capacities in sustainable ways that ensure the restoration of peace and prevention of future conflicts.

Indeed, many peace-building studies in the African continent continue to focus mainly on the question why armed groups wage wars against the state (Hendrix and Glaser 2007; Buhaug and Rod 2006; and Collier and Hoeffler 2002). The dominant focus on civil war and insurgency is understandable, given the tremendous human suffering they cause through deaths, displacement, and the disruption of the economy. Yet armed conflict is not the only way people use contentious tactics to effect change.

Given this background, in our view, theories of conflict and conflict resolution, although important in the public policy cycle, do not go as far as indulging the important factors of human understanding and relationships – in a word, how people or communities relate especially in a conflict or a post-conflict environment, such as the Mt Elgon area in Bungoma County in western Kenya.

Methodological Approach

The study adopted a mixed methods approach in order to provide a comprehensive picture of understanding of the peace-building processes and the role that the community played to bring about peace (Creswell, 2009). Structured questionnaires were used that generated quantitative data and focus group discussions that generated qualitative data. This research approach was suitable as it allowed us to collect detailed information as well as in identifying how variables interacted in peace-building in the Mt Elgon area from 2007 to 2017. A sample of 90 community members was selected out of total population of 300 local community member that belong to MERA. This represented 30% or one quarter of the total population of members that belong to the Mount Elgon Residents Association (MERA) organization. These respondents provided their views on how they, as members of the local community, using restorative practices and indigenous approaches, were involved in peace-building practices following the conflict in Mt Elgon. Out of the sample of 90 community members, 75 valid responses were received yielding a response rate of 83.3%.

Based on the data collected, the Bukusu community members felt that they were very highly involved in the peace-building process, while other Luhya sub-tribes in general felt they were to a high extent involved in peace-building at 66%. The Sabaots, on the other hand, who made up the majority of the community that responded to the research exercise, felt they were not adequately involved. Only 16% of Sabaot community members felt that they were very highly involved in the peace-building exercise. The other major tribal groups in the Mt. Elgon area, the Iteso, Luo and Kalenjins responded that their involvement was minimal.

From these community responses based on the tribes representative of the Mt. Elgon communities it appears that a significant local population felt that they were marginalized in the peace-building process. In resonance to Johan Galtung's ABC Triangle Model of Conflict Analysis, where A is for Attitude, B for Behaviors and C for Contradictions, it is evident that the attitudes or the perceptions of the tribes of the communities at Mt. Elgon appear to be both positive and negative, strongly positive in some instances (Bukusu community) and strongly negative in some instances (Luo and Kalenjin communities). These attitudes therefore affected their Behavior and this in turn determined largely their involvement in peace-building. Furthermore, there were some Contradictions in that the Sabaot, for instance, who were the majority of the respondents at 59%, felt that they were not highly involved in the peace-building process. This can perhaps be explained historically through their perceived differences with the Bukusu community, especially in relation to land.

The conflict in Mt. Elgon has been characterised by the long struggle of the Sabaot against the historical injustices occasioned by the disinheritance of their ancestral land in the wider Trans-Nzoia region by the colonial government without any form of compensation by successive governments. Initially, the Sabaot were situated in the Bungoma District (that is at present Bungoma County) that formally part of Western Province. Although Sabaots share similar cultural ties with Kalenjin community that are spread across the counties situated in the former Rift valley Province (TransZoia, Nandi, Kerich, Bomet, Uasin Gishu), they were administratively grouped together with the groups with whom they did not share common ties (Simiyu 2008). Bungoma County, for instance, where this study was located, is mainly dominated by the Bukusu, who are the majority in numbers, while the Sabaot remain a minority.

Focus Group Discussion

The study obtained its quantitative data through the use of a focus group discussion with individuals knowledgeable of the conflict in Mt Elgon and the subsequent peace-building

process in the region from 2007 to 2017. Some of these individuals belonged to opposing factions at the time when the conflict ensued. The FGD was conducted in Cheptais Sub-county, where MERA is headquartered and the majority of the respondents originate from. Most of the individuals that were selected for the discussion were themselves directly involved in the conflict, as well as the post-conflict peace-building activities in the area. The discussions attempted to establish factors that precipitated the conflict as well as the role of the community in peace-building between 2007 and 2017.

The focus group discussion comprised of a mixture of both female and male community participants. There were a total of 9 participants comprising of 5 females and 4 males that were MERA members. The aim of the FGD was to obtain in-depth knowledge of local community members and their perceptions of their involvement in peace-building in Mt Elgon area. Another aim was to assess their use of indigenous or traditional peace-building methods in conflict transformation in the Mt Elgon area. Furthermore, another objective of the FGD was to establish specifically MERA's contribution to the peace-building efforts in Mt Elgon area. Guided by 10 open-ended questions, the researchers organized one session that had a total number of 9 participants. The session lasted approximately 4 hours. This was in line with Krueger and Casey (2000) who observed that although the optimum number of participants for a focus group may vary, a manageable number is between six and ten participants. This study's focus group discussions were then captured using field-notes, where major points of consensus and disagreements over the 10 key questions relating to the study's variables in peace-building in Mt Elgon were engaged.

FGD – Findings

The session begun with the question: '*To what extent were you affected by the conflict in Mount Elgon?'* This question was selected deliberately because it was aimed at introducing the rationale of the research exercise. It was explained to the participants that the overall purpose and objective of this study was to assess their participation in peace-building in their locality from the period 2007–2017. It was further explained to the participants that the discussion will be conducted with the study's other objectives in mind which were aimed at assessing the use of indigenous peace-building methods in conflict transformation in the Mt Elgon area; as well as establishing the contributions of MERA through its programmes in peace-building efforts in the Mt Elgon area.

Based on the evidence collected, each of the participants confirmed that they were directly affected by the conflict in the Mt Elgon area. Some were displaced and lost property including animals. A majority reported that their family members were killed. One participant reported having lost nine members of her family. Some female participants reported having suffered sexual violence especially repeated and violent rape. Others reported having been left homeless. Others reported that they still lived in fear and suffered trauma to the present day.

During the discussion, a significant majority agreed that the community itself in Mt Elgon has played a pivotal role in peace-building in spite of numerous difficult challenges. One of the recurrent challenges they mention was in respect to the land that many of them lost, the second issue was the problem of displacement. Some of the community members praised the idea of regular community dialogues and elders' forums, or *Barazas,* in addressing some of the challenges that they continue to face in the community. For instance, the problem of widowhood and orphans was repeatedly mentioned. Youth unemployment is another factor that, as participants were concerned, was a trigger to the Mt. Elgon conflict. They explained that because of idleness caused by lack of employment and lack of training opportunities, the idle and agitated youth were easily recruited into militia groups such as the SLDF.

The community felt that another fundamental problem that underlies the reoccurrence of conflict and violence in Mt Elgon was primarily based on the problems surrounding land. They also blamed what they called 'dirty politics.' It later emerged that this was in reference to the perceived historical injustices that the Sabaots feel against the Bukusus in the wider Mt. Elgon area. When it came to the land issue, the GoK was significantly blamed for failing to redress land conflicts in the area as well as at times seeming to deliberately favour certain individuals within the wider community. The question of land had been aggravated by what the community saw as lack of political good-will to put in place relevant community driven policies and legal frameworks to redress colonial legacy of partition. In spite of GoK's effort by intervening in the Mt Elgon conflict in order to restore peace, there is a perception that the community reflected in the FGD that the government was not a neutral arbitrator.

Some of the participants suggested inter-marriage as a way of lessening ethnic tension and building stronger community cohesion with the long-term objective of diffusing violent conflict in the area. According to the participants, ethnicity has been a problem, although they admitted that it was not a major one. There were certain stereotypes that some of them harbored against other ethnic groups in the Mt. Elgon area. They admitted that these derogatory perceptions of other communities were potential reasons that may have exacerbated community conflict in the area.

Some of the younger participants felt that their generation had largely been ignored by the elderly especially during community forums such as *Barazas* that are often chaired by the older members of the community. Participants who were younger wanted to be included in community gatherings or forums aimed at addressing issues of peace-building and conflict resolution. They also stressed that they were interested in empowering activities that were often aimed at women and women-led organizations. Other participants echoed politics of negative ethnicity. This mainly came from communities that had freshly immigrated to Mt. Elgon area. They explained that they felt equally marginalized and excluded from mainstream community activities including peace-building that are occupied by major tribes in the area.

This study's theoretical framework engaged the work of Norwegian sociologist Johan Galtung's conflict analysis model and the American sociologist John Paul Lederach's conflict transformation theory on peace-building. Peace-building theories are largely credited to the work of these two scholars. Galtung's work calls for the creation of peace-building structures that are aimed at promoting long-lasting peace in society by tackling the original reasons that brings about conflicts and supporting indigenous approaches such as those found in the Mount Elgon region in resolving conflict and managing peace.

Conflict Analysis Theory

John Galtung's work is important in the study of peace-building in the Mt Elgon area in many respects. His theoretical works since 1963, when he first published in the *Journal of Peace Research,* broadened the focus of our understanding of the nature of conflicts and how to prevent them. Of interest to our study of Mt Elgon's communities in the aftermath of the conflict of 2006 and 2008 is Galtung's introduction and subsequent use of the terms structural violence, development and social justice (Galtung, 1963).

So, in a way, Galtung's peace-building theory moves us away from focusing on the actors in conflict with rationalization of our understanding of peace and violence, and he introduces us to the concept of using structure as tangible account of conflicts in communities such as Mt Elgon, where the central idea is that the 2006 and 2008 violence existed because of the structure and the actors such as SLDF or, for that matter, the KDF were mere actors carrying out that duties.

By connecting conflict in society to structural problems in the community, Galtung's theoretical premise helps us to locate the concepts of peace, conflict and progress in the community. The concept of structural violence theory is important in the Mt Elgon context in that it helps us to understand the formation of local community organizations such as MERA and their quest for social justice through restorative and indigenous peace-building efforts (Galtung, 2013). Galtung was convinced that research into conflicts in the communities and peace-building in general should not be limited to only issues of de-escalation of structural level violence, but that researchers must seek to understand the conditions for the prevention of violence in the community in general. In order to achieve this properly, Galtung seems to suggest that researchers must look at both peace and violence in totality and at all human organizations (Galtung, 1996). The value of positive peace in Galtung's theory is its visualization of generating harmony in the community instead of just focusing on putting off conflict fires, as was the case in the Koffi Annan led political negotiation in Kenya following the 2007 general elections impasse (Wanda, 2008).

We sought to ascertain whether the local community felt that their involvement in peace-building in Mt Elgon area was important in creating sustainable peace infrastructure in the region. The response in a way was aimed at understanding Johan Galtung's concept of structural violence in the community. Where personal and direct violence that a community can suffer from are often built into the social structures of a given community, it is much better to focus on the bigger picture revealed by structural violence, as this would reveal the causes and effects of violence and conditions for peace (Galtung, 2013). The study found that 72% of community members strongly agreed that their involvement was central to sustaining a sustainable security infrastructure in the region.

Conflict Transformation Theory

John Paul Lederach, the other theorist whose work on conflict transformation and in particular his idea of grassroots community participation in peace-building resonates well with our study, has observed that the reason why so many peace strategies have not been successful is because very often grassroots communities have distanced themselves from what they perceive as elitist institutions, and the governing structures that are extraneous to their immediate interaction (Lederach, 2005). Lederach's argument is that conflict resolution researchers need to critically explore the content and approach to conflict resolution in relation to a community's customs. He points out that cultural dissimilarity in community conflicts have been misunderstood as externally driven (Lederach, 1997). Central to Lederach's theory is the call for reconciliation. For Lederach, repairing damaged relationships in the communities is not just a preserve for the elites sitting and talking in a comfortable hotel as was the case at Serena Hotel in Nairobi during the 2007 general election impasse. He instead calls for grassroots community participation in the peace-building process as is the case in the Mt Elgon area following the conflict that peaked between 2006 and 2008.

Lederach's notion of conflict resolution applied to the Mt Elgon conflict is important not only in illustrating that communities can live together in peace, but more importantly it helps to demonstrate why MERA as an organisation and the community itself at large must live together in peace. Conflict transformation theory is as such useful to communities that have experienced conflicts, as those in Mt Elgon, because this theory discourages the presumptuous culture of violence begets violence and instead encourages a more restorative approach. Cross-border communities around the mountain can engage in repairing community relations aimed at harmonising and advancing societal development by adopting a dialogue-led holistic, bottom-up, participatory approaches embedded in a transformative theoretical model (Wanda, 2013; emphasis added).

Indeed, in cases where stakeholders mistrust each other, such as in the Mt Elgon conflict, or when actors in the conflict have such major disagreements, it is important for these actors to make attempts to engage in a dialogue aimed at resolving the issues at hand amicably and respectfully (Susskind et al, 2003). Our findings reveal that a significant number of community members thought that indigenous or traditional practices of conflict resolution were effective in peace-building in their locality, 81% were in favour as opposed to 19% who thought indigenous or traditional practices of peace-building played little or no role at all in their pursuit of peace in Mt Elgon. Furthermore, from the data gathered, 74% of the community members felt that indigenous or traditional cultural practices influenced their decision making when it came to their role in peace-building in their community. 17% were not sure, 5% disagreed, and a further 3% strongly disagreed.

From these facts, the study seems to confirm John Paul Lederach's conflict transformation theory, particular when he stresses the inclusion of grassroots community participation in peace-building efforts. Especially relevant is his observation that the reason why so many peace strategies have not been successful is because very often grassroots communities have distanced themselves from what they perceive as elitist institutions, and the governing structures that are extraneous to their immediate interaction (Lederach, 2005).

Win-win characterisation

Recent empirical literature on conflict studies has shown how leading scholars from the western sphere have influenced the perception and, subsequently, shaped policies even in a country like Kenya that has in turn had effects on community conflicts such as that of Mt Elgon. Kaplan (1994), for instance, perceives Africa as being retarded and wild. Samuel Huntington in his book the *Clash of Civilisation* (1993) has blamed conflicts in Africa on cultures, which, he says, have led to the current problems of fundamentalism and radicalisation. Others, such as Chabal and Daloz in their book *Africa Works* (1999), also look at the continent simply as the way it is. These stereotypical generalizations of wars in the continent are ultimately aimed at portraying Africa as simple and absurd.

Pamela Aall (2015) points out that there are mainly three major assumptions that underlie the analysis of conflict in Africa. She lists the first assumption as the zero-sum power politics; her second assumption is that conflicts occur due to state's weaknesses and the failure of governments to provide basic services; and as the third reason, she blames differing cultural and societal views (Aall, 2015: 1). In our view, while Aall's diagnosis of conflicts in Africa maybe correct to a limited degree, it is possible to argue that it does not capture the whole picture, as she acknowledges in her own 2015 article. Aall goes further and argues that in any event, it is important for us to look at the enabling conditions that lie beneath a particular conflict as this will help in resolving that particular conflict (Pamela Aall, 2015:1).

Indeed, in most traditional African societies, although conflict generally existed like elsewhere, whenever an incompatible situation arose (which very often also led to what Ajayi and Buhari have called a "win – lose" characterization), a traditional resolution would be used to transform the "win – lose" situation into a "win – win" outcome for all (Ajayi and Buhari, 2014:139).

The "win-win" approach is of particular relevance to conflict resolution, as it allows actors and parties involved in the conflict to become partners in the resolution of that conflict. The key to resolving a conflict is to convince both parties that they will mutually benefit from a resolution. As Deutsch (1973) has noted, a destructive course in a conflict is avoided when parties in a conflict work together instead of separately and competitively win-win approach is very important as all parties feel that they have won (Deutsch, 1973).

Efforts and Challenges to Peace-building in Kenya

Kenya has experienced a number of challenges in its efforts to peace-building. To begin with, it is fair to observe that efforts towards peace-building have largely been driven by concerns about election and post-election violence that often occur during the country's elections that usually occurs every five years. The country's Administration Police according to the government's own account have been part and parcel of the problem when it comes to conflicts (Akiwumi Commision, GOK, 2011). Another reason is that organisations that are engaged in peace-building activities tend to be based in the capital city Nairobi or other major cities in the country. This alone has made it difficult to monitor situation in the remote or rural areas and for these organizations to subsequently offer much needed support in structural changes aimed at resolving some of the issues that ignite conflicts. Another major problem that has affected peace-building efforts in Kenya has been poor methods of conflict monitoring, and the community has often been ignored when it comes to resolutions of conflicts in society (Pickering, 2007). Cultural practices and indigenous approaches to peace-building have also not been taken serious as tools that can be used positively to enhance peace in the country. Additionally, as a country, Kenya has not positively used its past experiences as examples to prevent conflicts that often reoccur based on contentious issues such as land and boundaries (Klopp et al, 2010: 4).

Historical Background to the Mt Elgon Conflict

To begin with, the conflict of Mt. Elgon that officially ended in 2008 has had many dimensions at play. Simiyu (2008) argued that the regular re-occurrence of land associated conflicts in the area was often amplified during elections time. According to him, it appears that there is more to the conflict than what it appears in the first instance. Simiyu suggests that there is a heavy input of political activity and pressure from well-placed individuals in the area (Simiyu, 2008). For this reason, Simiyu concluded that the land problem which the local community of Mt Elgon has experienced since the colonial period might be a proxy reason for the conflict in Mt Elgon.

Contributing to the debate at the time, the Human Rights Watch (2008) further mentioned that cattle rustling, mineral extractions as well as the construction of the national park were other possible mitigating factors in the conflict. In spite of the promulgation of a new constitution in August 2010, as the 2013 general elections neared, various political realignments took shape in the Mt. Elgon region. For instance, *Sabaot* leaders expressed fear of dominance by the *Bukusu* in leadership due to their overwhelming numbers and this affected the community's perception of itself on the county governance level. Whereas the constitution and the subsequent elections gave the community renewed hope and brought forth new opportunities and rights, it has also proven that it carries with it the potential risk for future violence in the Mt Elgon region.

While the Constitution changed the structure of government and how Kenya was governed by creating forty-seven counties, each with a significant budget to spend on the local area, the changes came with new problems, such as disputes on boundaries and so forth. As anticipated by the *Sabaots* in the 2013 general elections, the gubernatorial seat in Bungoma County was won by Mr. Kenneth Lusaka, a *Bukusu*. During the (2010) referendum for a new constitution, the *Sabaoti* had voted overwhelmingly against it with reasons well-articulated as not wanting to be governed in Bungoma, citing historical injustices of socio-economic nature as well as political marginalization orchestrated by the *Bukusu* leadership way before 1992, when the Daniel Arap Moi government curved them a district. One year on since the elections, and there were reported cases of ethnic violence, disturbances and cross-border regional tension.

It is these perceived suspicions between the local communities, lack of faith in government intervention (as the state is also seen as a major culprit) that led to the emergence of militia groups such as *Janjaweed* and the *Pok*-dominated *Sabaot Land Defence Force* (SLDF). According to state sources, the militia groups ran a parallel government in Mt Elgon, taxing residents and administering its own 'judicial system', until the government through its operation *OkoaMaisha* suppressed it. Therefore, the Mt Elgon conflict was triggered by a number of reasons, including issues of land ownership, defective electoral process, political manipulation, unequal distribution of resources and so forth. That said, in an effort to enhance local peace-building efforts, we are aware that there has been very little research conducted to ascertain the role that local communities through local community organizations that spread across the border such as that played by MERA involved in peace-building activities in the region. Much scholarly work in the area has been devoted to discussing what accounts for the process of conflict resolution and the durability of the peace following periods of acute civil conflict. These have included: contextual factors (economic and demographic), features of the conflict itself for instance the time and concentration of the conflict (Hoddie and Hartzell 2005).

Most of the empirical literature concerning how conflicts end have focused on institutional and structural changes that prevent conflict resumption or encourage peace duration. In particular, scholars have examined the features of the settlement and how they affect the probability of conflict resumption. For instance, Hartzell, Hoddie (2005), and Waltzer (1992) argue that conflicts that end in a negotiated settlement tend to lead to longer periods of peace duration, particularly if the peace settlement includes multiple dimensions of power-sharing between former protagonists such as was the case in Kenya when Mr Mwai Kibaki and Mr Raila Odinga had to share power equally (President and Prime Minister, respectively) after the highly disputed general elections of late December 2007.

On the other hand, other literatures including works in political psychology have pointed to the psychological processes that directly affect the duration of the peace – particularly the long term reconciliation process. This is reflected in the work of Bar-Tal (2000), who argues that conflict resolution not only includes a "settlement" (or the institutional and structural aspects of promoting peace) but also "reconciliation" – a psychological process (Bar-Tal, 2000: 48).

Indigenous and Restorative Practices in Peace-building in Mt Elgon Area

Indigenous conflict resolution mechanisms comprise social, economic, cultural and religious-spiritual dimensions in accordance with the entirety of traditions, customs and world views of a society within the different spheres of societal life. The methods involve negotiations, mediations and reconciliation based on the knowledge, customs and history of the community. Indigenous approaches to conflict resolution aim at restorative justice, restoration of order, harmony and the maintenance of relationships within the community through reintegrating feuding parties for true reconciliation. From the data gathered, 59% respondents agreed that they often used indigenous practices in peace-building. A further 24% strongly agreed that they used traditional or cultural practices in peace-building in their locality. 9.3% were uncertain, 5.3% disagreed, while only 3% strongly disagreed.

There are three significant pillars that support the enterprise of restorative practices. These are aimed at repairing the harm done during a conflict; holding wrongdoers accountable; and, more importantly, they are aimed at restoring relationships of those involved in conflict. Unlike other traditional western forms of justice, restorative justice does not deal with offences by myopically determining punishment. Instead, the restorative system views crimes committed in a community in a wider scope. When one commits a crime, it is

not just a matter of offending the law but the offender also violates the wider community. Therefore, the focus and importance is given to repairing the harm done to the community, not just redressing the violated law (Walterman-Spreha, 2013).

In a community like Mt Elgon, where the actual number of deaths as a result of the 2006-2008 conflict is yet to be established (but according to the Human Rights Watch (HRW), approximately 600 people were killed by SLDF, others maimed, had their ears chopped or tortured as a way of punishing them (Human Rights Watch, 2008)), creating a situation of a surge in widows and orphans in the region, a map of restorative practices might entail a communal contract drawn up by the communities that outlines the specific requirements for the perpetrators that demonstrate remorse, an acceptance of responsibility, and a demonstration of accountability. If all actions on the community contract are fulfilled within the stated amount of time, the offenders are then slowly and safely reintegrated back into the community. But as Calhorn (2013) has argued, this process is not an easy one. However, there is evidence to show that it often yields more positive outcomes for victims, the community, and the offender than does the conventional treatment of community crimes (Calhorn, 2013).

In our view, the ubiquitous retributive justice system employed by the government's state-centric approach to the Mt Elgon conflict of 2006-2008 was largely concerned with broken laws. It appears that there were two questions that predefined the government's response in the conflict. These were: what laws were broken? And, who broke them? Perhaps, even another one: What do the offenders deserve? Its success was as such measured by the extent of the punishment netted out to the communities in Mt Elgon. This state-centric KDF approach is arguably effective in some instances, for instance, the ongoing 'War on Terror', largely driven by the threat posed to Kenya by Somalia's Al-Shabbab terrorist group. However, in other situations, such as the Mt Elgon conflict, it left community members feeling unnecessarily harmed and, in some cases, even isolated. Those affected by the conflict and the communities involved were not adequately addressed by the government's approach to the conflict. As a result, it deepened societal wounds while limiting its effects on the healing process.

In comparison, given the same situation, under restorative and indigenous practices, questions such as 'who has been hurt?' would have been asked. Or, 'what are their needs?', or 'who else is involved in this?' or 'how can we make things right for all involved?' Restorative practices in this sense, propose that crime is not as simple as a broken law. People, relationships and communities at large are harmed. And that harm needs to be addressed. Being grounded in the principle of repairing harm, restorative practices are simply a viable alternative for resolving community conflicts. The practice promotes holding offenders accountable while at the same time restoring peace in the community.

MERA's Contributions to Community Peace-building in Mt Elgon

In our view, understanding the role that communities play in peace-building using restorative and indigenous approaches in the resolution of conflicts is vital for the stability and long-term sustainable growth and development of not just Kenya or the region but also the continent at large. MERA, which was registered officially on the 13th of April 2005 by the Registrar of Societies, has been operational since about 1995 and continues to engage in peace-building activities in the region. MERA is located in Cheptais Sub-County in Bungoma County, a locality that has been most hit by resource-based conflicts, which are said to have been politicized during the 1992, 1997, 2002 and 2007 elections. MERA's organization's effort focuses on four working areas (1) Democratic Governance and Advocacy; (2) Peace and Security; (3) Education; and (4) Rural Development, Climate Change Adaptation and Environment Protection. The 'community' organised through organizations such as MERA in

the Mt Elgon area are important in the context of conflict resolution and peace-building. They help community members to cope during difficult times by using traditional practices in the restoration of peace under difficult circumstances (Pouligny, 2005).

Community Dialogues – Barazas

In Kenya today, communities are increasingly relying on indigenous methods and approaches aimed at supplementing the modern high court. A good example of this blend of indigenous mechanism in Kenya today can be found in how local elders under the Land Disputes Tribunals Act of 1990 are used in resolving certain cases presented to the court system. This is important because land and boundaries disputes have been a major contributory factor to the conflict in the Mt Elgon area. Under the 1990 Land Disputes Act, the law allows for certain disagreements within the community to be resolved by nominated local. This indigenous practice has served to ease the pressure from the modern Court of law system. It has also helped community members who have disputes to have their cases heard at a cheaper cost and their issue resolved quicker. That said, different communities in Kenya have different ways of resolving conflicts indigenously. These different indigenous practices have helped the government of Kenya (GoK) by complementing its efforts in dealing with certain conflicts in the community such as the Mt Elgon one (Malesi, 2008).

Elders' community forums, or *Baraz*a, are a common feature in the Mt Elgon locality often used for sharing information and for gathering community opinions on local issues. Very often *Baraza* forums are used to resolve many a community problems including conflicts. Evidence from the field suggests that an overwhelming majority of community members (90%) agreed that the use of Baraza forums have played a useful role in peace-building in the Mt Elgon locality.

Research Findings and Analysis

According to the study's findings, the total number of male respondents was 43 out of a total of a total of 75. This accounted for 57.3%. Female participants were 32, or 42% of the total sample. The study revealed that 86% of the total respondents had some form of formal education. 21% were educated at primary level, while 40% had reached secondary education level. 16% had vocational qualifications, while a further 9.3% had higher education level of qualification. When it came to gender in relation to formal educational level attainment of community members, there were 10 women as opposed to 6 men who were educated unto to primary school level. At vocational level education, both male and female respondents were equal in number; they were 6 men and 6 women. However, men doubled the number of women at 20 as opposed to 10 women that had secondary level education. At post-secondary school level, there were 7 men and no women at all.

In response to our first objective, the study found that 64% of community members strongly agreed that their involvement was central to sustaining a sustainable security infrastructure in the region. However, the study found that that opinion was divided in the local communities as to what extent they were involved in the peace-building process in the area.

Using one of the study's independent variables' indicator, when it came to the disarming of the local militia groups such as the *Saboat Land Defense Force* or the *Janjaweed* as part of their involvement in peace-building process, a majority of community members (43%) were uncertain or neutral, while a further 27% confirmed that they felt the local community did not do enough to disarm the militia groups.

In response to the study's second objective, from the data gathered it was found that 83% of community members agreed that they often used indigenous practices in peace-building.

The data collected suggests that those aged between 35 and 54 years largely thought that their traditional culture and indigenous practices was central to their peace-building efforts in their locality. Furthermore, evidence from the field suggests that the majority of community members 90% laud the use of *Baraza* forums and consider them as having played a useful role in peace-building in the Mt Elgon locality. When it came to the overall effectiveness of indigenous or traditional practices of conflict resolution, a significant number of community members thought that they were effective in peace-building in their locality, 81% were in favour as opposed to 19% who thought indigenous or traditional practices of peace-building played little or no role at all in their pursuit of peace in Mt Elgon. The study also found that 93% of MERA's community members felt that the organization had played a useful role through its programmes in the community towards peace-building. The data suggests that 74% of respondents also thought that MERA played an important role in disarming local militia. The data also suggests that 28% of respondent strongly felt that MERA through its community programmes had empowered and raised the profile of women in the Mt Elgon area. A further 48% of respondents also agreed that MERA community programmes were beneficial to women and this enhanced peace-building activities. 18% remained neutral while 3% disagreed.

Conclusions

Overall, the community seems to be in agreement that the involvement of the community in efforts towards creating an everlasting peace in their locality was undoubtedly important. The community strongly pointed at land and "dirty politics" as issues being at the forefront of community conflict in Mt. Elgon. Data suggests that the local communities in Mt. Elgon do not trust the GoK as a neutral arbitrator. From the evidence gathered, when it came to the KDF's '*Operation Okoa Nchi*' intervention, the community felt that the GoK was heavy-handed. Therefore, GoK needs to involve more community-led initiatives in peace-building in the region. The County Government of Bungoma needs to be more inclusive in terms of its resource allocation to avoid accusations of nepotism, favoritism and the deliberate marginalisation of certain communities within the county.

Community's involvement in Mt Elgon is commendable. However, there were some communities that felt that their participation in the peace-building process was largely ignored by the larger communities. Furthermore, younger community members or the youth should be included more in activities concerning peace-building. Efforts should be made to encourage their participation to avoid the reoccurrence of conflicts in the region. Additionally, empowerment programmes with an economic inclination should be expanded to not only the female members of the community, but also to younger community members. The data suggested that those aged between 35 and 54 years largely thought that their traditional culture and indigenous practices was central to their peace-building efforts in their locality.

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РЕСТИТУЦИОННОЕ ПРАВОСУДИЕ И МИРОТВОРЧЕСКИЕ ПРОЦЕССЫ В ЗАПАДНОЙ КЕНИИ

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Аннотация. Статья посвящена анализу традиционных для коренных народностей методик разрешения межобщинных конфликтов в контексте реституционного правосудия на примере конфликта в районе горы Элгон в западной Кении, протекавшего в 2006–2008 гг. Опираясь на теоретические работы исследователей в области конфликтологии, таких как Иоганн Гальтунг и Джон Ледерах, автор анализирует результаты исследования, проведенного среди жителей округа Бунгома в Западной провинции Кении, и приходит к выводу, что местное население придает большое значение традиционным методам разрешения конфликтов, таким как привлечение старейшин и других авторитетных лиц к переговорным процессам и др., а также считает, что центральное правительство недостаточно полно использует подобные способы разрешения конфликтов, предпочитая более ортодоксальные методы ретрибутивного правосудия. Автор дает ряд рекомендаций, направленных на увеличение роли местного населения в локальной миротворческой деятельности, среди которых: более активное вовлечение молодежи и женщин в данные процессы, реституционный, а не ретрибутивный подход к осуществлению правосудия, поощрение создания местным населением организаций и объединений, отстаивающих его интересы.

Ключевые слова: межобщинные конфликты, местные практики, реституционное правосудие, миротворчество