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## **Contesting Traditional Conflict Resolutions Mechanisms in a Neo-liberal setting: Lessons from Kenya**

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### **Abstract**

*There exist challenges of transposing traditional conflict resolution mechanisms into a modern conflict context informed by neoliberal ideas. This article postulates that neo liberal ideas of conflict resolution subordinate the traditional practices of conflict resolution because the interface between the two approaches is discordant. Given the incessant conflict scenarios under interrogation it is prudent to develop a framework that synergizes workable and appropriate mechanisms and methodologies from both the traditional and modern set up.*

### **Introduction**

This article interrogates the traditional conflict resolution mechanism in a neoliberal setting. The conflict resolution terminology is used in this study to refer to the termination of conflict situation by applying home grown or indigenous strategies. The article is contextualized in a situational analysis of recurrent conflict environment in the independence era in Kenya and more specifically drawing relevant examples from current conflict situations with regard to northern, eastern, coastal parts and sections of the Rift Valley of Kenya.

The neo liberal approach to peace postulates that security, rule of law, democratic forms and economic reconstruction foster peaceful societies. Further to this, neo liberalists argue that market democracies construct inclusive and emancipatory peaceful processes. Under this framework conflict resolution involves the reduction, elimination, or termination of all forms of conflict using methods and processes that facilitates the peaceful ending of conflict. Neo liberal approach postulates that conflicts may be resolved through negotiation, mediation, diplomacy, and creative peace building and use of non-violent measures (Macmillan, 1997:34; Keohane & Martin, 1995:45-46).

The liberal peace elevates globalization, economic transformation through macro-economic stability and reduction of poverty to minimize the chances of conflicts. The democratic peace theory argues that democracies have non-aggression tendencies to each other and when conflicts emerge they have incentives to seek alternatives to war. Internally, democracies have mechanisms for resolving conflicts and assured guarantees. Where conflicts occur, particularly in emerging democracies there exist prescribed norms for resolving them (Jervis, 2002:5; Fukuyama, 1992:212; Levy, 1989:88).

### **Context**

Northern Kenya is the home to nomadic societies such as the Turkana, Samburu, Pokot and Somali. Some of these societies share international boundaries with Uganda, South Sudan, Ethiopia and Somalia. The region has been the center of local and international conflict over a long period of time (Menkhan, 2005:17-38). This is because of dwindling resources and the modern concepts of border and citizenships that are divorced from the traditional understanding and perceptions of territoriality and neighborhoods. Territoriality mostly corresponded to seasons while neighborhoods are highly transitory and randomly formed. Individuals moved in and out of neighborhoods in accordance with nomadic patterns. Territoriality defined limits of ownership and accessibility of members to resources but under exceptional circumstances allowed non-members into territorial sections. Territoriality and neighborhoods defined identity, inclusion, Exclusion, borders, borderland and citizenship (Campbell & Axin, 1980).

The establishment of colonial administration in Kenya redefined and introduced fixed borders and imposed the notion of citizenship and the process of identification, reducing independent communities into subjects. International and local borders did not take into consideration traditional notions of territoriality but cut across communities and placed them into separate states. People who initially belonged to one community found themselves labelled as citizens of different states. Movement beyond defined borders brought communities into conflict with the colonial and post-colonial state and even among ethnic communities that more often co-existed under well understood notions of territoriality and neighborhoods. Circumscribing the nomadic communities into fixed zones led to marginalization because the nomadic activities would not thrive in restricted surroundings. What ensued was the pauperization and constant animosity as pastoral communities fought over scarce resources for survival. Stock raiding became a common feature while movement across international boundaries has become a common that raises issues of illegal migrants, citizenship, refugee and insecurity (Dereje and Markus, 2010).

The paper posits that modern conceptualization of borders and citizenship is vaguely understood by the nomadic societies in the region. It is more retrogressive and the source of recurrent conflicts. From the modernist state, borders reinforce governance operation but from the nomadic communities in the region it is a means of marginalization and dispossession. The physical border, to many of the communities does not preclude society from the use of resources. The contestation raises fundamental question on the relevance of modern structures of governance on communities that have traditionalist approach to political, economic and social survival (Mwaniki, et al, 2007:28-31).

The hegemonization of ethnicity, ethnic exclusion and inclusion together with the creation of ethno territorial borders reinforce the process of inclusion and exclusion through which territories and spaces retain ethnic homogeneity reinforced by sacredness, myths and traditions. Intruding into these spaces result into inter-ethnic conflict, segregation and ethnic cleansing.

The politics of zoning ethno territorial spaces into ethnic voting blocs for ethnic based political parties characterize Kenya's political landscape since the advent of multi-party politics in the 1990s. The boundaries of ethnic and political differences trigger political conflicts (Nyanchoga, 2014). Conflicts have persisted despite the application of the neo liberal conflict resolution mechanisms. This may be due to lack of understanding of the history of the region and particularly how communities over a long period of time have co-existed and resolved conflicts.

## **Neo-liberal Approach to Conflict Resolution**

The following are some neo liberal approaches to conflict resolution:

### **Prosecution of Criminals**

The prosecution of criminals, ordinarily, aims at preventing criminals from perpetuating the crimes. Courts have been used to prosecute criminals and war lords, who have committed war crimes and crimes against humanity. But the court process is sometimes slow in issuing verdicts and sometimes judgment decisions are far removed from the people concerned (Tarimo & Manwel, 2007:46-50).

### **The use of Armed Forces**

The armed forces, like the police, the para-military General Service Unit (GSU) or the army, are used to impose curfews and instill discipline in localized conflicts. This has been witnessed in places like Mt. Elgon, the Mathare slum in Nairobi; Laikipia, Likia, Molo, Lamu and Tana river regions of Kenya. The rationale is that conflicts can be neutralized before they turn violent and widespread. The police are expected to provide appropriate intervention to reduce violence and criminality.

However, armed forces have, more often than not, been accused of human rights abuse that range from rape, extorting money from their victims and taking sides when it comes to inter-ethnic conflicts. The Kenyan Police, for instance, have been accused of extra judicial killings of the adherents of the Mungiki sect (a proscribed group). The use of military may resolve the conflict in the short run but there are long term implications. The recurrence of conflicts in many parts of Kenya raises questions as whether indigenous strategies of resolving conflicts should be applied (Nyanchoga, et al, 2008:95-110).

### **Education**

Following the post elections violence in 2007/8, the Kenya government together with civil society organizations embarked on peace education. The National Cohesion and Integration Commission (NCIC) developed strategies of promoting peaceful co-existence. Peace education became an effective tool for confidence building and to sensitize the people of the need to observe peace and co-existence. But the limit of this was the lack of involvement of the grass root stakeholders. The medium of communication still remained Kiswahili and English yet the vernacular language could do much better for easier understanding of the peace messages. When the

government took charge of the process, people felt alienated and detached themselves from the process (NCIC, 12:48; Galtung, 1975: 334-339).

It transcends punishment and retribution, for the sake of the common good. In Kenya the members of Mombasa Republican Council (MRC) and belligerents groups in many parts of Kenya including the Mungiki groups have on several occasions been offered amnesty. Critics argue that amnesty has limitations, because those that have been involved in killings, looting of public funds and massive corruption, may seek amnesty in order to evade prosecution. It may also be seen as unjust when the state initiates amnesty, to exempt the perpetrators from prosecution; without consultation, or by sacrificing the rights of the victims. This may be seen as overriding the rights of the victims. The victims may feel that the state has used amnesty to protect politically connected personalities (Tarimo & Manwel, 2007:33-38).

### **Mediation**

Mediation builds on negotiations and involves a third party intervention in the conflict. It aims at arriving at a settlement that is acceptable to those involved: one that they could not have achieved on their own. The mediators' role is to reduce tension and endless bargains, for the sake of peace. The choice of mediators is important for they must be acceptable to the parties involved. The objectives to be achieved, and procedures to be followed must be communicated to the parties concerned in advance; in order to facilitate a proper involvement (Tarimo & Manwel, 2007:33-50).

### **Power Sharing**

Power sharing has been used as measures of confidence building. This was applied in the power sharing arrangement between Emilio Mwai Kibaki and Raila Amolo Odinga in Kenya to prevent the escalation of violent conflict over the 2007 disputed presidential elections. The Kibaki and Raila power sharing deal was characterized by intermittent conflicts throughout their tenure (Nyanchoga, 2014).

### **Amnesty**

Amnesty is the offer of immunity from prosecution on condition that the belligerents cease unlawful

### **Critique of Neo-liberal Approach to Conflicts**

Some of these methodologies to conflict resolution have been contested due to the very fact they seem to take a top to bottom approach. The use of the military to quell

conflicts in many parts of Kenya such as in Lamu, Mt. Elgon region, Mandera and Wajir has to a greater extent taken a pacifist approach, and focused on short term truce only for the conflicts to resurface. What lacks is the integration of indigenous or traditional approaches. Secondly the amnesty is heavily contested as a strategy to integrate criminals and perpetrators of conflicts into society.

Many societies had elaborate rituals of cleansing and accepting criminals and perpetrators of crimes in society. The failure to invoke this and enable society own the process jeopardize the chances of having a long lasting solution to conflict. For instance, after the 2007 and 2008 post-election violence there was blanket amnesty and communities were encouraged to live together in harmony, yet, the level of intolerance is high among the ethnic divide as members of different ethnic groups continue to perceive each other as intruders, burdensome, security threats, exploiters and liars. The failure to invoke traditions and customs of the people into the peace initiatives and resettlement programme is a major impediment.

### **Traditional Conflict Resolutions Mechanisms in a Neo-Liberal Setting**

Kenya's 2010 constitution recognizes the role of local and customary conflict resolution mechanisms. This implies that communal and locally driven conflict resolution is conducive to resolving conflicts (The Constitution of Kenya, 2010: 62; 67).

### **Militarization of Conflict Resolution**

The method is used to resolve conflict as a last resort when all other methods, such as diplomacy, negotiation, payment of fines or other forms of pay-off fail. It is the physical force that realizes the objectives of a community. Armed combat is still fashionable among the various pastoral communities in Kenya to protect livestock, pasture, land, water resources and communities. But the approach seems to go contrary to the tenets of neo liberalism where it is perceived to be criminal or belligerent. The philosophy of militarization as a strategy to resolve conflicts was informed by the principle of self-defense and proportionality. Military build-up was a necessary deterrence mechanism. But neo liberalism strategy of demilitarization to a traditional context without adequate cautionary avenues is counter-productive because it leads to militarization again.

Several demilitarization operations in northern Kenya such as Operation Okoa Maisha (Save Lives) in 2008, Operation Chunga Mpaka (Guard the Border) in 2008 and Operation Dumisha Amani (Peace Operation) in 2010 were driven by national security

frameworks that included forceful disarmament leaving many of the communities vulnerable to external attacks.

### **Commonness of Humanity, Reciprocity and Respect**

This is the value of African communal way of life in which sharing was more of a virtue than denying the same to other people. Reciprocity emphasized both the ethics of sharing and a sense of collective security, through a social set-up which supported an egalitarian social living. It was a norm that transformed individual obligations into social welfare security schemes. The process of individualization and privatization of common good and resources encourage competition, conflict and hence undermine the ethics of humanity leading to conflict (Mkangi, 1997).

### **The Kinship Ideology**

According to Ochieng (1974), there existed multiplicity of kinship relations among various Abagusii clans. The principle idea was that such kin clans were relatives by blood and were strictly forbidden from engaging in acts of shedding blood. Such relationship also existed among the Agĩkũyũ and the Akamba. The two regarded each other as athoni (in-laws); a fact that forbade the two communities from fighting, however serious the provocations and circumstances may be. Thus, inter-ethnic marriages created blood relations within various African communities, making them related in one way or another. It was also common for African communities to exchange brides as means of cementing good relations and avoiding acts of aggression between communities. The emergence of trans-ethnic religions; modern education and urbanization has contributed to the emergence of new social values and the neutralization of this principle in creating and cementing social bonds.

Other forms of creating social bonds and social capital emerge. The decline of kinship ideology contributes to the disruption of social networks and promotes individualization, poverty, autonomy and conflict. Among the pastoral communities such as the Turkana, Samburu, Pokot and Somali; the process of urbanization and migration is eroding kinship ideology. There is also commoditization of pastoral economy, land pasture and water resources. This promotes the notion of atomization of kinship ideology and exacerbation of conflicts (Schlee, 1989).

### **Peaceful Treaties**

African communities entered into peace treaties, permanent or otherwise, and sometimes formed alliances against other communities. Among the Abagusii; leaders could prick their small fingers and once blood was oozing out, they could lock them

together and chant words and promises of peace and mutual protection. This treaty was called enchabo and was seriously upheld by the local custom; and any party reneging on it stood to incur the wrath of curses chanted during the treaty. It is also believed that the Abagusii entered into such agreements with their neighboring communities. During the battle of Saosao in 1891, for instance, the Abagusii allied themselves with their neighbours, the Luo and Kuria against the combined force of the Kipsigis and Nandi who had raided the latter for cattle. Such alliance proved fruitful at the battle of Charachani against the Kipsigis. The Turkana have in the past also entered into such peace treaties with Oromo and Pokot by breaking bones, of sacrificed animals, weapons of war and burying them (Nyanchoga et al 2008). The modernization coupled with the neo liberal approach to peace downgrade the rituals as a strategy in conflict resolution. Customary practices and rituals that promote peace are fast waning due to modern religions and modernity.

### **Gender and Peace Process**

Women were regarded almost everywhere in Africa as the epitome of the principles of common humanity, reciprocity and respect. As such, this made them better emissaries of peace as they were regarded to be the most non-partisan when it came to wars and extremely distressing situations. Women elders were accorded great respect, due to their social status. The post-menopausal women were accorded hearings and even joined male elders in their councils. They proved very resourceful in both averting conflicts and resolving them through their feminine skills. For example, among the Nandi one way in which women stopped war was through untying their birth belts (legetio) from their waist. The birth belt (legetio) was placed in front of the warriors and it was taboo to jump over it hence the men became impaired and had to stop the war immediately. This was a very powerful cultural mechanism used by women in seeking peace (Nyanchoga and Ndogotho, 2014). But modern security peace frameworks fail to incorporate women in peace initiatives and hence look at women and children as victims in conflict situations Adan & Pkayla, 2006:39).

### **Council of Elders**

The councils of elders were often composed of men, many of them aged and experienced in the art of governance. These were respected senior member of the community and were gifted in wisdom and presided on many social issues and conflicts. Their wisdom in resolving such conflicts was well acknowledged. They also acted as the war council in many communities, deliberating on matters of security, declaring war and negotiating for peace. The declining role of elders in contemporary Kenyan society is due to emerging forms and avenues of attaining social status such

as education and wealth. This undermines the authority of elders. Neo liberal approach to peace such as the use of military to resolve conflicts in many parts of the country such as in northern Kenya marginalize the role of community elders in resolving conflicts. Homicide cases and land conflicts are increasingly being referred to courts of law and therefore eroding the legitimacy of elders in conflict resolution. Despite the contextual relevance of the institution of elders in conflict resolution in many conflict situations such as Wajir, Mandera, Lamu and Moyale little has been achieved.

Since 2012 communal conflicts have engulfed Tana River, Moyale and Mandera leading to the destruction of property and loss of lives. One of the possible reasons is the involvement of elite politics in local communal conflicts that are tied to resources and power politics. Kenya's patrimonial politics, political rent seeking, the local and national political dynamics; the perceived non-partisan role of the government and political elites in local conflicts contribute to the flaring of conflicts and limit the role of elders in conflict resolution mechanism.

Several examples attest to interference of neo-liberal mechanisms in traditional approach to conflict resolution. In 2001 the Modogashe declaration brought together all the elders of the pastoral communities in northern Kenya to manage resource based conflicts (Chopra: 2008:15-17). Similarly in 2008; the Nakuru County Peace Accord brought together the Kalenjin and Kiyuyu elders to resolve politically instigated conflicts in the county. Despite the local initiatives the state interventionist role in resolving conflicts was detested. The state was perceived as self-imposing in the mediation process through its agents. Given the role of ethnicity in Kenyan politics; the state agents were perceived to play into the gallery of ethnic politics and therefore delegitimizing the role of elders in conflict resolution (Chopra: 2008:15-17).

### **The Third Party Approach**

In solving social disputes, African communities used an indirect method of interrogating the combatants, which was referred to as 'the third party approach'. Protagonists addressed the 'court' indirectly through a spokesperson, and this was found to minimize tension and avoid proliferation of the conflict. In such a way, it became easy to arrive at a peaceful resolution without the protagonists being provoked into unnecessary utterances. The third party approach is increasingly taken over by the state machinery and shifting conflict resolution mechanism from the localized process. The third party approach in traditional context relied mostly on processes based on customary institutions, procedures, trust, neutrality, impartiality, legitimacy, facilitation and consensus rather than leverage (Wepundi et al 2011).

However, in neo-liberal setting, there is increased marginalization of traditional third party approaches in conflict resolution. The government machinery with its resources are taking over the third party roles in conflict resolution. The third party approach modelled along the traditional conflict situation is waning because of institutional incapacity to monitor and enforce the terms of an agreement as well as lack of the resources that the central government possess in contemporaneous conflict situations.

The government as a third party in conflict resolution is seen as an external actor with little or no understanding of local triggers of conflicts. The perception of the government in local conflicts that may involve land, pasture and water may also fuel conflicts. The government views conflict as challenging its authority. Some of the recent communal conflicts including those in Mandera and Wajir Counties where more than 210,500 were displaced between January and May of 2014 are a case in point. Other conflict-affected areas include Baringo, Nyakach in Kisumu, Garissa, Turkana, Samburu and Moyale, Mombasa, Tana River, Kwale and Kilifi. Key drivers for the inter-communal conflicts include competition for scarce resources, border disputes and political differences. These conflicts are seen as a challenge to state's authority.

### **Age-grade**

Age-grade (set) social groups have also been identified as ideal institutions in promoting social cohesion and peace in various African communities. Among the Masaai, it is the Olmoran and riika among the Kikuyu of Kenya. Belonging to an age-group, meant adhering to specific set of rules, duties and rights. It demanded discipline and created a lasting sense of comradeship among people who belonged to the same age-group. Thus, conflict between age-grades and even age-mates was considered a taboo. The age grade system is disintegrating with the decline of traditional rites of passages such as circumcision, and the onset of urbanization, migration and modern religions. The checks and balances that were promoted through age grade systems are quickly disappearing and hence creating intra and inter community conflicts (Nyanhoga, et al 2008).

### **Conclusion**

The paper has established that neoliberal approach to conflict resolution tend to subordinate the traditional methods of conflict resolution. Consequently, there is a resurgence of conflicts where traditional mechanisms were effective in handling

conflict situations. It is the recommendation of this paper that a synergy between neo liberal approach to conflict and traditional conflict resolution methodologies be sought and implemented. Traditional models of conflict resolution such as the use of rituals tend to re- integrate the whole person into society through a cleansing process.

The paper has also established that traditional methods of conflict resolution were localized and given the changing social, political and economic landscape; it is becoming extremely difficult to transpose such ideas and practices into a modern and international context. In view of this and given the contextual analysis of conflict scenario explored, an integrated approach will be more appropriate.

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