

**THE INFLUENCE OF UTILIZATION OF ALTERNATIVE DISPUTE  
RESOLUTION MECHANISMS BY LEADERS ON SUSTAINABLE  
CONFLICT RESOLUTION IN BUNGOMA COUNTY, KENYA**

**BY  
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**2014**

**DECLARATION.**

This research project report is my original work and has not been presented for award of a degree in any other University

**Sign:.....**

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This research project report is submitted for examination with my approval as the university supervisor

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## **DEDICATION**

This study is dedicated to the memory of my late father Mr. Patrick Amele Atemi, my dear mother Nancy Jacinta Atemi, my amazing children Ashley Achupa, Daisy Nasipwoni Natasha, Phil Atemi, Wendila Kabalika Atemi and my friend and fiance Mwimbi Claudette Akello. Thank you so much for believing in me.

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## **ACRONYMS/ABBREVIATIONS**

<b>ADR</b>	Alternative Dispute Resolution
<b>MT.</b>	Mountain
<b>GoK</b>	Government of Kenya
<b>MP</b>	Member of Parliament
<b>MCA</b>	Member of County Assembly
<b>ACK</b>	Anglican Church of Kenya
<b>CC</b>	County Commissioner
<b>WR</b>	Women Representative
<b>CMC</b>	Citizen Mediation Centers

## ABSTRACT

The purpose of this study was to assess the influence of utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution in Bungoma county, Kenya. The study focused on identifying the various types of conflicts in Lwandanyi, Webuye and Cheptais Sub-Counties and the factors influencing the adoption of Alternative Dispute Resolution Mechanisms with specific focus on mediation, negotiation, conciliation and arbitration. The study explored the place of ADR in conflict resolution and the extent to which ADR is utilized by leaders. The sample size was comprised of grass root leaders

Simple random sampling and stratified random sampling methods were used to pick the required sample size for the study from the targeted population. The required data was collected using two instruments. These were Questionnaires and interview schedules

The study found that leaders in Bungoma County appreciate and make use of ADR mechanisms in conflict resolution. Mediation and negotiation mechanisms were commonly cited as being used by leaders in addressing various forms of conflict. The study also found that land disputes are the commonest of all conflicts. This was attributed to historical land injustices especially in Mt. Elgon region where politicization of land allocations in the former white settler farms has led to long standing conflict between the Bukusu and the Sabaot communities. The study also revealed that most land disputes were arising due to lack of land ownership documents. Rampant corruption at the lands ministry was blamed for this state of affairs.

The study also found that most land disputes were increasingly being addressed through alternative dispute resolution mechanisms and out of court settlements due to lengthy and costly litigation processes in the corridors of justice. However, capacity gaps in ADR operationalization were glaring. Most of the leaders interviewed in this study lacked technical capacity in ADR.

The County and national governments were also found to have failed in laying down systems and structures for operationalization of ADR. In order to address land disputes emanating from lack of clear ownership of land, the lands ministry needs to improve service delivery. Corruption perpetuated by officers at the lands office must be stopped. Land allocations in the former white settler areas of mt. Elgon should be delinked from politics as this is cited to be the root cause of unrest. The national and County government must take decisive action to address the land grievances of the Sabaot community to stop the inter clan fighting. Leaders must be trained and equipped with skills and competencies necessary for conflict resolution.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

The modern world is a world full of chances and options for people. Never before in history so many choices could and had to be made by the individual. But the modern world is also a world of competing interests, ideas, values, views, ideologies, religions and cultures, a world full of conflicting interests on all levels, between individuals and groups of people within their societies, between all sectors of societies as well as between economies, nations, states and so forth. If we want to characterize our contemporary world it would be in many ways more appropriate to speak about a ‘Clash of Interests’ instead of Clash of Cultures(Fisher,2000)

In spite of the prevalence of disputes in modern society, there is some degree of consensus or agreement between individuals and groups solicited through processes of negotiation and compromise. If societal dispute was left uncontrolled, the whole world would have long disintegrated. According to conflict theorists (Fisher, 2000) there are several sources of disputes including economic, value and power. Economic dispute involves competing motives to attain scarce resources. Each party wants to get the most that it can to maximize net gains. Value disputes involve incompatibility in ways of life, ideologies the preferences, principles and practices that people believe in. Power dispute occurs when each party wishes to maintain or maximize the amount of influence that it exerts in the relationship and the social setting. Power conflict occurs between individuals, groups or nations

Over the last decade courts have developed rules that require parties to try Alternative Dispute Resolution mechanisms , usually mediation, before trial. Mandatory Alternative Dispute Resolution has become popular because it helps unclog the court system and because most cases can settle once the parties have undertaken discovery and understand what evidence exists. Uwazie (2011) however observed that despite numerous attempts at modernization, many African countries are still struggling to establish functional, timely, and trusted judicial systems. Most courts in Africa are fraught with systemic problems, such as antiquated structures. Countless judges still take notes by hand, as there are no stenographers. Re-



records are archived manually and a reliable computer in an African court is rare, especially at the magistrate courts that handle most cases. Many African citizens have lost faith in the ability of their nations' courts to provide timely or just closure to their grievances (Liebmann, 2000).

### **1.1.1 Alternative Dispute Resolution**

Dispute resolution refers to the processes by which disputes are brought to an end (Algert and Watson, 2002). Dispute is an open disagreement between two or more entities such as people, groups of people, ethnicities, nations, states and cultures who have different interests, goals and or values. Dependent on the intensity of the disagreement the dispute may gradually become a confrontation and finally a conflict. Dispute resolution can occur through three ways; negotiated outcome, where the parties concerned sort out things themselves: mediated outcome, where the parties use the services of an independent mediator to help them arrive at their own agreement and an arbitrated or adjudicated outcome, where an independent arbitrator or court determines how the dispute is to be resolved and makes a binding decision or order to this effect (Algert and Watson, 2002).

Alternative Dispute Resolution (ADR) is the general name given to a variety of procedures available to parties in civil cases to resolve their disputes before a formal trial (Lambert and Myers, 1999). Alternative Dispute Resolution refers to processes for resolving disputes other than litigation. Alternative dispute resolution (ADR) mechanisms have existed for thousands of years. Alternative dispute resolution (ADR) refers to any process or collection of processes established to resolve disputes without trial or violence. The term ADR is often used to refer to a broad category of ADR processes such as negotiation, conciliation, mediation, settlement conferences, arbitration, consensus building, and community conferencing.

The primary motivations for ADR are to save money and control risk. Preparing for trial is extremely expensive, and parties can save money if they can resolve the case without having to incur the expense of trial preparation (Barrett & Barrett, 2004). Also, when parties settle cases, they have some control over the outcome of the case in that they can negotiate for terms of the settlement. If a lawsuit goes to trial, the outcome of the case is left entirely in the hands of the judge or jury. Parties cannot control the risk of losing at

trial. ADR gives parties a chance to control that risk. In some cases, privacy or confidentiality may be a factor. Most litigants think of ADR as private, and thus, if they seek secrecy, they may be motivated to try ADR.

Deferent types of Alternative Dispute Resolution include arbitration, negotiation, mediation, adjudication, family group conferences, expert determination and case evaluation. In mediation, a neutral third party helps the parties come to an agreement about how to resolve the case (Barrett, & Barrett, 2004). The mediator has no authority to impose a solution on the parties. Instead, he goes back and forth between sides to help them come to an understanding about how the case could be resolved to their mutual satisfaction. A mediator can be helpful in helping parties evaluate their case realistically, as the mediator can point out which facts or arguments he believes or rejects (Barrett, & Barrett, 2004). When courts order parties to try ADR, they most often order mediation. Non-mediated settlement is the process where the parties negotiate with each other without the help of a third party to come to a mutually satisfactory resolution of the case. This process is not ordered or overseen by a court and, therefore, is a private, rather than public, process.

The idea of Alternative Dispute Resolution (ADR) is about the search for and application of “nonconventional” peaceful means of settling disputes and resolving conflict situations using the least expensive methods, and in ways that satisfy the parties, as well as ways that preserve relationship diplomatically after a settlement might have been reached by the two parties (Hornby, 2006). ADR is specially meant to serve as an alternative to the official or conventional means of settling disputes, mainly through litigation and the courts, but with a preference for non-violence.

### **1.1.2 Bungoma County**

Bungoma County is located in western and constitutes of Eight constituencies namely Mt Elgon, Kimilili, Webuye, Webuye North, Sirisia, Kabuchai, Kanduyi and Bumula. The capital of Bungoma County is Bungoma Town. It has a Total Population of 1,375,063 and covers an area of 3,032.2 sq. km. The Population density is 453.5 people per sq. km and 53% of the population live below the poverty line. The economy of Bungoma County

is mainly agricultural, centering on the sugarcane and maize industries. The area experiences high rainfall throughout the year, and is home to several large rivers, which are used for small-scale irrigation.

Over the years Bungoma County has witnessed numerous conflicts ranging from land clashes in the Mt Elgon region, political violence linked to electoral processes, domestic violence, conflicts related to business transactions as well as labor unrest just to mention but a few. Investigation of the influence of the utility component of Alternative Dispute Resolution strategies will help inform sustainability of conflict resolution efforts (Chesi, 2012). Also, land conflicts has affected Mt. Elgon District in Bungoma county of Kenya. These land conflicts have had far reaching negative effects on the certainty of land markets, tenure and food security, economic production and reduction of poverty. Often, the land conflicts lead to; civil strife, loss of lives, population displacement, destruction of property and international humanitarian crisis (Chesi , 2012).

## **1.2 Statement of the problem**

In post conflict and fragile contexts, where societal tensions are already high and justice systems typically do not function, the need for prompt resolution of disputes is particularly critical. Without timely, accessible, affordable, and trusted mechanisms to resolve differences, localized disagreements or crimes can degenerate into broader conflict (Algert, 1996). This contributes to cultures of violence and vigilante justice. There are recurrent conflicts despite efforts being put in place to address such conflict. The court systems are overwhelmed by a backlog of cases and have systemic challenges being brought about by corruption, poor infrastructure and inaccessibility that work to kill their efficiency. The choice of a good alternative dispute resolution strategy is a difficult task, because a lot of physical and mental energy is required (David, 2006).

It is apparent that the success of a functional alternative dispute resolution strategy depends on good application using appropriate method which can subsequently motivate parties in dispute in their various communities. Lack of good alternative dispute resolution strategy by a trained individual in our community and institution can lead to

inappropriate behavior and frustration. In making choice of alternative dispute resolution strategies communities are faced with the challenges of selecting the method suitable for achieving non (David, 2006).

Sustainable conflict resolution still remains a major challenge in Kenya and beyond. As noted by Murungi (1995), numerous conflict resolutions have been attempted, but none of them seems sustainable in creating an atmosphere for peace, security and inter-ethnic. Disputes keep recurring sometimes with greater intensity leading to widespread loss of life and destruction of property. This is despite the litigation processes in court systems and other alternative efforts being expended in addressing conflict. There is a disconnect between sustainable conflict resolution and the numerous efforts being put to use.

Chesi (2012) did a study on the factors influencing land related conflicts in MT. Elgon District, Bungoma County. The study findings established that the severity of land conflicts in Mt. Elgon district is high and currently appear to be associated with geographical land boundaries, political boundaries, political environment and evictions from the land that they stay in. No study had been done on the influence of utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution in Kenya hence a research gap. This study therefore sought to investigate the influence of utilization of ADR mechanisms by the leadership on sustainable resolution of conflict in Kenya, a case study of Bungoma county.

### **1.3 Purpose of the Study**

The purpose of the study was to assess the influence of utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution in Bungoma county, Kenya.

### **1.4 Objectives of the study**

The specific objectives of the study were;

- i. To determine the influence of mediation dispute resolution mechanism on sustainable conflict resolution in Bungoma , Kenya.

- ii. To establish the influence of conciliation dispute resolution mechanism on sustainable conflict resolution in Bungoma , Kenya.
- iii. To assess the influence of negotiation dispute resolution mechanism on sustainable conflict resolution in Bungoma , Kenya
- iv. To find out the influence of arbitration as a dispute resolution mechanism on sustainable conflict resolution in Bungoma County , Kenya

### **1.5 Research Questions**

The study sought to answer the following questions;

- i. What is the influence of mediation dispute resolution mechanism on sustainable conflict resolution in Bungoma , Kenya?
- ii. How does conciliation dispute resolution mechanism affect sustainable conflict resolution in Bungoma , Kenya.
- iii. What is the effect of negotiation dispute resolution mechanism on sustainable conflict resolution in Bungoma , Kenya?
- iv. How does arbitration dispute resolution mechanism influence sustainable conflict resolution in Bungoma County, Kenya?

### **1.6 Significance of the Study**

This research is vital to the conflict resolution teams in Bungoma County because it provides an insight on the utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution. The teams will be able acquire knowledge on the best approach to conflict resolution.

The results of this research are important to the Government of Kenya in the development of rules and procedures of solving conflicts arising within the country. Through the findings of this study, the policy makers can learn various ways in which they may need to handle conflict resolution and hence come up with policies that lead to sustainable conflict management and resolution.

The results of this study will greatly benefit the victims of conflicts in Bungoma County. It will increase awareness on the benefits of embracing Alternative Dispute Resolution Mechanisms and contribute to quick, timely and affordable administration of justice.

Future researchers will also be able to use the research findings as a benchmark to their research on conflict resolution. In addition, the findings of this study will serve as a source of reference in future research. The study has also suggested other areas where future researchers can further their knowledge.

### **1.7 Basic Assumptions of the Study**

The researcher made the assumption that the respondents would be cooperative enough to give the required information of the study. The researcher assumed that he would get the resources intended to facilitate data collection, and that the information collected would be a representation of the whole sector for inference.

### **1.8 Limitations of the Study**

The researcher encountered various limitations that tended to hinder access to information that the study sought. The main limitation of study was reluctance among target respondents to provide information fearing that the information requested was being sought for other purposes other than academic purposes.

The researcher also encountered the challenge of limited time availability for the respondents due to their tight deadlines and workloads.

### **1.9 Delimitations of the Study**

This study was done in Bungoma County where residents have witnessed violent land conflict mostly in Mt. Elgon region where it is characterised by widespread loss of lives, destruction of property and massive displacement of populations. The County has also seen political conflict especially during general elections.

Domestic and gender based violence is also rampant. This coupled with systemic failures of the normal court processes make efforts towards of operationalization of Alternative Dispute resolution Mechanisms attractive. Stakeholders such as political leaders, administrators and religious leaders fully understand the vitality of sustainable conflict resolution and were therefore expected to cooperate with the researcher.

To overcome the challenge of limited time availability raised above, the researcher administered the questionnaires during break times to allow them time not to interfere with their normal work schedules. To overcome the challenge of reluctance by the respondents for fear that the information may be used for purposes other than academic, the researcher carried an introduction letter from the University confirming that the data requested would only be used for academic purposes.

### **1.10 Definitions of Significant Terms Used in the Study**

**Dispute resolution:** The processes by which disputes are brought to an end

**Alternative Dispute Resolution:** Are procedures available to parties in civil cases to resolve their disputes before a formal trial.

**Civil society:** These are non governmental organizations working at the grass roots to create awareness about issues affecting the ordinary citizen.

**County:** This term is used to refer to each of the constitutionally recognised 47 units of devolved governance in Kenya. A County is managed by a governor.

**Constituency:** This term is used to refer to each of the constitutionally recognised 290 units of representation in the national assembly in Kenya. A Constituency is represented by a Member of Parliament.

**Litigation:** This refers to the normal court processes that parties to a dispute have to go through to reach a binding determination of the dispute at hand.

**Mediation:** This is a private and structured form of negotiation assisted by a third party that is initially non-binding. If a settlement is reached, the mediator can draw up an agreement that can then become a legally binding contract.

**Negotiation:** This is any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution.

**Conciliation:** This is a process through which two or more parties may explore and reach a negotiated solution to their conflict with the help of a third neutral and disinterested party, the conciliator.

**Arbitration:** It is a formal and binding process where the dispute is resolved by the decision of a nominated third party, the arbitrator or arbitrators. The most unique characteristic about arbitration is that it is built on the basis of an acceptance and agreement of all the parties in case of any disagreement among them.

**Pilot study:** This is a study conducted on trial basis to test the quality of data collection instruments with regard to collecting the required information. The trial enables adjustments to be made to improve the quality of the instrument.

**Democracy:** This refers to the principle that allows for the creation of a government for the people by the people.



**De-escalation:** This refers to efforts put in place to reduce the intensity of conflicts.

**Validity:** this refers to the degree to which an instrument measures all of that and only that which it is supposed to measure.

**Reliability:** this means freedom from random error. The most fundamental test of reliability is repeatability, that is, the ability to get the same data values from several measurements made in the same way.

### **1.11 Organization of the Study**

This project report is organized in Five chapters. These are introduction to the study, literature review and the research methodology, research findings, data analysis, discussion and interpretation. The first chapter introduces and gives the background to the study on the influence of utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution in Bungoma county, Kenya. Here the researcher has defined conflict and enumerated the various sources of conflict. The researcher also defined Alternative Dispute Resolution and highlights the various ADR mechanisms commonly employed in the resolution of conflicts.

This chapter also contains demographic information and conflict dynamics in Bungoma County. The chapter also presents the statement of the problem, research objectives, and research questions, research hypothesis, purpose of the study, scope as well as limitations and assumptions to the study.

The next chapter looks at literature from other researchers related to the topic of study. The chapter gives a detailed analysis of the theoretical framework. Here the researcher has adopted the theory of process pluralism which points out that different kinds of matters may require different kinds of procedures of dealing with underlying conflict.

The researcher has also looked at the theory of conflict which attempts to understand the different sources of conflict, the dynamics of how conflict develops, escalates or declines and how it can be managed, reduced or resolved.

The researcher has also adopted the general theory on conflicts and disputes. This theory assigns disputes to transitional and mature democracies and conflicts to authoritarian regimes.

This chapter also looks at empirical review where the ADR mechanisms of mediation, negotiation, conciliation and arbitration are discussed in detail.

Writing on mediation by scholars such as Moore (2003) have been reviewed. Moore defines mediation as an intervention in a negotiation or dispute of an acceptable third party who has limited or no authoritative decision making power, who assists the parties to voluntarily reach a mutually acceptable settlement of the issue in a dispute. According

to Bennet & Hughes, 2005, mediation takes three models of transformative, facilitative and evaluative mediation.

In this chapter, conciliation is defined as a process in which the parties to a dispute, with the assistance of a neutral person, identify the disputed issues. Conciliation is the process by which one or more independent person (S) selected by the parties to an agreement generally by mutual consent, either at the time of making the agreement or subsequently when a dispute has arisen between them, to bring about a settlement of their dispute through consensus between the parties by employing various persuasive and other similar techniques (Fsher,Ury and Patton,1991).Conciliation is a process similar to mediation but the neutral third party takes a more interventionist role in bringing the two parties together.

In this chapter, Negotiation is defined as a process in which two or more participants attempt to reach a joint decision on matters of common concern in situations where they are in actual or potential disagreement or conflict (Fsher,Ury and Patton,1991) Negotiation is any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution.

Arbitration is also discussed as an adjudicative dispute resolution process. It is based on an agreement between the parties to refer a dispute or difference between them to impartial arbitrators for a decision”( Blake et al, 2011). It is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.

The researcher ends this chapter by providing a conceptual model that guided the study.

The chapter on research methodology presents the methology that was used in the study, the target population, sample size and sampling procedures, data collection instruments and procedures, data analysis techniques and ethical considerations to be observed in this study.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter discusses the past studies on influence of utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution. The specific areas covered are theoretical review and empirical review.

#### **2.2 Empirical Review**

According to Uwazie (2011) the notion of ADR fits comfortably within traditional concepts of African justice, particularly its core value of reconciliation. Pioneering ADR projects in Ghana, Ethiopia and Nigeria have generated positive results and illustrate the suitability of ADR in African contexts. Under these arrangements, ADR was used as the default resolution method. Formal court litigation, or instances where the judge actually judges, are reserved for cases of constitutional or legal interpretation, where there is a need to set precedence, in cases with major public policy implications, or as a last resort after ADR has been tried.

##### **2.2.1 Mediation Dispute Resolution Mechanism**

Moore (2003) defines mediation as the intervention in a negotiation or a dispute of an acceptable third party who has limited or no authoritative decision-making power, who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issue in dispute. Mediation is a process by which parties in conflict are helped to reach an amicable agreement by a neutral third party called a mediator. Mediation is a private and structured form of negotiation assisted by a third party that is initially non-binding. If a settlement is reached the mediator can draw up an agreement that can then become a legally binding contract. Moore (2003) points out that mediation finds its strengths through its privacy and confidentiality mode of operation, its voluntary and consensual obligations, its flexibility with rules and regulations, and its focus on interests and needs of the parties rather than the personalities behind the issues.

The mediator skillfully aids communication between the conflicting parties and helps them negotiate options to meet their interests, while preserving and repairing their relationship (Bennet & Hughes, 2005). Mediation takes three models of transformative, facilitative or problem solving and evaluative mediation. These models have an important impact on the outcome of the process. An investigation of the role of the different mediation models on the outcome of a mediation process, though beyond the scope of this literature review is an aspect worth investigating (Bingham, & Hallberlin, 2009). In the facilitative or problem solving mediation the neutral third party helps the parties identify their interest and focus discussions to brainstorm options that satisfy all of the parties interest. With evaluative mediation the neutral third party provides expert opinion on the merits of the dispute. The mediator helps the parties know the strengths and weaknesses of their case by providing them with an assessment, prediction and direction ((Bingham & Hallberlin, 2009). In transformative mediation on the other hand, the mediator empowers the parties to control all aspects of the process, parties are helped in clarifying their interests, goal and choices and at the same time have a better understanding of the other party's perspective. The parties are transformed from positions of weakness to recognition of a possibility of mutual satisfaction of interests and settlement of the dispute (Bingham, 2004).

Moore (2003) notes that many governments and institutions including the United Nations have recognised that the costs of dealing with disputes within businesses, between individuals, in the family, and even internationally, using purely legal remedies only, are simply too high. Financial costs, emotional costs, and relational costs push the global perspective and the local variance of the same to see mediation as a major player within societal development.

There are three types of Mediatory methods proposed by Zumeta (2000) that seem practical for consideration, and Liebmann (2000) pinpoints these forms of mediation as being able to transform various situations of conflict. The first arm of mediation is the most common which is facilitative. In facilitative mediation, the mediator structures a process to assist the parties in reaching a mutually agreeable resolution. The mediator

uses questions to bring out the parties points of view; searches for interests underneath the positions taken by parties; and assists the parties in finding and analyzing options for resolution. The facilitative mediator does not make recommendations to the parties; give his or her own advice or opinion as to the outcome of the case. The mediator is in charge of the process, while the parties are in charge of the outcome. Zumeta's (2000).

The Second type of mediation is the Evaluative mediation process which is usually modelled on settlement conferences held by judges. An evaluative mediator assists the parties in reaching resolution by pointing out the weaknesses of their cases, and predicting the legal likely result. In this style recommendations to the parties can be made, yet the decision is still in the hands of the individuals. Evaluative mediators are concerned with the legal rights of the parties rather than needs and interests, and evaluate based on legal concepts of fairness. This form of mediation is usually court oriented. The third postulation of Zumeta (2000) is that of Transformative mediation which is the newest of the three. Transformative mediation is based on the values of empowerment of each of the parties as much as possible, and recognition by each of the parties of the other parties' needs, interests, values and points of view. The potential for transformative mediation is that any or all parties or their relationships may be transformed during the mediation.

The findings of the research by Umunadi (2011) revealed that the mediation method can serve as the best method of alternative dispute resolution. The study further found out that mediation method was effective because it is a practical oriented method which accommodated different practical activities like flexibility in dialogue, confidentiality, privacy, neutrality, and reality test approach in dispute resolution. Ezeji (1993) highlighted the point that mediators utterances, actions, teaching methods, alternative dispute resolution strategies, leadership styles, knowledge of subject and skills in dispute resolution are considered as important factors having implication for non violent method of conflict resolution.

As part of a project on judicial reform, for example, Ghana held its first mediation week in 2003 in which about 300 cases pending in select courts in Accra were mediated over 5

days. Kimberlee Kovach (2011) noted that the effort was a major success, with 90 percent of surveyed disputants expressing satisfaction with the mediation process stating that they would recommend it to others.

The achievements of this initiative led to a follow up ADR round in 2007 where 155 commercial and family cases from 10 District courts in Accra were mediated over 4 days. Almost 100 cases were fully mediated or concluded in settlement agreements. Eighteen cases reached partial agreement and were adjourned for a later mediation attempt. A total of 37 cases were returned to court.

The 2007 program was expanded through 2008 and over 2,500 cases in seven district courts in Accra were mediated, with over 50 percent of the cases completely settled. This demonstrated both the scale and potential reduction in backlog that ADR can generate. More than 40 district courts in Ghana have since initiated court-connected ADR programs.

In the ADR Center in the town of Ashaiman, for example, a group of five mediators settled 476 of 493 cases considered between January and June 2011. By 2013, all district, circuit, and high courts in Ghana will have functioning mediation programs, with a projection of 10,000 case mediations annually—significantly reducing the pressure on Ghana's court system.

As noted by Kimberlee Kovach (2011) Ghana's positive experience with ADR greatly influenced the creation of the country's landmark ADR legislation in 2010—finalized after nearly 10 years of consultations, consensus-building, bill drafting, and multiple changes in government leadership and in the judiciary. ADR Act 798 is the most comprehensive ADR legislation in Africa. Under Section 82 of the law, mediation agreements are recognized as binding and enforceable as court judgments. The Ghana experience provides potentially useful lessons for other African countries contemplating ADR, especially regarding the importance of gaining official support and funding, establishing relationships between mediators and traditional chiefs to maximize the complementarity of their efforts, and instituting the enforceability of out-of-court settlements or mediation agreements.

Tosin Adejuwon(2009) writes that since the creation of the pioneering Lagos Multidoor Courthouse and its ADR Center in 2002, disputing parties now have the option of choosing among court-connected alternative methods to resolve their disputes, including the Lagos State Ministry of Justice's Citizen Mediation Centers (CMC). Similar multidoor courts and CMCs either currently exist or are emerging in a dozen other locations in Nigeria, with an average of approximately 200 cases mediated monthly and resolution or settlement rates ranging from 60 to 85 percent. This represents a significant portion of caseloads in Nigeria where it is not unusual for judges to add up to 50 new cases to their docket each day.

Tosin Adejuwon(2009) also noted that in November 2009, in an effort to elevate and expand the use of ADR as well as generate publicity and educate the legal profession, Lagos State held its first mediation week. About 100 medium-scale commercial disputes were selected from the Lagos Island High Court docket with the consent of disputants, lawyers, and judges and scheduled for mediation over 5 days. Using lessons learned from earlier experiences, nearly 60 percent of the mediations resulted in agreement. Over 98 percent of disputants surveyed expressed satisfaction with the process, and nearly 70 percent said they preferred mediation to court litigation. Most of the participating lawyers also found the process satisfactory and indicated that they would recommend it to their clients.

### **2.2.2 Conciliation Dispute Resolution Mechanism**

Conciliation is a process in which the parties to a dispute, with the assistance of a neutral person, identify the disputed issues. Conciliation is the process by which one or more independent person(s) selected by the parties to an agreement generally by mutual consent, either at the time of making the agreement or subsequently when a dispute has arisen between them, to bring about a settlement of their dispute through consensus between the parties by employing various persuasive and other similar techniques (Fisher, Ury and Patton, 1991). Conciliation is a process similar to mediation but the neutral third party takes a more interventionist role in bringing the two parties together. In the event of the parties are unable to reach a mutually acceptable settlement, the



conciliator issues a recommendation which is binding on the parties unless it is rejected by one of them (Fisher, Ury and Patton, 1991). While the conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, it is not a determinative role. A conciliator does not have the power to impose a settlement. It is a process of confidence and faith.

This is a voluntary and informal process by which the parties to a dispute reach a mutually acceptable agreement. As the name implies the parties seek out the best options for each other which culminates in an agreement (Umunadi, 2011). At their option, the process may be private. In this process, they may or may not use counsels and there is no limit to the argument, evidence and interests, which may be canvassed.

The conciliator will help you and the other parties to look at the strengths and weaknesses of each other's arguments. Usually, the conciliator is an expert on the subject of the dispute and as a result, the conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative one. Sometimes, and in some systems it is also called mediation. There may be technical or legal differences between the two expressions, namely, conciliation and mediation, but for the present purpose the expression "conciliation" is used to refer to both the processes, namely, the conciliation and mediation. Conciliation is an effective means of alternative dispute resolution and can be usefully deployed for both international as well as domestic disputes, except that in the conciliation of an international dispute certain facts assume greater importance than they would in a domestic conciliation (Blake *et. al.*, 2011).

### **2.2.3 Negotiation Dispute Resolution Mechanism**

Negotiation is a process in which two or more participants attempt to reach a joint decision on matters of common concern in situations where they are in actual or potential disagreement or conflict (Fisher, Ury and Patton 1991). Negotiation is any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution. According to Fisher and Ury, (2011) prostrates that negotiation is a basic means of getting what you want from others. It is a back and forth communication designed to reach an agreement. In Negotiation, representatives of disputing parties

often called negotiators meet to work with or against each other for their own position or pre-determined, desired outcome. Often formal negotiation proceedings take place between groups of people rather than individuals, and the list of tactics that negotiators may use is long and varied.

As noted by Umunadi (2011), negotiation is a key approach to the peaceful resolution of dispute and conflicts that may arise between the parties. It is also within the reach and control of parties like communication and collaboration because there are no third parties involved. Thus, negotiation is a direct process of dialogue and discussion taking place between at least two parties who are faced with a conflict situation or dispute. Both parties come to the realization that they have a problem, and both are aware that by talking to each other, they can find a solution to the problem. The benefits of compromised solution, it is believed to outweigh the losses arising from refusal to negotiate (Umunadi, 2011). In negotiation, there must be communication between two or more people intended to gain understanding, to produce agreement, to bargain between individual involved in a conflict or dispute.

Negotiation typically takes place during the early stages of conflict when communication between parties is cordial and good or at the de-escalation point when communication has been restored (Chikwe, 2011). There are two types of negotiation. We have the positional negotiation and the collaborative negotiation. The first type of negotiation is based on the aggressive pursuit of interest by parties, and is typically adversarial and competitive. Parties make demands that are inconsiderate of the interest and needs of others, and this makes it difficult for this interest to be met. Parties may also perceive themselves to be in competition. The desire will be to win, instead of working towards a mutually beneficial outcome. Thus, the demands of one party can be met only to the detriment of the other. Parties tend to stubbornly adhere to their positions and one side seems to dominate the negotiation. It can break down easily (Chikwe, 2011).

Fisher and Ury (2011) identify negotiation as the most used form of dispute resolution because of its vast applicability within the home and community. In a negotiation the

disputants may represent themselves or they may be represented by agents and whatever the case, whether they are represented or not represented, they have control over the negotiation process. Even though negotiations can be time consuming and mentally taxing, they are usually most fruitful in the end, for there is the likelihood of a win- win situation, where both parties leave the table with something better than what they came with (Mnookin et al, 2000).

#### **2.2.4 Arbitration Dispute Resolution Mechanism**

Arbitration is an adjudicative dispute resolution process. It is based on an agreement between the parties to refer a dispute or difference between them to impartial arbitrators for a decision” (Blake *et. al.*, 2011). It is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. Arbitration is a long-established procedure in which a dispute is submitted, by agreement of the parties, to one or more impartial and independent arbitrators who make a binding and enforceable decision on the dispute. Arbitration is a voluntary method of ADR, which is applied to both domestic and international contracts and is founded on the present or future agreement of the parties to submit any dispute between them to arbitration. Parties to a contract can choose to resolve any dispute which arises between them without reference to the regular courts.

In arbitration, disputes are resolved, where possible, by documents-only, so that one does not face the upheaval of attending court, nor the stress of giving evidence in front of a judge, the press, and the other party in a court room. If a hearing is required for the arbitration, or you are involved in mediation (in which case a mediation hearing is usually essential), the parties and the neutral agree on a venue and time as convenient as possible to all concerned. The process is always in private which means that any sensitive knowledge (information) and individual reputation is preserved.

The most unique characteristic about arbitration is that it is built on the basis of an acceptance and agreement of all the parties in case of any disagreement among them.

Arbitration is an informal process which proceeds in a manner conforming to justice, equity and good conscience, unlike courts of law which are put into a straight jacket of fixed procedure and rules of evidence.

Arbitration in Kenya is governed by the Arbitration Act No. 4 of 1995 and the rules made therein, as well as Order 46 of the new Civil Procedure Rules, 2010. The Chartered Institute of Arbitrators Kenya Branch, established in 1984, promotes and facilitates determination of disputes by Arbitration and other forms of Alternative Dispute Resolution (ADR). ADR can contribute to building an effective dispute settlement system and bridge the gap between the formal legal system and traditional modes of African justice. The institutionalization of ADR in African legal systems should also bolster security and development. While some conflict is inevitable in any society, its effective resolution directly hinges on the availability of trusted processes and skilled personnel. ADR is a practical tool to foster peace building and conflict resolution at both the interpersonal and community levels. By reducing disaffection with the lack of access to justice—and the perceived need for disputants to take justice into their own hands—the potential for violence and rebellion is reduced. Uwazie (2011).

ADR is also a potentially valuable mechanism for stabilization and state building efforts. From land disputes in Liberia, to reconciliation in Côte d'Ivoire, and competition for resources aggravated by widespread displacement in Africa's Great Lakes region, ADR can deliver quick (though not immediate) relief to some recurrent conflict triggers in fragile contexts, while more complex and long-term judicial sector restructuring and capacity-building unfolds. In the newly emerging state of South Sudan, for instance, studies of inter communal disputes found that conflicting parties sought an "organic mechanism for the court members to advise one another and improve their capacity to handle changing and interethnic cases, rather than necessarily to produce binding agreements or fixed definitions of law."

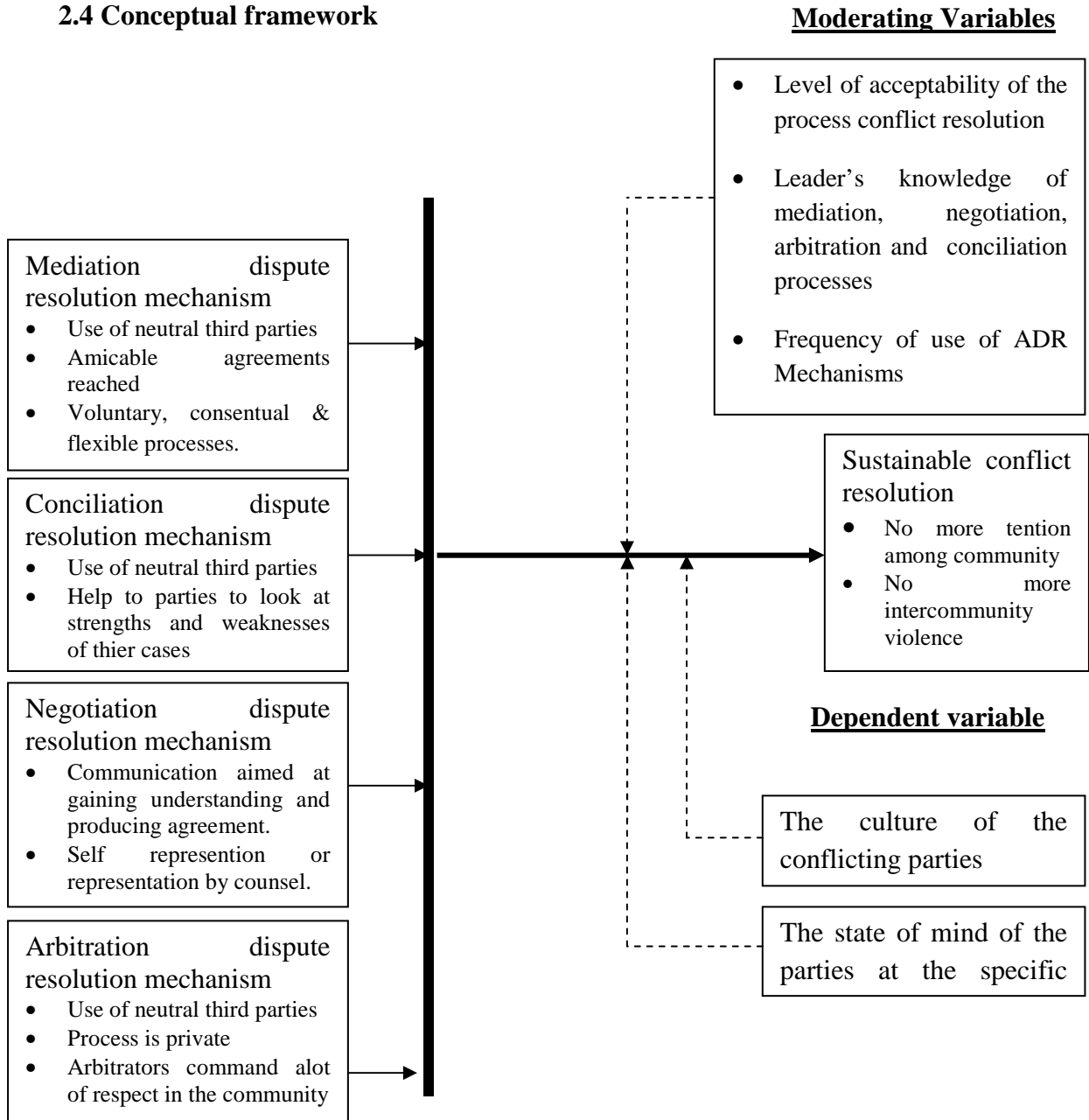
Uwazie (2011) suggests that National and local governments and international partners should invest in training and infrastructural support for ADR networks comprised of mediators and advocates who can continually advance best practices. In addition to legal professionals, capacity-building efforts should include training of local and religious

leaders, traditional authorities, election officials, police and security personnel, human rights organizations, public complaints bureaus or offices of ombudsmen, and women and youth leaders. This would increase the country's conflict mitigation and prevention capacity as well as reduce the number of cases that burden court dockets. Particular emphasis should be given to supporting ADR networks in Africa's conflict-prone and post conflict countries and communities.

### **2.3 Theoretical framework**

Various theorists have come up with theories on dispute resolution. The theories adopted by this study include theory of process pluralism, theory of conflict and General Theory on Conflicts and Disputes. Theory of process pluralism points out that different kinds of matters may require different kinds of procedures or ways of dealing with the underlying conflict (Ralf, 1958) theory of conflict attempts to understand the different sources of conflict, the dynamics of how conflict develops, escalates or declines, and how conflict can be managed, reduced or resolved. Conflict theory tries to explain the types of conflicts that exist and whether they are productive or destructive and then goes on to attempt to explain the ways in which conflict proceeds or is structured and how it can be managed or resolved. The General Theory on Conflicts and Disputes assigns disputes to transitional and mature democracies and conflicts to authoritarian regimes (Otomar and Wehr, 2001). The First Premise of the General Theory is that there are no conflicts in democratic society, only disputes. The Second Premise is that in authoritarian regimes there are only conflicts and politicized systems of settlement, not disputes. The Third Premise is that in international relations, national states can transform conflicts into disputes. Conflicts are those issues that lack a legitimate, reliable, transparent, non-arbitrary forum for the peaceful settlement of differences (Otomar and Wehr, 2001). Disputes, conversely, are pre described as having recognized forums for their expression and resolution that meet the above criteria. In short, conflicts lack a viable container for the routine management of differences. A mature theory of dispute-resolution must encompass all institutions and processes - whether legal or non legal, formal or informal, contemporary or customary - to further the end of settling disputes by smoothing away discords.

## 2.4 Conceptual framework



## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

This chapter presents the research methodology that was used in the study. It presents the methodology used in the study, the target population, sample size and sampling procedures, data collection instruments and procedures, data analysis techniques and ethical considerations.

#### **3.2 Research Design**

This study adopted a descriptive research design. As noted by Cooper and Schindler (2000) descriptive research design are concerned with addressing the particular characteristics of a specific population of subjects, either at a fixed point in time or at varying times for comparative purposes. As noted by Gill and Johnson (2002), descriptive research design describes characteristics associated with the subject population. By using descriptive research design, the study was able to establish the how of the phenomenon under investigation.

#### **3.3 Target Population**

Target population is a well defined or specified set of people, group of things, households, firms, services, elements or events which are being investigated (Ngechu, 2004). It is the specific population about which information is to be collected from. The target population of this study comprised of the dispute resolution leaders in Bungoma county. These are Members of County Assembly (MCA), religious leaders, County Commissioners, local chiefs and their assistants, village and clan elders, representatives of aid agencies, representatives of civil society groups, women leaders and leaders of the youth. These leaders were selected because of the role they play in dispute resolution.

#### **3.4 Sample Size and Sampling Procedure**

In any scientific study, the sample size and sampling procedures must be known.

### **3.4.1 Sample Size**

According to Mugenda and Mugenda (1999), a sample is a sub-set of a population. It is the part of the target population. The study selected a representative sample of 90 from the target population. Use of a sample enables the study to save cost and time. According to Pamela L.A & Robert B.S (1995) experienced researchers regard a sample of 100 respondents as the minimum sample size and 1000 as the maximum sample size for large populations. They note that it is seldom necessary to sample more than 10 percent of the population to obtain adequate confidence.

Sampling is a process of selecting subjects or cases to be included in the study of the representative of the target population. Ngechu (2004) underscores the importance of selecting a representative sample through making a sampling frame. This study made use of a sample so as to save cost and time.

### **3.4.2 Sampling Procedure**

Mugenda and Mugenda (2003) defines sampling as the process of selecting subjects or cases to be included in the study of the representative of the target population. The study used purposive sampling and simple random sampling to select a sample from the target population. Purposive sampling is a method in which elements are chosen based on purpose of the study. In this study purposive sampling was used to pick three Sub-Counties namely; Webuye, Cheptais and Lwandanyi because they are conflict flash points. Simple random was used to randomly sample the leaders in each of the selected Divisions. According to Mugenda and Mugenda (2003), simple random sampling is a sampling technique designed to ensure that every unit of a population has equal chances of being selected in the population. By use of simple random sampling in this study, a representative sample was obtained.

### **3.5 Data Collection Instrument**

The data collection instruments that were used in this study are questionnaires and checklist of specific questions that were posed to key informants. As noted by Mugenda and Mugenda (1999), questionnaires are appropriate for use when the target population is



educated and knowledgeable. The questionnaires were chosen for data collection in this study since the population of the study is well educated and also the questionnaires save on cost and time. The questionnaire designed in this study comprises of two sections. The first part includes the demographic characteristics questions designed to determine the profile of the respondents while part two deals with the identified factors. The questionnaire has both open and close ended questions. The closed ended questions make use of a five point Likert scale where respondents were required to fill according to their level of agreement with the statements. The unstructured questions were used to encourage the respondents to give an in-depth response where close ended questions are limiting.

### **3.5.1 Pilot Testing of the Instruments**

According to Ngechu (2004), pilot testing of the research instruments is a small-scale research project that collects data from respondents similar to those that will be used in the full study. It serves as a guide to examine specific aspects of the research to see if selected procedures will actually work as intended. As noted by Ngechu (2004) pilot study is critical in improving the research instruments. From the results of the pilot study, improvements can be made. A pilot study was conducted to test for clarity and understanding of questions and also to find out whether the questions yield the answers expected. The researcher selected a pilot group of 5 individuals from the target population.

### **3.6 Validity of the Instrument**

Validity is the degree by which the sample of test items represents the content the test is designed to measure (Berg and Gall, 1989). In order to test the validity of the research instruments, the researcher conducted a pilot study. The study used both face and content validity to ascertain the validity of the questionnaires. Content validity was employed by this study as a measure of the degree to which data collected using a particular instrument represents a specific domain or content of a particular concept. Mugenda and Mugenda (1999) contend that the usual procedure in assessing the content validity of a measure is to use a professional or expert in a particular field. Face validity is actually validity at

face value. As a check on face validity, test/survey items were sent to the pilot group to obtain suggestions for modification (Lacity and Jansen, 1994). Content validity draws an inference from test scores to a large domain of items similar to those on the test (Polkinghorne, 1988).

### **3.7 Reliability of The Instrument**

Reliability refers to the consistency of measurement (Ngechu, 2004). The aim of testing the reliability of the research instruments was to correct inconsistencies arising from the instruments, which ensures that they measure what is intended. Reliability was assessed using the split half reliability method. Reliability is said to be stable if it gives consistent results with repeated measurements of the same object with the same instrument. The degree of stability is determined by comparing the results of repeated measurements.

The split half method involves scoring two-halves of a test separately for each person and then calculating a correlation coefficient for the two sets of scores. The researcher split the instrument into two halves.

The researcher got a coefficient of 0.70 which implies that there is a high degree of data reliability.

### **3.8 Data Collection Procedures**

The researcher first sought written approval from the National Council of Sciences before proceeding to conduct this study. This study collected quantitative data using a self-administered questionnaire and interview schedules. The questionnaires were done through drop and pick later method where the researcher delivered the questionnaires in person at the respondents' places of work. However, where it proved difficult for the respondents to complete the questionnaire immediately, the researcher left the questionnaires with the respondents and picked them up on a later date. The drop and pick later method was selected because it enables the study to reach a large number of subjects who are able to read and write independently. The interviews were conducted for respondents who were too busy to fill the questionnaire and thus the researcher planned the interviews while aligning them to the work schedule of the respondents.

### **3.8.1 Data Analysis Techniques**

Kothari (2004) views data analysis as the whole process, which starts immediately after data collection and ends at the point of interpretation and processing of results. The quantitative data collected using questionnaires and interview schedules will be inspected for completeness, and analysed using Statistical Package for Social Sciences (SPSS v. 21.0). The results will be presented in form of tables and graphs.

### 3.9 Operational Definition of the Variables

Research objective	Type of variable	Indicator	How to Measure the indicator	Data collection Methods	Level of Scale	Approach of Analysis	Types of Analysis	Level of Analysis
To determine the influence of mediation dispute resolution mechanism on sustainable conflict resolution in Bungoma	Independent variable	Mediation Dispute Resolution Mechanisms	Leaders knowledge on mediation process  Frequency of use of the mediation  Level of Acceptability of the process by disputed groups	Questionnaires, interviews Observation	Nominal Ordinal	Qualitative Quantitative	Non-Parametric	Descriptive
To establish the effect of conciliation dispute resolution mechanism on sustainable conflict resolution in Bungoma	Independent variable	Conciliation Dispute Resolution Mechanisms	Leaders knowledge on Conciliation process  Frequency of use of the Conciliation  Level of Acceptability of the process by disputed groups	Questionnaires, interviews Observation	Nominal Ordinal	Qualitative Quantitative	Non-Parametric	Descriptive

To assess the effect of negotiation dispute resolution mechanism on sustainable conflict resolution in Bungoma	Independent variable	Negotiation Dispute Resolution Mechanisms	Leaders knowledge on Negotiation process  Frequency of use of the Negotiation  Level of Acceptability of the process by disputed groups	Questionnaires, interviews Observation	Nominal Ordinal	Qualitative Quantitative	Non-Parametric	Descriptive
To find out the influence of arbitration dispute resolution mechanism on sustainable conflict resolution in Bungoma County	Independent variable	Arbitration Dispute Resolution Mechanism	Leaders knowledge on Arbitration  Frequency of use of the Arbitration  Level of Acceptability of the process by disputed groups	Questionnaires, interviews Observation	Nominal Ordinal	Qualitative Quantitative	Non-Parametric	Descriptive
	Dependent variable	Sustainable conflict resolution	Frequency of occurrences of disputes after resolution  Contentment of parties in disolution	Questionnaires, interviews Observation	Nominal Ordinal	Qualitative Quantitative	Non-Parametric Parametric	Descriptive

### 3.10 Ethical Considerations

Cooper & Schindler (2003) gives the goals of ethics in research as to ensure that no one is harmed or suffer adverse consequences from research activities. The researcher ensured that the questionnaires and interview schedules were non-invasive and the information gathered would solely be for academic purposes and not for any other

purpose. To guarantee that ethics would be observed during this study, the researcher was issued with a transmittal letter from the university reiterating the fact that confidentiality and privacy would be observed during the study and that the data collected would only be for academic purposes.

## CHAPTER FOUR

### DATA ANALYSIS,PRESENTATION,DISCUSSION AND INTERPRETATION

#### 4.1 Introduction.

This chapter focusses on the questionnaire return rate,demographic ionformation of the respondents,data presentation ,interpretation and discussion of findings.The presentation was done based on the research questions.

#### 4.2 Questionnaire return rate

This refers to the proportion of the sample that participated in the survey as intended in all the research procedures. Out of 90 questionnaires administered to 90 leaders in three sub counties of the larger Bungoma County,85 were returned making questionnaire return rate to be 94%.

#### 4.3 Demographic information of the respondents

This chapter addresses itself to the demographic information of the respondents who constitute the leaders in Bungoma County.

##### 4.3.1Age of the respondents

This study sought information from male and female leaders of diverse age groups.This was aimed at ensuring that all leaders regardless of the age participated in the study.

**Table 4.3.1 showing age of the respondents**

	<b>Frequency</b>	<b>Percent</b>
25-35	6	6.7
35-45	26	28.9
45-55	36	40.0
55-65	21	23.3
65 and older	1	1.1
<b>Total</b>	<b>90</b>	<b>100.0</b>

The Table shows that 40% of the respondents were aged between 46-55 years and that those aged between 36-45 years accounted for 28.9% of those interviewed. Those aged between 26-35 years accounted for 6.7% while those between 56-65 years stood at 23.3%. The leaders who indicated that they were 65 years and above stood at 1.1% of the entire sample.

In terms of gender, 86.7% of the interviewed were men while 13.3% were women. In Luhya, Teso and Saboat cultures women have not been readily accepted as capable leaders and have therefore been largely excluded from grass root leadership. Most village and clan elders are men hence the small number of women respondents. It is vital to note that the 2010 constitution gives both men and women equal opportunity in all spheres of social, political and economic being of our country. Therefore nobody should be discriminated or denied leadership opportunities on account of their gender. Women must rise to challenge these discriminatory tendencies and play an active role in the leadership of their communities.

**Table 4.3.2 showing gender of the respondents**

		<b>Frequency</b>	<b>Percent</b>
	Male	78	86.7
Valid	Female	12	13.3
	<b>Total</b>	<b>90</b>	<b>100.0</b>

### **4.3.3 Marital status of the respondents**

The respondents were asked to indicate their marital status, this was aimed at establishing whether marital status has a bearing on whether an individual is given leadership roles or not including conflict resolution.



**Table 4.3.3 showing marital status of the respondents**

		<b>Frequency</b>	<b>Percent</b>
Valid	Married	86	95.6
	Single	4	4.4
<b>Total</b>		<b>90</b>	<b>100.0</b>

This study indicates that 95.6% the respondents are married while a mere 4.4% are single an indication that the local communities place value on family life and thus require their leaders to be marry before taking on leadership roles. This however, needs to change so that leadership is not pegged on marital status. It is dicriminatory and unconstitutional

#### **4.3.4 Education level of the respondents**

The respondents were asked to indicate their level of education, this was aimed at establishing wether education is a factor that hinders people from executing their leadership responsibilities including conflict resolution.

**Table 4.3.4 showing the level of education of the respondents**

		<b>Frequency</b>	<b>Percent</b>
Valid	.00	1	1.1
	Primary	3	3.3
	Secondary	43	47.8
	Tertiary	33	36.7
	University	10	11.1
<b>Total</b>		<b>90</b>	<b>100.0</b>

This study indicates that literacy levels among leaders in Bungoma County is high with 47.8% of the sampled leaders having attained secondary education, 36.7% had gone through tertiary institutions while holders of university degrees stood at 11.1%. This

therefore shows that the leaders have the requisite education and capacity to execute their functions including conflict resolution.

#### **4.3.5 Born and raised in the area or emigrated into the area of jurisdiction**

The question on whether the leaders were born and raised in their area of jurisdiction or they immigrated in to the area was also posed to the respondents. This was aimed at ensuring that the respondents understand the area they work in and the conflict issues at hand.

77.8% of the respondents said they were born and raised in their areas of jurisdiction. 15.6% of the respondents migrated into their current areas of residence while 2.2% of the sampled respondents were born in their areas of residence but were raised elsewhere. This is a clear indication that most of the sampled leaders know their areas well and have a grasp of the issues that cause conflict.

#### **4.4 Time lived in the area**

From the study it was also established that 80% of the respondents have lived in their areas of jurisdiction all their lives while 11.1% indicated that they had lived in their areas of residence for Ten years or more. Only 7.8% of the responding leaders said they had lived in their areas for more less than five years. The length time lived in area has a bearing on a person's understanding of not just the area and its people but also the issues affecting them.

##### **4.4.1 Work in the public sector**

This question was posed to respondents with a view to establish whether or not they had worked in the public sector as government employees. Experience in the public sector especially in volatile areas gives an officer opportunity to handle and manage conflict. It affords such officers an opportunity to understand conflict resolution including alternative dispute resolution mechanisms. This experience works to equip the officers with knowledge and skills in the execution of their responsibilities to the public.

As shown in Table 4.4.1, 50% of the respondents reported that they have never worked in the public sector as government employees while 44.4% reported to have worked in the public sector. The 50% however explained that they are village and clan elders who work alongside public servants especially chiefs and County Commissioners. Five respondents did not answer this question.

**Table 4.4.1 Showing whether or not leader had worked in public service**

		<b>Frequency</b>	<b>Percent</b>
Valid	.00	3	3.3
	Yes	40	44.4
	No	45	50.0
	7.00	2	2.2
<b>Total</b>		<b>90</b>	<b>100.0</b>

#### **4.4.2 Dominant tribes**

The dominant tribes in Bungoma County are the Bukusu and the Sabaot accounting for 70% and 24% of the County population respectively. The Kikuyu, Teso, Tachoni and other tribes account for only 6% of the County population. These percentages explain the antagonism between the Bukusu and Sabaot over land, distribution of jobs and development resources.

In Lwandanyi and Cheptais Sub-Counties, this conflict is pronounced because of these two dominant tribes. The Sabaots mainly inhabit the Cheptais area and the greater Mt. Elgon. The Sabaot accuse the Bukusu of dominating them by taking most of the political and state leadership positions because of their superior population numbers. This fight led to the creation of Mt. Elgon constituency so that the Sabaots can have their own member of parliament to champion their grievances.

The Bukusu on the other hand accuse the Sabaot of alienating themselves and identifying with the Kalenjin in the Rift Valley a fact that was always visible during

elections where the Saboat voted to support the presidential candidate fronted by the Kalenjin community.

#### 4.4.3 Intermarriage

**Table 4.4.3 showing intermarriage among communities**

		<b>Frequency</b>	<b>Percent</b>
	.00	2	2.2
Valid	Yes	85	94.4
	No	3	3.3
	<b>Total</b>	<b>90</b>	<b>100.0</b>

Communities in Bungoma County intermarry freely. 94.4% of the sampled respondents indicated that there's free intermarriage among tribes residing in their Sub-Counties. A negligible 3.3% responded to the contrary. However, this has done little to prevent conflict over land resource allocation in the County an indication that there is significant political undertones in the conflicts.

#### 4.4.4 Inter community conflicts.

37.8% of the respondents indicated that conflict mostly occurs between the Bvukusu and the Sabaot while 2.2% said the conflict they have witnessed is between the various Sabaot clans. 23.3% indicated that there is conflict between the Bukusu and the Tachoni mainly in Webuye Sub-County. The conflict between the Bukusu and the Sabaot mainly occurs in Cheptais and Lwandanyi Sub-Counties. This is so because the two communities have historically occupied these areas but the Sabaots have mostly occupied the upper areas of mount Elgon.

The conflicts mainly revolve around land and distribution of resources including state jobs. From my discussions with area residents it emerged that the fight between the Bukusu and Sabaots over land is historical in nature. The sabaots were not farmers but

hunters and gatherers mainly living in caves in the expansive mt. Elgon area while the Bukusu have always been a farming community. After the departure of white settler farmers from the high potential areas of the mountain the Saboots laid claim to the land sparking of a violent conflict with the Bukusu community.

Government failure to address land problems in the area and political interference in the process also led to fighting between various Saboot clans. The Moi government issued land to some clans while others were left out of the scheme. This fueled conflict. It is also notable that many Saboots were evicted from the mt. Elgon forest rendering many as squatters. This also fueled the conflict and led to the formation of the infamous Saboot land defence force (SLDF) by disgruntled clans to fight for their rights. The S.L.D.F may have been crushed by brute military force but the land grievances still exist and remain unaddressed.

Despite the violent conflict in Mt. Elgon pitting the various Saboot clans against each other being highlighted in the media and the swift and brutal government response, it is important to note that the Saboot speak one language and have historically lived in peace. This is why only 2.2% of the respondents highlighted this conflict.

In this study, 23.3% of the respondents indicated that there's a conflict between the Bukusu and the Tachoni communities mainly in Webuye Sub-County. My interactions with the local communities in Webuye revealed long standing rivalry between the two communities dating to pre-colonial times. The Tachoni have always accused the Bukusu of deliberate attempts to dominate and lock them out of political leadership.

To reinforce this fact Tachoni clan elders point to the fact that during colonial times a Bukusu chief was imposed on them and this domination was continued after independence when the Bukusu always grabbed the only parliamentary position available because of their superior numbers. The Tachonis have since felt marginalised. To express their dissatisfaction, the Tachoni have always sponsored and voted for one of their own in every election. This injustice has since been addressed following the creation of

of Webuye North Constituency following the revision of constituency boundaries in Kenya just before the 2013 general election that led to the splitting of the former Webuye constituency.

#### 4.4.5 Leadership position currently held

Village elders ,clan elders and religious leaders featured prominently in this study because they are readily available and intimately understand the issues that cause conflict in their communities. Village elders ,for example,play a crucial role in providing linkage between the community and government structures as well as actively participate in addressing conflict.

Political leaders such as members of parliament and Members of County Assembly though crucial in conflict issues were unavailable and efforts to reach them were futile because of their busy schedule.

**Table 4.4.5 Leadership position currently held**

	<b>Frequency</b>	<b>Percent</b>
.00	13	14.4
clan elder	15	16.7
village elder	23	25.6
county commissioner	3	3.3
Member of county assembly	6	6.7
Civil Society representative	8	8.9
Aid agency representative	2	2.2
Religious leader	11	12.2
Youth Leader	2	2.2
County Rep	3	3.3
14.00	1	1.1
27.00	1	1.1
28.00	1	1.1
57.00	1	1.1
<b>Total</b>	<b>90</b>	<b>100.0</b>

The study also sought to find out how long the leaders had served in a bid to establish their understanding of local issues and conflict dynamics in their areas. 40% of the leaders indicated that they had served for more than 15 years while 20% and 30% of the leaders have been in service for 15 years and 10 years respectively. It is clear that the leaders have a clear understanding of the conflict issues in their areas of jurisdiction by virtue of length of service.

#### 4.4.6 Frequency of conflict

**Table 4.4.6 showing frequency of conflict**

	<b>Frequency</b>	<b>Percent</b>
.00	3	3.3
Fairly frequent	14	15.6
Valid Not frequent	30	33.3
Very Frequent	2	2.2
After every electoral cycle	41	45.6
<b>Total</b>	<b>90</b>	<b>100.0</b>

The study also sought to establish the frequency of conflicts and as shown in Table 4.4.6, 45.6% of the respondents reported that conflicts arise after every electoral cycle. 33.3% of the respondents said the conflicts though present, are not frequent while 15.6% of the sampled leaders said the conflicts are fairly frequent. In Kenya, elections are always associated with violence and it is not surprising that 45.6% of the sampled leaders in Bungoma County said the conflicts arise during and after elections. Politicians use violence to influence the outcome of elections.

The frequency of conflict especially around election time is an indication that politics is a major factor in the triggering of conflict in the County. Politicians take advantage of community grievances concerning land and distribution of development resources to

whip up emotions and even sponsor violence for personal gain. In my discussion with leaders in the sampled sub- Counties it emerged that prior to elections the Sabaot leaders in mt Elgon cause tension to trigger mass exodus of the Bukusu so that they do not vote and tilt scales in favour of particular candidates.

#### 4.5 Mediation

**Tablee 4.5 showing utilization of mediation**

		<b>Frequency</b>	<b>Percent</b>
Valid	Yes	86	95.6
	No	2	2.2
	4.00	2	2.2
<b>Total</b>		<b>90</b>	<b>100.0</b>

As indicated in Table 4.5, it is clear that mediation has been embraced by leaders in their conflict resolution efforts in Bungoma County. This is because 95.6% of the sampled leaders indicated that they assist parties involved in disputes to voluntarily reach a mutually acceptable settlement on the issues in dispute. They also reported to using their influence to secure amicable agreement among disputants. This is crucial for sustainable peace because each of the parties leaves satisfied with the outcome of the mediation process.

The sharing of political leadership positions, plum county jobs and development resources is bound to create tension and as such the leaders intimated that round table discussions among leaders from rival communities and camps are organized and led by respected neutral third parties who lead the groups towards amicable agreements. It was claimed during my discussions with various sampled leaders that such meetings were held between the Bukusu and the Sabaot political leaders where an agreement was struck to have the Bukusu take the gubernatorial seat while the sabaot take the deputy governor's position. The leaders said this is what averted a conflict between the Bukusu and the Sabaot in the last election. It is important to note that Hon. Kenneth Lusaka the governor



of Bungoma County comes from the Bukusu community while his deputy is from the Sabaot community.

#### 4.5.1 How leaders use mediation to resolve conflicts

**Table 4.5.1 showing how leaders use mediation to resolve conflicts**

		<b>Frequency</b>	<b>Percent</b>
Valid	.00	1	1.1
	Yes	82	91.1
	No	4	4.4
	3.00	2	2.2
	23.00	1	1.1
<b>Total</b>		<b>90</b>	<b>100.0</b>

As shown in Table 4.5.1, 91.1% of the respondents said that in their use of mediation, the process is sometimes private but is mostly an open/public and structured form of negotiation assisted by a third party that is initially non-binding but if a settlement is reached the neutral third party can draw up an agreement that can then become a legally binding contract.

4.4% of the respondents said that in handling disputes using mediation, the process is an open/public and unstructured form of negotiation assisted by a third party that is initially non-binding but if a settlement is reached the neutral third party can draw up an agreement that can then become a legally binding contract.

Another 1.1% of the respondents on the other described their mediation process as a private and structured form of negotiation assisted by a third party that is initially non-binding but If a settlement is reached the neutral third party can draw up an agreement that can then become a legally binding contract

The analysis above indicates that more leaders have embraced mediation processes that are public and structured as well as the use of neutral third parties that command respect from parties to the dispute. It is vital that a mediator be neutral and objective for sustainable conflict resolution. Sharing of political power, land and development resources are emotive issues and must be handled with care to avoid a recurrence of

conflict that mostly turns violent when poorly handled. In Bungoma County, i was informed that once such agreements are secured,it is incumbent on the parties to jointly market the agreements to their communities and project unity for the agreements to hold.

#### 4.5.2 Mediation processes kept private and confidential

**Table 4.5.2 showing whether or not mediation processes are kept private and confidential**

		Frequency	Percent
Valid	.00	2	2.2
	Yes	70	77.8
	NO	15	16.7
	3.00	3	3.3
<b>Total</b>		<b>90</b>	<b>100.0</b>

77.8% of the respondents reported that while using mediation to resolve conflict they keep the process private and confidential while 16.6% reported to keeping the processes open to all. Some respondents did not answer this question. This question was posed to the respondents to test their grasp of the mediation process and to find out how the leaders in Bungoma County use mediation in resolving conflict.

Those leaders who keep the mediation processes private and confidential intimated that this is done to keep the acrimony of negotiations out of the public and only open up the process once an agreement has been struck. They argued that land issues and sharing of political power are sensitive issues that take time to resolve and therefore must be discussed in privacy where negotiators are encouraged to be open and candid with each other regarding the sticky issues. Many times there are stalemates and hurdles that will only be broken with sober discourse which is only possible in an environment that is without pressure.

The study also established that 94.% of the sampled leaders keep mediation processes voluntary,consensual and flexible while 6% said they dont. This question was aimed at

establishing whether or not the leaders understand the vitality of free will, voluntary participation and flexibility in mediation processes.

For any mediation process to succeed the parties must voluntarily participate without undue influence or pressure. The process should also be flexible and must adapt to changing circumstances and realities.

#### 4.5.3 The focus of mediation processes

**Table 4.5.3 showing the focus of mediation processes**

	<b>Frequency</b>	<b>Percent</b>
Yes	82	91.1
No	8	8.9
<b>Total</b>	<b>90</b>	<b>100.0</b>

Table 4.5.4 shows that 91% of the sampled respondents ensure that the mediation processes focus on interests and needs of the parties in conflict rather than the personalities behind the issues. 9% of the sampled leaders think the personalities behind the issues should not be ignored.

This question was also designed to test understanding of the mediation process by the concerned leaders. 91% of the respondents said it was important that the interests and needs of the parties be given adequate attention. This they said is important because personalities come and go but issues if not addressed have the tendency to escalate into violent conflict.

The sharing of political power, land and development resources among communities are sticky issues in Bungoma County and it is vital that these issues are addressed regardless of the personalities championing them. During my interviews with various leaders in the County I learnt that there is a simmering conflict with regard to the sharing of executive positions in the County government.

The Bukusu clans in Kanduyi, Bungoma South and Webuye Sub-Counties accuse the governor and his deputy of appointing people from Kimilili and Mt. Elgon Sub-Counties to the plum positions while sidelining the other areas. This conflict has since been taken to court and it is notable that the High court sitting in Bungoma recently nullified the appointments. The governor of Bungoma County has since appealed against that decision but it is yet to be resolved.

#### 4.5.4 The third party aids communication between the parties

**Table 4.5.4 Showing whether or not third parties aid communication between disputants**

		Frequency	Percent
	.00	2	2.2
Valid	Yes	86	95.6
	No	2	2.2
<b>Total</b>		<b>90</b>	<b>100.0</b>

Table 4.5.4 shows that 95.6% of the sampled respondents indicated that in the discharge of their conflict resolution duties they skillfully aid communication between the conflicting parties. It is important that communication between the parties be done in such a way that it enhances understanding of each others' point of view. Mediators have a responsibility to ensure that parties bring out their issues clearly so that they can be addressed and this helps move the parties towards a solution.

This question was designed to gauge the understanding of the nitty gritty of the mediation process and its use by the leaders in their conflict resolution duties. The high percentage of respondents affirming the aiding of communication between the parties in a mediation process is an indicator of not only the understanding but also of the practice of this important aspect of mediation.

#### **4.5.5 Third parties support parties negotiate options to meet their interests while preserving and repairing their relationship.**

Most of the respondents(96%) interviewed for this study felt that for mediation processes to succeed,it is important for neutral third parties taking charge of the process to support conflicting parties negotiate options that meet their interests while at the same time repairing their relationship.

The communities living in the County need each other for prosperity. Their lives are intertwined and depended on one another.The communities share schools,markets, Banks,roads,health facilities and even human resources. It also emerged that there are kinship ties across communities because of intermarriage. There are many Bukusu women married to Sabaots and vice versa.This is also true for the Bukusu andd the Teso as well as the Bukusu and the Tachoni.

The leaders interviewed said that whenever conflicts occur they always take time to remind the parties that they are brothers who need each other in the long term and should therefore have foresight in their agreements.

#### **4.5.6 Provision of expert advise/opinion on the merits of the dispute by neutral third party**

This study revealed that 93% of the respondents provide expert opinion on the merits of the dispute in question while 4% of the respondents said they dont,3% of the respondents skipped this question. Further probing of the leaders who provide expert opinions on disputes showed that these was only applicable in issues concerning land. They said they understand land issues deeply because most of them are locals who sit on local land control boards in their respective sub- Counties.This question was also designed to test the understanding and use of mediation by the local leaders.

**Table 4.5.6 showing provision of expert advise/opinion on the merits of the dispute by neutral third party**

	<b>Frequency</b>	<b>Percent</b>
.00	2	2.2
Yes	84	93.3
No	4	4.4
<b>Total</b>	<b>90</b>	<b>100.0</b>

The study also revealed that 98% of the respondents assist parties in conflict to know the strengths and weaknesses of their case by providing them with an assessment ,prediction and direction concerning the issues in dispute. This they said is important in speeding up the process so as to arrive at amicable solutions. The high number of respondents agreeing with such assessment, prediction and direction concerning sticky issues is an indicator of use and understanding of mediation.

#### **4.5.7 Neutral third party role in empowering the parties to control the dispute resolution process.**

**Table 4.5.7 Showing neutral third party role in empowering the parties to control the dispute resolution process.**

	<b>Frequency</b>	<b>Percent</b>
.00	1	1.1
Yes	84	93.3
No	5	5.6
<b>Total</b>	<b>90</b>	<b>100.0</b>

As indicated in table 4.5.8, 93% of the sampled respondents reported that in the course of their conflict resolution duties,they empower the parties in conflict to control all the

aspects of the dispute resolution process,including helping the parties clarify their interests,goal and choices.Only 6% of the sampled respondents thought otherwise. Those who go out of their way to help parties clarify their goals and interests said they considered it their responsibility as leaders to do this so as to ensure justice is achieved.They however lamented the lack of goodwill and support from government in terms of capacity building,establishment of structures for dispute resolution at grassroot level and remuneration for community leaders.Those who said they do not help parties clarify their goals and interests said they lacked capacity and only provide a conducive environment for fruitful negotiations.

**4.5.8 The use of questions to bring out the parties points of view; search for interests , find and analyze options for resolution**

**Table 4.5.8 showing the use of questions to bring out the parties points of view; search for interests , find and analyze options for resolution**

	<b>Frequency</b>	<b>Percent</b>
Yes	89	98.9
No	1	1.1
<b>Total</b>	<b>90</b>	<b>100.0</b>

The use of questions to bring out the parties points of view; search for interests underneath the positions taken by parties; and assistance to parties in finding and analyzing options for resolution was strongly advocated for by the respondents in this study. As a matter of fact, 99% of the respondents said they employ this strategy in their execution of conflict resolution resolution duties.

These respondents pointed out that questions help clarify issues and enable mediators understand the borne of contention in the matter at hand.Specific questions are posed to ensure disputants are following the process and agree or disagree with its progress.This gives mediators an opportunity to be in control of the process.Most respondents also

mentioned that questions help eliminate issues that may be unnecessary in the mediation process and thus helps save time.

Formal training to equip leaders with competencies to effectively perform the responsibilities of a neutral third party was mentioned as being very important for mediation. 84% of the sampled respondents said they had benefited from formal training in this regard. Only 14% of them said they had not been trained. Those that had been trained said they had attended training meetings at their respective Sub-County headquarters where they were lectured the importance of impartiality in mediation. They also learnt listening and facilitation skills. When asked about who facilitated the training and how long it took many said they had been trained by Officers in the County Commissioners' office and that the training had lasted one day.

It is vital to note that such trainings are ineffective because of their poor quality. Conflict resolution and management has many issues that must be addressed in the content of such trainings and it is highly unlikely that a one day training is adequate. It is also important that such content be tailored to the needs of specific areas while taking into consideration the unique circumstances of each area. It is notable that most of the leaders who underwent this training do not have reference material or guidelines for mediation a pointer to the poor quality of the said training exercise.



#### 4.5.9 Frequency of recurrence of disputes addressed through mediation.

**Table 4.5.9 showing frequency of recurrence of disputes addressed through mediation.**

	Frequency	Percent
.00	1	1.1
Valid Rarely recur	55	61.1
recur every five years especially during elections	34	37.8
<b>Total</b>	<b>90</b>	<b>100.0</b>

With regard to recurrence of disputes addressed through mediation, 61% of the sampled leaders said that such disputes rarely recur while 38% said such disputes recur every five years especially during elections. Those who said the disputes rarely occur were however clear that such disputes are those land disputes between individuals and are far in between. Those who said the disputes recur every five years especially during elections made reference to community land disputes. These they said are common place between the Bukusu and the Sabaots in Cheptais and Lwandanyi Sub-Counties and are mostly fueled by politicians.

#### 4.5.10 Disputes resolved through mediation

According to the leaders sampled in this study, land disputes form the bulk of the disputes solved through mediation by leaders in the County accounting for 60% of the cases. Disputes over sharing of political leadership positions account for 10% of the cases while disputes arising out of unequal distribution of development resources only account for 7% of the cases. Other respondents provided more than one answer to this question.

A further probe into why the land disputes featured prominently in cases handled by leaders through mediation revealed that the County had huge chunks of land that had not be registered and therefore lacked title deeds. This the leaders said was the reason behind

quarrels over land ownership. They squarely blamed the government lands ministry for this failure.

When asked why mediation had taken center stage in land issues the leaders said residents were facing frustration with court litigation processes that are too slow and expensive with many land cases taking more than 20 years to resolve.

Disputes arising out of unequal distribution of development resources and sharing of state jobs were said to be handled by members of parliament and leaders in senior positions in government and only featured at the grassroots when members of parliament complain publicly at official functions to galvanize support and secure development support for the County.

The leaders pointed to a case where the then former Bumula Member of parliament told President Mwai Kibaki at a public rally at Kanduyi stadium in the year 2009 that despite voting for the ruling party the people of Bungoma County were yet to see a person from the County appointed to a senior position in government. He also pressured the president to tell the residents when Kibabii University College would be built. It is noteworthy that Kibabii University College has since been built.

#### 4.6 Adoption of conciliation in conflict resolution

**Table 4.6 showing adoption of conciliation in conflict resolution**

		<b>Frequency</b>	<b>Percent</b>
	.00	1	1.1
Valid	Yes	88	97.8
	124.00	1	1.1
	<b>Total</b>	<b>90</b>	<b>100.0</b>

Conciliation has been overwhelmingly adopted as an alternative dispute resolution mechanism in Bungoma County. This is evidenced 98% confirmation by all the sampled

respondents. This question was aimed at establishing whether or not the leaders had adopted this mechanism in their day to day conflict resolution duties.

#### 4.6.1 The use of independent person(s) to bring about a settlement of dispute through consensus

**Table 4.6.1 showing the use of independent person(s) to bring about a settlement of dispute through consensus**

	Frequency	Percent
.00	1	1.1
Valid Yes	80	88.9
NO	6	6.7
3.00	3	3.3
Total	90	100.0

The leadership of Bungoma County adopts the use of independent person(s) selected by the parties by mutual consent when a dispute has arisen between them, to bring about a settlement of their dispute through consensus. This was clearly brought out by 89% of the sampled leaders as shown in the graph above. This is an indicator that alternative dispute resolution mechanisms are appreciated.

The leaders pointed to the existence of councils of elders made of respected citizens in each of the indigenous communities living in the County. These Councils meet from time to time to deliberate on important issues affecting their communities. They are instrumental in conflict resolution so as to avert violent conflict that has in the past led to loss of lives and massive destruction of community assets.

This came out prominently among respondents sampled in Lwandanyi and Cheptais Sub-Counties who said that because of the historical land feuds between the Bukusu and the Sabaot; the Councils of elders of both sides as well as respected religious leaders have always been called upon by political leaders on both sides to handle disputes before they get out of hand.

#### 4.6.2 Techniques employed by conciliators

**Table 4.6.2 showing techniques employed by conciliators**

	Frequency	Percent
Valid	2	2.2
Coercion	6	6.7
Pesuation	5	5.6
Negotiation	59	65.6
13.00	1	1.1
23.00	16	17.8
34.00	1	1.1
<b>Total</b>	<b>90</b>	<b>100.0</b>

Conciliation involves the use of various techniques to resolve conflicts and reach satisfactory agreements for the parties in a dispute. Some of these techniques include persuasion, negotiation and coercion. 66% and 6% of the respondents said they widely employ negotiation and persuasion respectively in their conciliation efforts where parties clearly and soberly state their goals and interests (positions) and are advised to embrace the spirit of give and take so as to reach a middle ground on the issues in dispute.

Only 7% said they used coercion in their conciliation efforts but were quick to add that this was only used when a party was clearly obstructing efforts to reach an agreement. They cited an example where, for example, official land maps showed boundaries yet a party vehemently disregards the authenticity of the maps. In such circumstances such a party is coursed into agreement and may be threatened with sanctions in case he goes against the agreements reached.

#### 4.6.3 Options for conciliators in event of parties' inability to reach mutually acceptable settlement.

In conciliation processes it is possible that conciliation efforts may not yield satisfactory outcomes for the parties involved. In such a scenario conciliators have several options that they can take. In this study as indicated in the graph below 56% of the sampled

respondents said that they issue a recommendation which is binding on the parties unless it is rejected by one of them. This is premised on the fact that conciliators are held in high regard by both parties in the dispute as well as their capacity to adjudicate on the matter at hand...

33% of the sampled leaders reported that they refer the parties to the courts for settlement of their cases in case of failure of conciliation efforts..They however pointed out that they take time to advise the disputants that litigation especially with regard to land is time consuming and expensive. 2% of the respondents said they sometimes use threats and sanctions to force the parties into agreement. None said they impose a settlement.

This question was aimed at testing understanding and proper use of conciliation in dispute resolution by the leaders in the Bungoma County.The fact that leaders use persuasion and provide recommendations as well as refer the conflicting parties to courts of law is a pointer to the understanding and use of conciliation.

#### **4.6.4 Conciliators advisory role on the content of the dispute or outcome of its resolution**

Conciliators have a role to play in advising the parties in a conflict about the content of the dispute or the outcome of its resolution.Consiliators take their time to listen to both sides and make objective judgement based on the facts in the matter.Many times they are able to advice the parties not to waste time and resources by going to the courts if the matter can be conclusively addressed out of court.

In this study and as indicated in the graph shown above, a convincing 91% of the sampled leaders reported to playing this advisory role adding that it goes along way in helping speed up the process of conflict resolution. Only 6% of the sampled leaders thought otherwise urging that many times they are incapacitated by lack of technical expertise.

#### **4.6.5 Conciliators imposing a settlement on the conflicting parties**

In this study respondents were asked whether or not they had imposed a settlement on conflicting parties or had witnessed their colleagues do it.This was aimed at testing their

understanding of conciliation and its application in dispute resolution. 37% of the respondents said they had witnessed the imposition of a settlement on disputants while 63% said they had not witnessed it. This is an indicator that most leaders understand conciliation and appreciate the value of negotiated settlements as opposed to imposed ones which mostly do not stand the test of time.

The process of conciliation can take many forms. However the end result of any conciliation effort is always aimed at reaching a mutually agreed settlement. At the option of the parties, the process may be private. This is especially true if the dispute involves business transactions and the disputants are of the view that publicity of the conflict may hurt their businesses.

The parties may or may not use counsels and there is no limit to the argument, evidence and interests, which may be canvassed. This all in the effort to get the best settlement that fits their interests. Counsels are mainly employed in disputes that require technical expertise as well as those that involve considerable amounts of monetary value where there's considerable risk of loss in case of an unfavorable settlement.

The process may also involve instances where the conciliator helps the parties look at the strengths and weaknesses of each other's arguments with the sole aim of reaching a mutually agreed settlement.

In other conciliation efforts, the conciliator is an expert on the subject of the dispute and as a result, the conciliator may have an advisory role on the content of the dispute or the outcome of its resolution

In this study 48% of the sampled respondents said they often use the process that provides the conciliator with an opportunity to help the parties look at the strengths and weaknesses of each other's arguments. 10% of the sampled respondents said the conciliators' expert advice on the content of the dispute or the outcome of its resolution is important.

Many respondents gave multiple answers as to the conciliation processes adopted by them in the discharge of their duties. However, as shown by the graph above, a lot of

emphasis is given to assistance by conciliators to disputants to look at strengths and weaknesses in each other's arguments.

#### **4.6.6 Frequency of recurrence of disputes addressed through conciliation.**

**Table: 4.6.6 Showing frequency of recurrence of disputes addressed through conciliation.**

	<b>Frequency</b>	<b>Percent</b>
.00	1	1.1
rarely recur	62	68.9
recur every five		
years especially	24	26.7
during elections		
3.00	1	1.1
34.00	1	1.1
134.00	1	1.1
<b>Total</b>	<b>90</b>	<b>100.0</b>

table 4.6.6 shows 69% of the sampled respondents indicating that disputes addressed through conciliation rarely recur while 27% of the respondents indicated that conflicts resolved through conciliation recur every five years especially during elections. Those who said the disputes recur every five years especially during elections made reference to community land disputes. These they said are common place between the Bukusu and the Sabaots in Cheptais and Lwandanyi Sub-Counties and are mostly fueled by politicians.

#### **4.6.7 Disputes resolved through conciliation**

According to the leaders sampled in this study, land disputes form the bulk of the disputes solved through mediation by leaders in the County accounting for 60% of the cases. Disputes over sharing of political leadership positions account for 9% of the cases while disputes arising out of unequal distribution of development resources only account for 7% of the cases.

Other respondents did not answer this question appropriately. However land disputes were clearly identified as being majorly handled through conciliation.



A further probe into why the land disputes featured prominently in cases handled by leaders through conciliation revealed that the County had huge chunks of land that had not be registered and lacked ownership title deeds. This the leaders said was the reason for the high number of land disputes. They squarely blamed the government lands ministry for this failure.

When asked why conciliation had taken center stage in land issues the leaders said residents were facing frustration in courts processes that are not only slow but are also expensive.

Disputes arising out of unequal distribution of development resources and sharing of state jobs were said to be handled by members of parliament and leaders in senior positions in government and only featured at the grassroots when members of parliament complain publicly at official functions to galvanize support and secure development support for the County.

#### **4.6.8 Adoption of negotiation in conflict resolution**

Negotiation has been overwhelmingly adopted as an alternative dispute resolution mechanism in Bungoma County. This is evidenced 93% confirmation by the sampled respondents. This question was aimed at establishing whether or not the leaders had adopted this mechanism in their day to day conflict resolution duties.

#### 4.6.9 Negotiation as used by leaders in dispute resolution

Table 4.6.9 showing negotiation as used by leaders in dispute resolution

	Frequency	Percent
00	1	1.1
any form of communication	22	24.4
back and forth communication	15	16.7
negotiators meet to work with or against each other	4	4.4
negotiation proceedings take place between groups of people	2	2.2
parties come to realization of the problem,	21	23.3
Valid ensure communication between conflicting parties	8	8.9
12.00	6	6.7
15.00	1	1.1
45.00	1	1.1
56.00	5	5.6
135.00	1	1.1
145.00	1	1.1
156.00	1	1.1
1234.00	1	1.1
<b>Total</b>	<b>90</b>	<b>100.0</b>

The purpose of negotiation is to engage the parties in dispute in direct communication that will result in a mutually agreed settlement of the dispute. The communication is usually back and forth and is designed to ensure the conflicting parties reach an agreement. This was pointed out by 17% of the sampled respondents.

Mostly, negotiators meet to work with or against each other for their own position or pre-determined, desired outcomes. The aim is to extract as much as they can from the other party in the dispute.

Negotiation proceedings may take place between groups of people rather than individuals, and the list of tactics that negotiators may use is long and varied. Through negotiation both parties come to the realization that they have a problem, and both are aware that by talking to each other, they can find a solution to the problem. This was pointed out by 23% of the respondents.

Those leading the negotiations must ensure that there's communication between the conflicting parties intended to gain understanding, to produce agreement, to bargain between individual involved in a conflict or dispute.

In this study 24% of the sampled respondents indicated that the negotiation process they have adopted ensures that there's communication between the conflicting parties is intended to gain understanding and to produce a mutually agreeable settlement. 2% indicated that negotiations that take place are between groups of people rather than individuals.

4% of the respondents said negotiators meet to work with or against each other for their own position or pre-determined, desired outcome. They do this with the realization that they have a problem, and both are aware that by talking to each other, they can find a solution to the problem.

It is clear from this study that the leaders pay a lot of attention to communication between the conflicting parties since this leads to understanding of each others' arguments and ultimately to a negotiated settlement.

#### **4.6.10 Negotiation is based on the aggressive pursuit of interest by parties, is adversarial and competitive where parties make demands that are inconsiderate of the interest and needs of others**

This study showed that a sizeable 47% of the respondents strongly agree that negotiation is based on the aggressive pursuit of interest by parties, and is typically adversarial and competitive where parties make demands that are inconsiderate of the interest and needs of others. The leaders pointed out that most times opposing sides in a dispute want to achieve their own interest and have little or no regard for their counterparts at the negotiating table. They mostly have the winner takes all mentality that mostly derails negotiations. It thus takes sober facilitation by neutral third parties to steer the

negotiations through emphasis of give and take where parties are encouraged to strongly consider letting go off some demands to enable consensus building.

38% slightly agree with the above statement but were quick to point out that most disputants are not necessarily interested in seeing their counterparts lose in the negotiations but strongly work to avoid loss of what rightfully belongs to them.

13% of the sampled leaders strongly disagreed saying negotiations do not have to be adversarial and inconsistent with the needs of others. In land disputes for example they urged that historical boundaries are crucial in determining ownership and leaders call upon elders from time to time to unravel boundary disputes.

What clear from the above graph is that negotiation negotiation is based on the aggressive pursuit of interest by parties, and is typically adversarial and competitive where parties make demands that are inconsiderate of the interest and needs of others.

#### **4.7 The view that demands of one party can be met only to the detriment of the other where parties tend to stubbornly adhere to their positions and one side seems to dominate the negotiation.**

In this study, 37% of the sampled respondents strongly agreed with the view that demands of one party can be met only to the detriment of the other where parties tend to stubbornly adhere to their positions and one side seems to dominate the negotiation. 39% of the leaders slightly agreed with this view while 22% of the respondents strongly disagreed with it.

This question was posed to the respondents to assess their understanding of negotiation and get a view of the kind of negotiation processes undertaken by these leaders in the course of their dispute resolution duties. Those who strongly agreed with the above statement were mostly from Lwandanyi and Cheptais SubCounties where land disputes abound. They mentioned that Sabaot and Bukusu were always motivated by ethnic rivalries and historical differences such that they had little regard for each other.

**4.7.1 In negotiation processes, the disputants may represent themselves or they may be represented by agents and whatever the case, they have control over the negotiation process**

**Table 4.7.1 showing opinion on negotiation processes**

		<b>Frequency</b>	<b>Percent</b>
Valid	Strongly agree	44	48.9
	Slightly agree	31	34.4
	Strongly disagree	15	16.7
<b>Total</b>		<b>90</b>	<b>100.0</b>

In this study, 49% of the sampled respondents strongly agree with the view that in negotiation processes, the disputants may represent themselves or they may be represented by agents and whatever the case, they have control over the negotiation process. 34% of the respondents slightly agreed with this statement but did not give reasons why. 17% of the respondents strongly disagreed. Those who strongly agreed with this statement said land disputes attracted lawyers or advisor hired by disputants. This however was done by families that are endowed with resources. Those who come from poor backgrounds represented themselves but had control of the process.

**4.7.2 level of acceptability of negotiation by the parties in resolving conflict**

In this study 77% of the sampled respondents said negotiation was highly acceptable among disputants in their areas of jurisdiction while 22% said they rarely used it. Negotiation is highly acceptable because it is cheap and is done in familiar surroundings. The leaders said Community elders know each other well and are able to access each other on short notice. The leaders interviewed gave the example of 1992 land clashes between the Bukusu and the Sabaot in Cheptais Sub County where Community elders on both sides had to intervene to stop the killings after the failure of policemen to stop the fighting. The fighting was stopped through negotiations.

In Webuye Sub County a conflict was brewing between the Bukusu and the Tachoni following a proposal to review constituency boundaries. The Bukusu leaders were said to

be opposed to the creation of a constituency for the Tachoni sub tribe but negotiations were held and the Tachoni got a constituency(Webuye North)for the first time since independence.

#### 4.7.3 Frequency of recurrence of disputes addressed through negotiation

**Table 4.7.3 showing Frequency of recurrence of disputes addressed through negotiation.**

	Frequency	Percent
.00	1	1.1
Valid rarely recur	73	81.1
recurs every five years especially after election	16	17.8
<b>Total</b>	<b>90</b>	<b>100.0</b>

With regard to recurrence of disputes addressed through negotiation,81% of the sampled leaders said that such disputes rarely recur while 18% said such disputes recur every five years especially during elections .Those who said the disputes rarely occur were however clear that such disputes are those land disputes between individuals and are far in between. Those who said the disputes recur every five years especially during elections made reference to community land disputes. These they said are common place between the Bukusu and the Sabaots in Cheptais and Lwandanyi Sub-Counties and are mostly fueled by policticians.

#### 4.7.4Disputes resolved through negotiation

According to the leaders sampled in this study,land disputes form the bulk of the disputes solved through mediation by leaders in the County accounting for 60% of the cases. Disputes over sharing of political leadership positions account for 9% of the cases while disputes arising out of unequal distribution of development resources only account for 10% of the cases.

A further probe into why the land disputes featured prominently in cases handled by leaders through negotiation revealed that the County had huge chunks of land that had not

been registered and lacked ownership title deeds. This the leaders said was the reason for the high number of land disputes. They blamed the lands ministry for this failure.

When asked why negotiation had taken center stage in land issues the leaders said residents were frustrated by court processes because they are slow but and costly.

Disputes arising out of unequal distribution of development resources and sharing of state jobs were said to be handled by members of parliament and leaders in senior positions in government and only featured at the grassroots when members of parliament complain publicly at official functions to galvanize support and secure development support for the County.

#### **4.7.5 Adoption of arbitration in conflict resolution**

**Table 4.7.5 Showing percentage of parties that do or dont refer a disputes to impartial entities away from the courts**

		<b>Frequency</b>	<b>Percent</b>
Valid	Yes	75	83.3
	No	15	16.7
<b>Total</b>		<b>90</b>	<b>100.0</b>

As shown in the table 4.7.5, arbitration has been adopted as an alternative dispute resolution mechanism in Bungoma County. This is evidenced 83% confirmation by the sampled respondents. This question was aimed at establishing whether or not the leaders had adopted this mechanism in their day to day conflict resolution duties.

#### 4.7.6 Equipping leaders with competencies for provision of impartial dispute resolution services through formal training

**Table 4.7.6 Showing whether or not the leader have been equipped through formal training**

		Frequency	Percent
Valid	.00	1	1.1
	Yes	80	88.9
	No	9	10.0
<b>Total</b>		<b>90</b>	<b>100.0</b>

Formal training to equip leaders with competencies for provision of impartial dispute resolution services was pointed out as being very important for arbitration. 89% of the sampled respondents said they had benefited from formal training in this regard. Only 10% of them said they had not been trained. Those that had been trained said they had attended training meetings at their respective Sub-County headquarters where they were lectured the importance of impartiality in arbitration. They also learnt facilitation skills. When asked about who facilitated the training and how long it took many said they had been trained by Officers in the County Commissioners' office and that the training had lasted one day.

It is vital to note that such trainings are ineffective because of their poor quality. Conflict resolution and management has many issues that must be addressed in the content of such trainings and it is highly unlikely that a one day training is adequate. It is also important that such content be tailored to the needs of specific areas while taking into consideration the unique circumstances of each area. It is notable that most of the leaders who underwent this training do not have reference material or guidelines for mediation a pointer to the poor quality of the said training exercise.

The conclusion i made from my interaction with various leaders is that even the organizers of this training sessions do not seem to understand the things they purport to



know and lack capacity to conduct such trainings. It is incumbent on County governments to develop skills and capacity so that the quality of such trainings can be improved.

**4.7.7 Existence of formal/ informal independent and impartial arbitration structures put in place by government, NGOs or the communities.**

**Table 4.7.7 showing existence of formal/ informal independent and impartial arbitration structures put in place by government, NGOs or the communities.**

	Frequency	Percent
.00	8	8.9
Yes	76	84.4
No	6	6.7
<b>Total</b>	<b>90</b>	<b>100.0</b>

As shown in table 4.6.19, 84% of the sampled respondents testified to the existence of independent and impartial arbitration structures. Only 7% of them testified to the contrary. This question was designed to establish the existence of such structures, if at all

**4.7.8 Arbitration structures in Bungoma County.**

**Table 4.7. 8 showing the constitution of arbitration structures.**

	Frequency	Percent
.00	15	16.7
clan elders from conflicting communities	40	44.4
Religious leaders	5	5.6
Government appointed arbitors	8	8.9
Civil society representatives	1	1.1
12.00	8	8.9
13.00	4	4.4
123.00	4	4.4
124.00	2	2.2
134.00	2	2.2

1234.00	1	1.1
<b>Total</b>	<b>90</b>	<b>100.0</b>

As shown in table 4.7 .8, 44% of the sampled respondents pointed to the existence of clan elders from conflicting communities who are relied upon to offer arbitration services.7% of the respondents said religious leaders were known to offer arbitration services when need arises.9% said they were aware of the existence government appointed arbitors. Other respondents gave multiple answers for this question.

This information is an indicator of the immense influence of the local community structures in addressing conflict.This influence is reinforced by the cultures of the communities in Bungoma County that respect community clan elders.Incase of violent conflict over land for example,these elders have been called upon from time to time to stop the clashes and they have been effective in playing this role.The Bukusu council of elders is a revered institution in the Community and its pronouncements always hold sway.

The influence of religious leaders in as far as conflict resolution through arbitration is concerned is minimal.Their waning influence can be traced to the rampant corruption and other vices that have crept into the church.This has led to the loss of moral authourity.

Discussions with officers at the County government revealed a complete lack of structures with regard to conflict resolution.What exists is a committe on disaster management whose mandate does not include conflict resolution.This points to a reactionary approach to conflict which does not work well.

#### **4.7.9 Arbitration as used by leaders in dispute resolution**

The purpose of any arbitration process is to have an independent and impartial neutral third party listen to the issues in a dispute and make a binding judgement.The parties are expected to accept and embrace the results of the arbitration process but if dissatisfied they are allowed to go to courts of law and seek justice.

The process is always in private which means that any sensitive knowledge (information) and individual reputation is preserved. The arbitors are people who command a lot of respect from the communities and are appointed from within the community.

The most unique characteristic about arbitration is that it is built on the basis of an acceptance and agreement of all the parties in case of any disagreement among them. 39% of the sampled respondents in this study affirmed this.

In this study it was also established that the arbitration processes used people who command a lot of respect from the communities and are appointed from within the community and that disputants readily accepted to engage in arbitration processes. This is evidenced by 24% of the respondents who confirmed this. The processes were also said to be private as indicated by 2% of the sampled leaders while 10% of the respondents gave more than one response.

#### **4.7.10 Frequency of recurrence of disputes addressed through arbitration.**

**Table 4.7.10 Showing frequency of recurrence of disputes addressed through arbitration.**

	<b>Frequency</b>	<b>Percent</b>
.00	8	8.9
Valid Rarely recur	57	63.3
recur every five years especially after elections	25	27.8
<b>Total</b>	<b>90</b>	<b>100.0</b>

With regard to recurrence of disputes addressed through arbitration, 63% of the sampled leaders said that such disputes rarely recur while 28% said such disputes recur every five years especially during elections. 9% of the respondents gave multiple answers to this question. Those who said the disputes rarely occur were however clear that such disputes are those political disputes between individual elected leaders and are far in between. Those who said the disputes recur every five years especially during elections made reference to community land disputes. These they said are common place between the

Bukusu and the Sabaots in Cheptais and Lwandanyi Sub-Counties and are mostly fueled by politicians.

#### 4.8 Disputes resolved through arbitration

**Table 4.8 Showing disputes resolved through arbitration**

Type of dispute	Frequency	Percentage
Land disputes	9	10%
Disputes over sharing of political leadership positions	45	50%
Disputes arising from sharing of state jobs	-	0%
Disputes arising out of unequal distribution of development resources	36	40%

According to the leaders sampled in this study, disputes over sharing of political leadership positions and those arising out of unequal distribution of development resources form the bulk of the disputes solved through arbitration by leaders in the County accounting for 50% and 40% respectively. Land disputes accounted for 10%.

This question was designed to establish the type of disputes mostly handled through arbitration. The low number of respondents picking land disputes in this question indicates that arbitration is not a preferred mechanism of dispute resolution in land cases.

## **CHAPTER FIVE**

### **SUMMARY OF THE FINDINGS, CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

Alternative dispute resolution mechanisms are appreciated and utilized by leaders in their day to day conflict resolution duties in Bungoma County. Mediation and negotiation mechanisms are commonly utilized by leaders in addressing various forms of conflict between individuals as well as disputes between communities.

#### **5.2 Summary of the findings**

In this study, it has been established that land disputes are the commonest of all conflicts. This has been attributed to historical land injustices especially in Mt. Elgon region where politicization of land allocations in the former white settler farms has led to long standing conflict between the Bukusu and the Sabaot communities. The conflict between various Sabaot clans also has its genesis in these politically motivated land allocations.

Another reason given for increased number of land disputes is the lack of land ownership documents in Bungoma County due to rampant corruption at the lands ministry.

This study also established that many residents of Bungoma County, especially those with land disputes are increasingly turning to alternative dispute resolution mechanisms and out of court settlements due to lengthy and costly litigation processes in the corridors of justice.

It was also established that though the leaders appreciated ADR mechanisms, there still exist capacity problems that need to be addressed. The national and County governments have not invested in quality ADR training for the leaders yet they are expected to discharge conflict resolution duties in their communities.

There is need for development and standardization of ADR training curriculum content that should be cascaded down to grassroots leaders. There's need to also train trainers for such content so that good quality trainings in ADR can be guaranteed.

The study also established that once land and other disputes have been resolved they rarely recur but only come up again during general elections. Politicians were accused of

taking advantage of community grievances for personal political gain. It was claimed that some politicians sponsor violence especially just before elections to displace sections of other communities to stop them from participating in the elections. This was widely sited in Lwandanyi and cheptais Sub-Counties where Bukusu and Sabaot rivalry is palpable.

Though currently being practiced, arbitration is not very well understood by the leaders in Bungoma County. I found out that there exist no formal arbitration structures in the County. This study glaring capacity gaps with regard to arbitration in the County. The County government must therefore rise to the occasion and develop capacity within its ranks.

This study also found that women still have along way to go before they can be trusted with leadership positions. Despite gains made in the 2010 constitution, Bungoma County communities are yet to embrace them by giving opportunities to women.

### **5.3 Recommendations.**

1. In order to address land disputes emanating from lack of clear ownership, the lands ministry needs to improve the quality of service delivery to the citizens of Bungoma County. Rampant corruption perpetuated by officers at the lands office was cited as a major stumbling block in acquisition of land title deeds and must be stopped.
2. Land allocations in the former white settler areas of Mt. Elgon have been infiltrated by political interests and this is the root cause of unrest in Mt. Elgon Sub-County. The national and County government must take decisive action to address the land grievances of the Sabaot community to stop the inter clan fighting that has led to loss of many lives and massive destruction of property.
3. For the leaders to be more effective in conflict resolution they must be trained and equipped with skills and competencies necessary for this responsibility. There's need to address the quality of the trainings being provided because they are poor.
4. The County government must invest in the establishment of arbitration structures at County level so that citizens can find assistance. This can be done through employment and training of arbitration personnel for the County.

5. Women must be supported and given leadership opportunities. This can be done through affirmative action. Slots for positions such as chief and assistant chief should be set aside for women leaders.

#### **5.4 Suggestions for further study**

Based on the study findings the researcher suggests the following studies to be carried out. Firstly, a study should be initiated to establish the impact of the devolved system of governance on community integration and cohesion. This is because this study established a renewed sense of protectionism for community interests at the expense of other communities.

#### **5.5 Conclusion**

Alternative dispute resolution mechanisms are an important component in the justice system of a country. They provide opportunity and space for parties in conflict to resolve the issues in contention amicably while avoiding the costs and delays associated with normal court processes.

This study established that though ADR mechanisms are in use at the community level, County governments have not put in place mechanisms to institutionalise ADR. There are glaring capacity gaps that continue to impact on the adoption and use of ADR mechanisms. This must be addressed.



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## APPENDICES

### Appendix I: Transmittal Letter

#### TO THE RESPONDENTS

#### BUNGOMA COUNTY.

Dear Sir, Madam,

**RE: RESEARCH ON THE INFLUENCE OF UTILIZATION OF ALTERNATIVE  
DISPUTE RESOLUTION MECHANISMS BY LEADERS ON SUSTAINABLE  
CONFLICT RESOLUTION IN BUNGOMA COUNTY, KENYA.**

I am a student at the University of Nairobi pursuing a Masters Degree in Project Planning and Management. I wish to carry out research on the influence of utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution in Bungoma county, Kenya. I request you to assist in collecting the data necessary for this study by responding to one of the data collection instruments. Please provide your sincere knowledge and expertise regarding every aspect. Please note that all information collected will remain confidential and only used for the purpose intended.

I look forward to your consideration and cooperation.

Yours Faithfully,

Atemi Justin

M.A STUDENT, UNIVERSITY OF NAIROBI.

**Appendix II: Questionnaire for religious/political/administrative leaders**

This questionnaire is intended to help the researcher to establish the influence of utilization of alternative dispute resolution mechanisms by leaders on sustainable conflict resolution in Kenya. The researcher is hopeful that your responses will contribute to increased understanding and utility of alternative dispute resolution mechanisms on sustainable conflict resolution in Kenya. There is no need to disclose your identity. Fill in the spaces provided or tick appropriately

**SECTION ONE**

1. Kindly indicate how old you are

- a) 25-35 yrs
- b) 35-45 yrs
- c) 45-55 yrs
- d) 55-65 yrs

2. Please indicate your sex

- a) Male
- b) Female
- c) Any other (Specify).....

3. Please indicate your marital status

- a) Married
- b) Single
- c) Divorced
- d) Separated

4. Kindly indicate your level of education

- a) Primary
- b) Secondary
- c) Tertiary
- d) University

5. Kindly indicate whether you were born in this area or you migrated here from another region. (Tick where appropriate)

- a) I was born and raised in this area.
- b) I was born in this area but was raised away from this area

c) I migrated into this area from elsewhere

6. Kindly indicate how long you have lived here

- a) All my life
- b) Less than five years
- c) Ten years or more

7. Have you worked in the public sector before?

- a) Yes
- b) No

8. What tribes/sub-tribes/clans reside within your area?

- a) Bukusu
- b) Tachoni
- c) Teso
- d) Saboat
- e) Kikuyu
- f) Any other (please specify).....

9. To which tribe do you belong?

- a) Bukusu
- b) Tachoni
- c) Teso
- d) Saboat
- e) Kikuyu
- f) Any other(Please specify)

10. Is there free intermarriage among the tribes in your area?

- a) Yes
- b) No

11. Between what groups/tribes have the conflicts been occurring?

- a) Bukusu verses Tachoni
- b) Bukusu verses Teso
- c) Bukusu verses Saboat
- d) Saboat verses Saboat

- e) Saboat verses kikuyu
- d) Bukusu verses Bukusu

12. What leadership position do you currently hold in the community?

- a) Clan elder
- b) Village elder
- c) County Commissioner
- d) Member of County Assembly
- e) Civil society representative
- f) Aid agency representative
- g) Religious leader
- h) Youth leader

13. Have you ever held any administrative positions?

- a) Yes
- b) No

14. If yes in Q13 above, please indicate the positions held.

- a) Assistant Chief
- b) Chief
- c) District Officer
- d) District Commissioner

15. For how long have you worked as an administrator/leader in your area?

- a) Less than five years
- b) Ten years
- c) Fifteen years
- d) More than fifteen years

16. Is there free intermarriage among the tribes in your area?

- a) Yes
- b) No

17. Between what groups/tribes have the conflicts been occurring?

- a) Bukusu verses Tachoni
- b) Bukusu verses Teso

- c) Bukusu verses Saboat
- d) Saboat verses Saboat
- e) Saboat verses kikuyu
- f) Bukusu verses Bukusu

18. What is the frequency of these conflicts?

- a) Fairly frequent
- b) Not frequent
- c) Very frequent
- d) After every electoral cycle

***Objective 1. To determine the influence of mediation dispute resolution mechanism on sustainable conflict resolution in Bungoma , Kenya***

19. Kindly tell me whether you and other leaders in your area assist the parties involved in disputes to voluntarily reach a mutually acceptable settlement of the issue in dispute.

- a) Yes
- b) No

20. While handling conflict in your area do you and other leaders help the parties in conflict reach an amicable agreement ?

- a) Yes
- b) No

21. If yes in Q2 above do you and other leaders work to ensure the use of a neutral third party to lead the conflicting parties towards such agreements?

- a) Yes
- b) No



22. Kindly listen to the statements below and choose a statement that best depicts how you use mediation in resolving conflict in your area.

- a) The process is a private and structured form of negotiation assisted by a third party that is initially non-binding but If a settlement is reached the neutral third party can draw up an agreement that can then become a legally binding contract
- b) The process is an open/public and unstructured form of negotiation assisted by a third party that is initially non-binding but if a settlement is reached the neutral third party can draw up an agreement that can then become a legally binding contract
- c) The process is sometimes private but is mostly open/public and structured form of negotiation assisted by a third party that is initially non-binding but if a settlement is reached the neutral third party can draw up an agreement that can then become a legally binding contract

23. While addressing conflict in your area using processes that are spearheaded by neutral third parties, do you keep the processes private and confidential?

- a) Yes
- b) No

24. While addressing conflict in your area using processes that are spearheaded by neutral third parties, do you keep the processes voluntary, consensual and flexible?

- a) Yes
- b) No

25. Does the process described above and used by you and other leaders in your area focus on interests and needs of the parties in conflict rather than the personalities behind the issues?

- a) Yes
- b) No

26. While addressing conflict in your area does the neutral third party skillfully aid communication between the conflicting parties?

a) Yes

b) No

27. Does the neutral third party help the conflicting parties negotiate options to meet their interests, while at the same time preserving and repairing their relationship?

a) Yes

b) No

28. Does the neutral third party provide expert opinion on the merits of the dispute?

a) Yes

b) No

29. Does the neutral third party help the parties know the strengths and weaknesses of their case by providing them with an assessment, prediction and direction concerning the issues dispute?

a) Yes

b) No

30. Kindly indicate whether or not the neutral third party empowers the parties to control all aspects of the dispute resolution process, including helping the parties in conflict clarifying their interests, goal and choices and to have a better understanding of the other party's perspective.

a) Yes

b) No

31. Kindly indicate whether or not the mediator uses questions to bring out the parties points of view; searches for interests underneath the positions taken by parties; and assists the parties in finding and analyzing options for resolution.

a) Yes

b) No

32. Have you and other leaders in your area undergone any formal training to equip you with competencies to effectively perform the responsibilities of a neutral third party?

a) Yes

b) No

33. In your own assessment, how often do the disputes addressed through arbitration recur?

a) They rarely recur

b) They recur every five years especially during elections

34. In your own assessment what disputes do you and other leaders in your area resolve through mediation?

a) Land disputes

b) Disputes over sharing of political leadership positions

c) Disputes arising from sharing of state jobs

d) Disputes arising out of unequal distribution of development resources.

***Objective 2. To establish the effect of conciliation dispute resolution mechanism on sustainable conflict resolution in Bungoma, Kenya.***

35. While resolving conflict in your area have you and other leaders in your region adopted conciliation as an alternative dispute resolution mechanism?

a) Yes

b) No

36. If yes in Q35 above, does the process involve the use of one or more independent person(s) selected by the parties by mutual consent when a dispute has arisen between them, to bring about a settlement of their dispute through consensus?

a) Yes

b) No

37. Kindly indicate the techniques employed by the conciliators in your area

a) Coercion

b) Persuasion

c) Negotiation

d) Deception

38. In the event of that the parties are unable to reach a mutually acceptable settlement, what do the conciliators in your area do?

a) They issue a recommendation which is binding on the parties unless it is rejected by one of them

b) They refer the parties to the courts

c) They employ threats and sanctions to force the parties to strike an agreement

d) They impose a settlement.

39. While addressing conflict in your area do the conciliators play an advisory role on the content of the dispute or the outcome of its resolution?

a) Yes

b) No

40. From your experience as a leader in this area, have you or other leaders witnessed a conciliator impose a settlement on the conflicting parties?

a) Yes

b) No

41. Which of the following statements depict the conciliation process adopted by you or other leaders in your area in resolving conflict?

- a) At the option of the parties, the process may be private.
- b) The parties may or may not use counsels and there is no limit to the argument, evidence and interests, which may be canvassed.
- c) The conciliator will help the parties to look at the strengths and weaknesses of each other's arguments
- d) Usually, the conciliator is an expert on the subject of the dispute and as a result, the conciliator may have an advisory role on the content of the dispute or the outcome of its resolution,

42. In your own assessment, how often do the disputes addressed through conciliation recur?

- a) They rarely recur
- b) They recur every five years especially during elections

43. In your own assessment what disputes do you and other leaders in your area resolve through conciliation?

- a) Land disputes
- b) Disputes over sharing of political leadership positions
- c) Disputes arising from sharing of state jobs
- d) Disputes arising out of unequal distribution of development resources

***Objective 3. To assess the effect of negotiation dispute resolution mechanism on sustainable conflict resolution in Bungoma, Kenya***

44. Kindly indicate whether you and /or other leaders in your area employ negotiation in dispute resolution whenever conflict arises?

a) Yes

b) No

45. If yes in Q44 above, Kindly tick against statements that depict what you and other leaders normally do while using negotiation in dispute resolution

- a) We use any form of communication between two or more parties in conflict for the purpose of arriving at a mutually agreeable solution.
- b) We use a back and forth communication designed to ensure the conflicting parties reach an agreement.
- c) negotiators meet to work with or against each other for their own position or pre-determined, desired outcome
- d) negotiation proceedings take place between groups of people rather than individuals, and the list of tactics that negotiators may use is long and varied.
- e) Both parties come to the realization that they have a problem, and both are aware that by talking to each other, they can find a solution to the problem.
- f) We ensure that there's communication between the conflicting parties intended to gain understanding, to produce agreement, to bargain between individual involved in a conflict or dispute.

46. Negotiation is based on the aggressive pursuit of interest by parties, and is typically adversarial and competitive. Parties make demands that are inconsiderate of the interest and needs of others.

- a) Strongly agree
- b) Slightly agree
- c) Strongly disagree

47. Demands of one party can be met only to the detriment of the other. Parties tend to stubbornly adhere to their positions and one side seems to dominate the negotiation.

- a) Strongly agree
- b) Slightly agree

c) Strongly disagree

48. In a negotiation the disputants may represent themselves or they may be represented by agents and whatever the case, whether they are represented or not represented, they have control over the negotiation process.

a) Strongly agree

b) Slightly agree

c) Strongly disagree

49. What is the level of acceptability of the negotiation mechanism by the parties in resolving conflict?

a) Highly acceptable

b) Rarely used

50. In your own assessment, how often do the disputes addressed through negotiation recur?

a) They rarely recur

b) They recur every five years especially during elections

51. In your own assessment what disputes do you and other leaders in your area resolve through direct negotiation?

a) Land disputes

b) Disputes over sharing of political leadership positions

c) Disputes arising from sharing of state jobs

d) Disputes arising out of unequal distribution of development resources

**Objective 4. To find out the influence of arbitration dispute resolution mechanism on sustainable conflict resolution in Bungoma County , Kenya**

52. In the course of your conflict resolution duties do the parties refer a dispute or difference between them to impartial entities away from the courts for a decision?

a) Yes

b) No

53. Have you or any of the leaders in your area been trained and equipped with skills on provision of impartial dispute resolution services?

a) Yes

b) No

54. Are there any formal or informal independent and impartial structures that have been put in place by government,NGOs or the communities so that such structures make a binding and enforceable decision on the dispute? (Tick where appropriate)

a) Yes

b) No

55. If yes in Q34 above,who constitutes such a structure?

a) Clan elders from conflicting communities

b) Religious leaders

c) Government appointed arbitors

d) Civil society representatives



56. Which of the following statements describes arbitration as used in your area?

- a) The process is always in private which means that any sensitive knowledge (information) and individual reputation is preserved.
- b) The most unique characteristic about arbitration is that it is built on the basis of an acceptance and agreement of all the parties in case of any disagreement among them.
- c) The arbitors are people who command alot of respect from the communities and are appointed from within the community.

57. In your own assessment,how often do the disputes addressed through arbitration recur?

- a) They rarely recur
- b) They recur every five years especially during elections

58. In your own assessment what disputes do you and other leaders in your area resolve through arbitration?

- a) Land disputes
- b) Disputes over sharing of political leadership positions
- c) Disputes arising from sharing of state jobs
- d)Disputes arising out of unequal distribution of development resources

**THANK YOU FOR YOUR TIME AND GOD BLESS YOU**

## **Appendix 111: Map of Bungoma County**