

**INFLUENCE OF TRADITIONAL JUSTICE SYSTEM ON
EFFECTIVE CONFLICT MANAGEMENT IN MUHORONI
SUB COUNTY, KENYA**

EMILY AKINYI KUNGU

**A Research Project Report submitted in Partial Fulfilment of the
Requirement for the Award of Master of Arts in Peace Administration
(MAPE) of the University of Nairobi.**

2015

DECLARATION

This research project is my original work and has never been presented in part or as a whole for any academic award to other Examining Institutions.

Signature: _____ Date: _____

Emily Akinyi Kungu

Registration No: L51/77852/2012

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

Signature: _____ Date: _____

Dr. Ndunge Kyalo

Senior Lecturer

Department of Extra Mural Studies

University of Nairobi

DEDICATION

This work is dedicated to my parents Mr & Mrs Kungu, who always ensured that each and every child in the family put education a head of everything else. Similarly, dedication goes to the entire Kungu family who has brought something new and fresh to my understanding about assisting a family member in need. Equally, I owe much gratitude to my nephews: Brian, Leroy, Elius, Arnold, Jeremy, Jonathan, and Jayden; and to my nieces Nicole, Beverly, Donna, and Nitchel for their moral and material support towards my study. Finally, I dedicate this work to my loving husband, Mr. George Washington, who provided unwavering support and encouragement in every step that I have made in this study. Last but not least, I thank the Almighty God for taking me this far in my studies.

ACKNOWLEDGEMENT

I am so grateful to my supervisor, Dr. Dorothy Kyalo, for devotedly guiding me in this research. This work would not have been done without the contribution of the supervisor. She has been enthusiastic in guiding me and encouraging me throughout this research work. Her critique provided me with unwavering strength to forge and complete this work as scheduled.

I would also sincerely thank my lecturers in the department, Dr. Mbwesa, Prof. Machari, Dr. Kyule D., Dr. L. Kaviti, Dr. A. Assey, Prof. Kidombo, Dr. R. Kiyoro, Madam Muchemi, Mr. Mwangi, Dr. R. Imonje, Dr. D Mangurio, and Dr. Wangamati, and other lecturers in the University of Nairobi, who guided me through my entire study in the university.

Similarly, I would also thank the University of Nairobi for availing me a chance to carry out my academic endeavors, more so for the offer to use the university library which enabled me to collect sufficient materials for my research.

Much gratitude goes to my course mates in the University of Nairobi, Victoria, Consolata, and Raphael (among others), who shared with me the necessary academic materials which contributed a great deal in making my studies a success.

To the all the Assistant Chiefs and Village Elders in Muhoroni Sub County who provided data related to alternative justice system, this work might not have been a success without your input, and many thanks goes to you in this regard. Owing that you were the main focus from whom data was to be collected, I congratulate you for your priceless cooperation and agreeing to be interviewed for the purpose of this study.

ABSTRACT

Across the world, communities have been using different traditional methods in resolving disputes and managing various types of conflicts. In most instances, formal judicial systems are considered by disputants as foreign, expensive, and lead to social fragmentation and further animosity among members of same community. While studies reveal the importance attributed to this judicial system in managing conflicts in Africa, there is need for a study to establish its contribution to conflict management among communities in Kisumu County. The purpose of this study was to establish the influence of traditional justice system in conflict management in Muhoroni Sub County of Kisumu County. Specific objectives were to examine appropriateness of different methods of traditional justice system used for conflict management; to identify different forms of common conflicts which are managed by traditional justice system; and to establish the influence of different methods of traditional justice system on the management of various forms of common conflicts in Muhoroni Sub County. A qualitative research design was adopted on a target population comprising of all the assistant chiefs and 45 village elders responsible for the maintenance of peace in the Sub County. Census and purposive sampling technique were used to select 15 assistant chiefs and 9 village elders respectively, as the sample size of the study: making a total of 24 respondents. Data was collected using interview schedule and observation guides, and data analysis was done through thematic methods. It was found that negotiation is the main methods used for conflict management by the sub location and village administrators, while cattle rustling are the main types of conflict that often occur among the community members. Similarly, the study revealed that traditional justice system influences cohesion among community members. It was recommended more training on mediation, negotiation, and should be done to sub location and village administrators to enhance skills in this system; reporting mechanisms should also be prompt (immediately a particular offence takes place), more centres for mediation, negotiation, and conciliation should be opened so as to enable as many people as possible access to this service. For further research, the researcher recommends for the following studies to be done: Influence of hybrid (formal and informal) justice system on the management of conflict; and the influence of traditional justice system on human rights enhancement.

TABLE OF CONTENT

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
ABSTRACT	v
LIST OF FIGURES	ix
LIST OF TABLES	x
ABBREVIATIONS AND ACRONYMS	xi
CHAPTER ONE: INTRODUCTION	1
1.1 Background of the Study	1
1.2 Statement of the Problem.....	5
1.3 Purpose of the Study.....	5
1.4 Study Objectives.....	5
1.5 Research Questions	6
1.6 Significance of the study.....	6
1.7 Delimitation of the Study.....	6
1.8 Limitations of the Study	7
1.9 Assumptions of the Study	7
1.10 Definition of Significant Terms	8
1.11 Organisation of the Study	9
CHAPTER TWO: LITERATURE REVIEW	10
2.0 Introduction	10
2.1. Methods of Traditional Justice System.....	10
2.1.1 Negotiation.....	10
2.1.2 Conciliation	11
2.1.3 Mediation	11
2.1.4 Adjudication/Arbitration.....	12
2.2 Types of Conflict managed by Traditional Methods.....	12
2.3 Influence of Traditional Justice System on Conflict Management	14
2.4 Theoretical Framework.....	17
2.5 Conceptual Framework.....	20
2.6 Summary of Reviewed Literature	22

CHAPTER THREE: RESEARCH METHODOLOGY	23
3.1 Introduction	23
3.2 Research Design.....	23
3.3. Area of Study	23
3.4 Target Population	24
3.5 Sample Size and Sampling Technique	24
3.6 Data Collection and Procedures	25
3.7 Research Instruments.....	25
3.7.1 Interview schedule	25
3.7.2 Observation Guide.....	26
3.8 Data Analysis Techniques.....	26
3.9 Ethical Consideration	27
CHAPTER FOUR: DATA ANALYSIS, PRESENTATION AND INTERPRETATION.....	28
4.1Introduction.....	28
4.1.1: Objectives of the Study.....	28
4.2: Demographic Information of the Respondents	28
4.2.1 Distribution of Respondents by Gender.....	28
4.2.2 Distribution of Respondents by Age	29
4.2.3 Distribution of Respondents by Academic Qualification	29
4.2.4 Experience in Administrative duties.....	30
4.3 Themes Generated from the Field	31
4.3.1 Methods of traditional Conflict Management	31
4.3.2 Types of Conflicts managed by Traditional Justice System.....	34
4.3.3 Impact of Traditional Justice System on Management of Conflict.....	36
CHAPTER FIVE : SUMMARY, DISCUSSIONS CONCLUSIONS, AND RECOMMENDATIONS	39
5.1 Summary of Findings	39
5.2 Discussions.....	40
5.3 Conclusions	42
5.4 Recommendations	43
5.5 Recommendations for Further Research.....	43

REFERENCE	44
APPENDICES	47
APPENDIX I: Introductory Letter	47
APPENDIX II: Interview Schedule for Religious Leaders	48
APPENDIX III: Observation Schedule for Traditional Justice Procedure	50
APPENDIX IV: Questionnaire	51
APPENDIX V: Work Plan	55

LIST OF FIGURES

Figure 1: Conceptual framework representing the relationship between Traditional Justice System and Conflict Management.....	21
--	----

LIST OF TABLES

Table 1.1: Types and frequency of conflicts in the Sub County.....	4
Table 4.1: Distribution by Gender	29
Table 4.2: Distribution of Respondents by Age.....	29
Table 4.3: Distribution by Academic Qualifications	30
Table 4.4: Distribution by years of Experience	30

ABBREVIATIONS AND ACRONYMS

- KNBS** - Kenya National Bureau of Statistics
- NACOST** - National Council of Science and Technology
- RJ** - Restorative Justice
- TA** - Thematic Analysis

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

More often than not, patterns of social ordering always determine the forms of dispute resolution in any given society. Pre-industrial societies where relations involved various continuing interests, parties relied on negotiation or mediation in dispute settlement attempts which generally led to consensus and compromise. Conversely, in complex industrialized societies where parties were mostly involved in single interest relations, reliance were mainly on adjudication or arbitration in dispute settlement attempts, thus leading to win-or-loss decisions (Velsen, 1964). Sometimes referred to as informal justice, traditional justice system has been employed in adjudicating conflicts by societies across the World since time immemorial. For instance, Common law, age old legal tradition, evolved in England after the Norman Conquest (Bowry, 2015). The doctrines of common law have been adopted all over the world, notably in America and most commonwealth countries. Informal or traditional systems are usually the primary means of resolving disputes in many countries; as such their effectiveness determines whether disputes can be resolved in a peaceful way or whether they will descend into violence (Golub, 2003).

Traditional justice is an established system of immemorial rules which have evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to special cases, which were retained in the memories of the chief and his counselors, their sons and their son's sons, until forgotten, or until they became part of the immemorial rules (Roy, 2005). The phrase justice system refer to the institutions that interpret, apply and enforce the law rather than to the normative framework of laws applied, according to a pool of shared values, ideas about right and wrong, and acceptable sources of morality that are commonly acknowledged and rooted in local cultural orientation (Oomen, 2003). According to Murithi (2006), conflict management within a particular community is a process that involves identification of the root cause of the problem and bringing all parties concerned to address the underlying issues: a process that often ends with the

guilty accepting wrong doing, leading to reconciliation which may include compensation or just forgiveness.

Clark and Stephens (2011), in their research programs on alternative justice systems as practiced across the globe, found that only about 15 percent of disputes in the United States, England and Wales enter the legal system, while in Australia, only 6 percent of commercial disputes make it to court. In the developing world, Wojkowska (2006) contends that traditional justice system has been popularly employed in conflict management in many states. In Malawi between 80% and 90% of all disputes are processed through customary justice forums, while in Bangladesh an estimated 60% - 70% of local disputes are solved through the *Salish* (a traditional court set up for conflict resolution). Similarly in Sierra Leone, approximately 85% of the population falls under the jurisdiction of customary law, defined under the Constitution as the rules of law, which, by custom, are applicable to particular communities in Sierra Leone: customary tenure covers 75% of land in most African countries, affecting 90% of land transactions in countries like Mozambique and Ghana. Further, there are estimates claiming that up to 80% of Burundians take their cases to the *Bashingantahe* institution as a first or sometimes only instance. The preference for traditional justice system aside, different communities prefer to use different methods for managing specific categories of conflict, and there is need to establish these disparities.

There exist different methods of managing conflicts offered within traditional justice system, key among these are negotiation, mediation (or compromise), conciliation, arbitration, and litigation (Olaoba, 2005). According to Theresa and Oluwafemi (2014) mediation, an old method of conflict management is surrounded by secrecy and involves non-coercive intervention of third party (mediators). Olaoba (2005) described mediation as a method of conflict resolution that had been so critical to traditional society. The mediators usually endeavoured that peace and harmony reigned supreme in the society at whatever level of mediation. This is also usually couched with the dictum of no victor no vanquished as buttressed by the maxim (Isurmona, 2005). Mediation is often preferred because of its capacity to reorient the parties towards each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship (Ray, 2009). Muigua (2014) opines that negotiation is the process involving conflicting parties meeting to identify and discuss the issues at hand so as to arrive at a mutually

acceptable solution without the help of a third party. The parties themselves attempt to settle their differences using a range of techniques like concession or compromise, and coercion or confrontation. Negotiation thus allows party autonomy in the process and over the outcome. It is non-coercive thus allowing parties the room to come up with creative solutions (Ireland Law Reform Commission, 2008). Negotiation focuses on the common interests of the parties and not their relative power or position, and aims at avoiding overemphasis on how the conflict arose but to create options that satisfy both the mutual and individual interests.

Similarly, conciliation is perhaps the most significant aspect of conflict management. This process is similar to mediation except for the fact that in conciliation, the third party can propose a solution (Theresa and Oluwafemi, 2014). Its advantages are similar to those of negotiation. It has all the advantages and disadvantages of negotiation except that the conciliator can propose solutions, thus making parties lose some control over the process.

Although best applied in trade disputes, conciliations are recognized by a number of international legal instruments as a means to the management of several types of conflicts. It is considered the most significant aspect of conflict resolution, owing that it is the end product of negotiation, mediation, or adjudication. After the disputants have been persuaded to end the dispute, peace was restored. This restoration of peace and harmony is always anchored on the principle of give a little and get a little: this is the essence of conciliation. Although no empirical studies have been done to establish which among the traditional methods of conflict management is most applicable in any particular situation, this study was intended to fill this gap in knowledge.

The ultimate aim of traditional justice system is the restoration of good relations, which include spiritual dimensions (Huyse 2008). Accordingly, punishing an action is viewed as harming the conflicting parties a second time. The establishment of harmony, the core intent of this justice system, implies reintegration of the defiant members. According to Zartman (2000), restorative justice has to be understood as compensation for loss, as opposed to retribution for offense. Through this justice system, parties in a conflict have to negotiate a consensus regarding the interpretation of the past and to establish a common view of the historical background of the conflict (Huyse 2008). More often than not, facts have to be established and the truth has to be revealed, thereafter perpetrators can confess their wrongdoings, apologise and ask for forgiveness, and victims can accept

the apologies and forgive. On this basis reconciliation between the parties can take place. Boege (2008) state that this process often lead to the exchange of material goods as compensation; in terms of money or other gifts, depending on the cultural context, based upon the symbolic aspect envisaged by the community.

Muhoroni Sub County is a settlement scheme which is inhabited by people from different communities, with majority being Luo tribe and a sizable number of Kalenjins (owing that Kalenjin region neighbors Muhoroni Sub County) as well as a few Kisii, Luhya, and Kikuyu tribes. Although local administrators (Chiefs and Assistant Chiefs) and village elders have continued to employ diverse methods of traditional justice process in resolving different disputes emanating from local interactions, the rate at which conflicts occur and the dimensions that they (conflicts) take has raised immense concern across Kenya. Table 1.1 shows the types and frequency of conflicts and their consequences in the Sub County between 2013 and 2014 as obtained from the Sub County Commissioner’s office.

Table 1.1: Types and frequency of conflicts in the Sub County

Year	Arson	Cattle Rustling	Burglary	Assault	Cane damage	Domestic Violence
2013	120	104	52	168	305	364
2014	154	83	73	216	354	382
Total	274	187	125	384	659	746

Table 1.1 illustrates that domestic violence and damage to plantations of Sugar Cane out of various types of disputes (746 and 659 cases respectively) between 2013 and 2014 were very frequent in the Sub County. Similarly worrying were cases of cattle rustling (187 cases in a span of 2 years) and arson (274 cases within 2 years) given the impact they may have in the community in terms of potentiality to ignite widespread violence. However, information concerning effectiveness of conflict management processes employed in this region is not available. While studies on traditional justice system highlight the social embedding role it plays in our communities, the influence of this alternative justice system amongst communities living in Kisumu County has not empirically been established. The present study sought to establish the influence of alternative justice system on the management of conflicts in Muhoroni Sub County in Kisumu County, Kenya.

1.2 Statement of the Problem

Studies reveal that approximately 85% of disputes in the U.S., England, and Wales are resolved through traditional justice system; while in Australia, only 6% of commercial disputes make it to formal courts. In most instances, formal judicial systems are considered by disputants as foreign, expensive, and lead to social fragmentation and further animosity among members of the same community. The acceptance of this justice system in the developing world is immense. For instance, in Africa, customary tenure covers 75% of land in most African countries, affecting 90% of land transactions in countries like Mozambique and Ghana, while up to 80% of Burundians take their cases to the communal courts (Bashingantahe) as a first or sometimes only instance. However, Muhoroni Sub County has experienced various types of conflicts in the last two years. For instance, 382 cases of domestic violence were reported in 2014 alone, and another 354 cases of damages to sugar cane plantations were reported in 2014. These signals worrying dimensions that disputes have taken in this region, and there is need to assess the effectiveness of conflict management processes employed in this area. While much importance has been attributed to this informal judicial system in managing conflicts in Africa, there appear to be study that has been carried out in Kisumu County to establish the influence of this system on the management of conflict. This study therefore aimed at filling this gap.

1.3 Purpose of the Study

The purpose of this study was to establish the influence of traditional justice system in conflict management in Muhoroni Sub County of Kisumu County, Kenya.

1.4 Study Objectives

This study was guided by the following objectives:

- i. To examine appropriateness of different methods of traditional justice system used for conflict management on Muhoroni Sub County
- ii. To identify different forms of common conflicts which are managed by traditional justice system in Muhoroni Sub County
- iii. To establish the influence of different methods of traditional justice system on the management of various forms of common conflicts in Muhoroni Sub County

1.5 Research Questions

In order to attain the study objectives, the following questions will be answered

- i. What is the appropriateness of different methods of traditional justice system employed for conflict management in Muhoroni Sub County?
- ii. What are the different forms of conflicts that are managed by traditional justice system in Muhoroni Sub County?
- iii. What is the influence of different methods of traditional justice system on the management of various forms of common conflicts in Muhoroni Sub County?

1.6 Significance of the study

The recommendations of this study, if adopted, are capable of helping households, communities, the entire judicial systems in Kenya, and peaceful coexistence among members of particular communities. Conflicts arising amongst members of the same household and between households, if solved in accordance with common communal practices as highlighted in traditional justice arrangements, hold the effect of sustainable peaceful coexistence. Similarly, members of the same community will understand and embrace conflict management methods suitable for enhancing integration as opposed to formal justice systems which tend to disintegrate the community. The adoption of the study recommendations would ensure that many civil cases are resolved communally through traditional justice system, thereby decongesting the courtrooms. Finally, recommendations for further research provided in this study open a window for more studies on the same phenomena.

1.7 Delimitation of the Study

To minimize situations that might have limited the success of this study, the researcher ensured that identities of respondents remained anonymous, which encouraged open provision of required information. Further, the researcher obtained permissions from the University, the county commissioner of administration, and the county commissioner so as to encourage respondents to provide information freely. Similarly, the problem of possible provision of biased information was overcome through the use of two methods of data collection: questionnaires and interview schedule, thereby ensuring corroboration of information. In the same vein, the researcher opted to make several visits to the offices of Assistant Chiefs, village elders, and church leaders to ensure that every respondent was

interviewed. In overall, the researcher was obliged to explain accurately the purpose of the research to the selected respondents, so that any kind of suspicion was eliminated from the respondents.

1.8 Limitations of the Study

Most respondents were pessimistic with research due to the sensitive nature of their work which is closely related to public administration: disclosure of such information requires permission from higher offices. The busy schedules of sub location administrators also threatened the successful data collection process, and this forced the researcher to make several visits to the offices of selected respondents to ensure that each one of them was reached. Further, recording of proceedings in village barazas was restricted, and taking pictures or voice recording was not permitted. However, the researcher found ways of overcoming these limitations.

1.9 Assumptions of the Study

This study assumed that there is an alternative justice system based on beliefs and practices of local communities, in this case, communities living in Muhoroni Sub County. This study also assumed that there are several types of conflicts taking place in the Sub County, either involving members of same communities or two communities. Similarly, it was taken that the traditional justice system in the study area assists in solving different types of conflicts, which goes further in restoring coherence and unity. Finally, this study assumed that there specific order followed by traditional justice system in managing conflicts among different parties in Muhoroni Sub County.

1.10 Definition of Significant Terms

Arbitration	The official process of settling a disagreement between two people or groups.
Biodiversity	Existence of a large number of animals and plants which make a balanced environment.
Conflict resolution	Is the methods and processes involved in facilitating the peaceful ending of conflict and retribution
Conciliation	To make somebody more friendly by being kind or giving them something
Conflict resolution	A process geared toward getting a solution to a conflict
Conflict	Situation in which people, groups or countries are involved in serious disagreement
Disputants	People who are involved in a discussion where there is a disagreement.
Jury	A group of members of the public who listen to the facts of a case in a court of law and decide whether or not somebody is guilty or not
Litigation	The process of making or defending a claim in a court of law.
Nationalism	The desire by a group of people who share the same culture to form an independent country.
Peace building	Interventions that are designed to prevent the start or resumption of conflict by creating a sustainable peace
Qualitative	Connected with how good something is rather than how much of it there is.
Reconciliation	An end to a disagreement and the start of a good relationship again.
Stability	State of being steady and not changing in any way.
Trigger	Something that is the cause of a particular reaction or development, especially a bad one.

1.11 Organisation of the Study

This study is organized into five chapters. Chapter one introduce by stating the background of the problem, statement of the problem, purpose of the study, research objectives and research questions. It also has the significance of the study, limitations of the study, delimitations of the study, basic assumptions and definition of key terms.

The second chapter presents theories used in the study and review of related literature. The reviewed literature is organized according to the study objectives. A conceptual framework is thereafter drawn. Methodology of the study forms the third chapter. It focuses on the research design, target population, sample size and sampling procedure, description of research instruments, the test for reliability and validity, procedure for data collection and methods of data analysis. Chapter Four looks at the findings of the study. It includes the analysis, discussions and interpretation of the data collected. Chapter Five contains summary of findings, conclusions, and recommendations in the sequence of the study objectives.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

The literature review aims at reviewing the critical points of current knowledge including substantive findings as well as the theoretical and contribution of a particular topic (Kagawa, 2005). The literature review on this study includes the following sub-topics: different methods of traditional justice system used for conflict management, different forms of common conflicts which are managed by traditional justice system, influence of different methods of traditional justice system on the management of various forms of common conflicts, and finally the summary of the literature review.

2.1. Methods of Traditional Justice System

Conflict management processes are interactive and participatory, giving the conflicting parties a chance to come up with mutually satisfying outcomes. The best placed mechanisms to achieve this are negotiation, mediation, adjudication, negotiation, and conciliation (Hamilton, 2010). More often, traditional justice system consider conflict under different contexts, and manage them (conflicts) through appropriate methods.

2.1.1 Negotiation

This process involves parties meeting to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party. The process may involve two or more people of either equal or unequal power meeting to discuss shared or opposed interests in relation to a particular area of mutual concern (Muigua, 2010) The parties themselves attempt to settle their differences using a range of techniques from concession and compromise to coercion and confrontation. Negotiation thus allows party autonomy in the process and over the outcome. It is non-coercive thus allowing parties the room to come up with creative solutions.

According to William (2000), the underlying secret in negotiation is to harmonize the interests of the parties concerned. Thus, even when the conflict involves a member against his or her society, there is an emphasis on recuperation and reinsertion of errant member back into its place in society. The recovery of a dissident member can just as well be seen as the restoration of the harmony and integrity of the community, as the

assertion of value consensus and social cohesion, so that the management of the conflict favours the concerns of both parties (Ibid, pp. 220-221).

According to Nancy and Welsh (2010) negotiators rely upon their perceptions of distributive and procedural fairness in making offers and demands, reacting to the offers and demands of others, and deciding whether to reach an agreement or end negotiations. The rationale is that if no relationship exists between negotiators, self-interest will guide their choice of the appropriate allocation principle to use in negotiation. Ireland Law Reform Commission (2008) contends that relationships apparently matter in negotiators' definitions of fair outcomes.

2.1.2 Conciliation

Reconciliation is perhaps the most significant aspect of conflict management. Theresa and Oluwafemi (2014) state that conciliation is process is similar to mediation except for the fact that the third party can propose a solution. Its advantages are similar to those of negotiation. It has all the advantages and disadvantages of negotiation except that the conciliator can propose solutions making parties lose some control over the process. Although best applied in trade disputes, conciliation are recognized by a number of international legal instruments as a means to management several types of conflicts. It is considered the most significant aspect of conflict resolution, owing that it is the end product of negotiation, mediation, or adjudication. After the disputants have been persuaded to end the dispute, peace was restored. This restoration of peace and harmony is always anchored on the principle of give a little and get a little: this is the essence of conciliation.

2.1.3 Mediation

According to Theresa and Oluwafemi (2014) mediation, an old method of conflict management is surrounded by secrecy and involves non-coercive intervention of third party (mediators(s)). Olaoba (2005) described mediation as a method of conflict resolution that had been so critical to traditional society. The mediators usually endeavoured that peace and harmony reigned supreme in the society at whatever level of mediation. This is also usually couched with the dictum of no victor no vanquished as buttressed by the maxim (Isurmona, 2005). Mediation is often preferred because of its

capacity to reorient the parties towards each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship (Ray, 2009).

2.1.4 Adjudication/Arbitration

Muigua (2014) opine adjudication is a process of conflict management where an impartial, third-party neutral person known as adjudicator makes a fair, rapid and inexpensive decision on a given dispute arising under a construction contract. Adjudication is an informal process, operating under very tight time scales (the adjudicator is supposed to reach a decision within 28 days or the period stated in the contract), flexible and inexpensive process; which allows the power imbalance in relationships to be dealt with so that weaker sub-contractors have a clear route to deal with more powerful contractors. The decision of the adjudicator is binding unless the matter is referred to arbitration or litigation. Adjudication is thus effective in simple construction disputes that need to be settled within some very strict time schedules. Due to the limited time frames, adjudication can be an effective tool of actualizing access to justice for disputants who are in need of addressing the dispute in the shortest time possible and resuming business to mitigate any economic or business losses.

2.2 Types of Conflict managed by Traditional Methods

There exist different types of conflict involving members of the same community of between communities. A study conducted by Ik Dahl, Hellum, Kaarhus, Benjaminsen, and Kameri-Mbote (2005) in five countries (Tanzania, Mozambique, South Africa, Zimbabwe and Kenya) found that land conflicts, domestic conflicts, cattle rustling, burglary, and other delinquencies are common issues that make relationships to be poor within communities.

Sandefur and Siddiqi (2011) conducted a survey of 2,500 households in rural Liberia, cataloging over 4,500 disputes taken to a variety of customary and formal forums. The underlying hypothesis is that rural Liberians make constrained but rational choices in navigating the dual legal system, and that these choices embody a trade-off between the broader legal rights provided by the formal system, and the more efficient restorative remedies offered by the customary system. The overwhelming tendency to take disputes to customary rather than formal forums provides important lessons about the design of justice sector reforms targeted at the rural poor.

In a study of non-formal dispute resolution processes in a slum area in Nairobi, Kamau (2007) observed that these processes operate in a wider socio-economic context and are integrated into the social and economic fabric of life, solving conflicts which cut across various contexts. Thus, for instance, the mandate of the village committees extend beyond hearing disputes to other important aspects of community life such as security, environmental management, health and civic administration. Further, the outcomes of the dispute resolution process tend to reflect unequal socio-economic relations, for example in disputes between landlords and tenants, or husbands and wives. However, the participatory and problem-solving approach of non-formal forums has potential for democratizing dispute resolution.

Kamau also found that there is a high level of interaction between non-formal and formal dispute resolution processes, which to a large extent blurs the boundary between the official and unofficial. This is especially seen in the ambivalent position of chiefs and village committee elders, who are agents of the provincial administration but at the same time have a large measure of legitimacy as community leaders. Despite the interaction between formal and non-formal systems, policy making and resource allocation has focused only on the formal system. She argues that there is need for reform of the justice system in Kenya in a way that captures “the best of both worlds”, that is, that incorporates the informality, flexibility and diversity of non-formal systems while maintaining minimum standards of fairness and non-discrimination found in formal systems.

Emerging trends in delinquencies like house breaking using sophisticated tools were found by Osaghae (2000) to be appropriately handled through localized methods, and therefore nature of modern conflicts, hence they are limited in the extent to which traditional knowledge can be applied. Similarly, inter-ethnic approaches effectively resolve large-scale disputes. Menkhaus (2000) showed that TJS are dynamic. They keep changing and adjusting to incorporate new realities in the social milieu. Kimathi (2005) indicates that TJS have weak linkages with the formal justice systems. However, the lack of access to justice by many does not lie in exclusively relying on either of the systems. Hence the solution is not in formalizing the informal systems, nor making the formal informal, but a hybrid of the two.

2.3 Influence of Traditional Justice System on Conflict Management

Five major strengths of traditional approaches to conflict transformation can be identified.

Traditional approaches

- fit situations of state fragility and failure;
- are not state-centric and hence credited with legitimacy;
- take the time factor into due account and are process-oriented;
- provide for comprehensive inclusion and participation;
- focus on the psycho-social and spiritual dimension of conflict transformation

Traditional approaches fit situations of state fragility or collapse. In fact, a renaissance of traditional approaches to conflict transformation can be observed particularly under conditions of state failure and state collapse. In view of the absence of modern state-based institutions and mechanisms for the control of violence and the regulation of conflicts people take recourse to pre-state customary ways. Of course, this only is an option if custom has not been destroyed by but has survived previous processes of state-building and modernization and is still alive. Furthermore, it can also contribute to the termination of violence and sustainable peace building, from the local to the national level, as peace building in Somaliland and in Bougainville demonstrate (Boege 2004, 103–151).

The western view that where there is no state (and civil society) and no monopoly over the legitimate use of force there must inevitably be chaos and a Hobbesian war of everybody against everybody else, is false. There is control of violence and nonviolent conduct of conflict beyond the state – and this holds true not only for some distant past, but also for contemporary constellations of weak, fragile or collapsing states. Whereas post-colonial scholarship assumed that traditional institutions would give way to modernity, traditional institutions and the power of custom have proven to be remarkably resilient. Non- or pre-state traditional forms of conflict regulation have proven this resilience in particular.

Traditional approaches are not state-centric and because of that they are credited with legitimacy by the communities in which they are sought. They can be pursued without recurrence to the task of state- and nation-building. Instead of trying to impose western models of the state and the nation on societies to which these models are alien, one can draw upon existing indigenous forms of control of violence and conflict transformation

which have proven their efficiency. Pursuing such a non-state-centric approach takes into account that in general people on the ground have a desire for peace building and perceive respective endeavours as positive, whereas state-building is often perceived as irrelevant for peace and order and – given the often bad experiences people have had with ‘the state’ – even seen as negative. Traditional approaches make conflict transformation and peace building possible and at the same time circumvent or postpone state-building.

Such a non-state-centric approach opens up possibilities for dealing with the issue of legitimacy. It must not be forgotten that legitimacy is at the core of the problem of state weakness. Weaknesses of state are not only problems of structures, institutions and powers of enforcement and implementation, but also of perceptions and legitimacy. It is often ignored that Max Weber’s famous definition of the state ‘monopoly over the legitimate use of violence’ – includes both: enforcement power and legitimacy. All too often the state is weak because it has no legitimacy in the eyes of the people. People on the ground do not perceive themselves as “citizens of the state”, as “nationals” (at least not in the first place). They define themselves instead as members of some sub- or trans-national, pre-state societal entity (kin group, tribe, village, etc). ‘The state’ is perceived as an alien external force. This has extraordinary consequences for their (dis)loyalty against the state. People are loyal to ‘their’ group (whatever that may be), not the state. Legitimacy rests with the leaders of that group, not with the state authorities, and people do not obey the rules of the state, but the rules of their group. Reference to those traditional authorities and institutions will enhance the legitimacy of any measures taken with the goal of conflict transformation and peace building.

Traditional approaches are process-oriented and take the time factor into due account. One has to keep in mind that the acknowledgement of different concepts of time, depending on cultural contexts, is of major significance for success or failure of peace building processes.” African time differ from European time regimes. Circular time that predominates in traditional societies opposes vectoral time that prevails in modern industrial societies. Circular time is a slow cumulative process where duration and associated functions leave their almost unnoted imprint (Faure 2000, 161). The process of conflict transformation – which can be very time-consuming – tends to be more important than solutions – all the more so as in traditional contexts any ‘results’ achieved are only of a temporary nature anyhow. They are subject to renegotiations and revisions (and,

further down the line, renegotiations of the revised results and revisions of the revision). Menkhaus (2000) stresses the point: traditional conflict management mechanisms tend to be process-oriented, not product-oriented; that is, they focus on managing rather than resolving conflict. In this sense, they are somewhat more realistic than standard international diplomacy, with its emphasis on peace treaties that definitely end a conflict; one has to do with ongoing rounds of talks that revisit and renegotiate issues. This approach to conflict management, particularly the tendency to begin renegotiating freshly minted accords, fits poorly with international diplomatic timetables and approaches. International peacemakers seeking rapid, tangible, and fixed results in negotiations are almost certain to be disappointed by traditional conflict management (Menkhaus 2000, 198). Traditional approaches are characterised by their slowness. And slowness breaks and time outs are deliberately built into conflict transformation, so as to give conflict parties time to calm down, to assess the state of the process so far and to reformulate their position.

Traditional approaches provide for inclusion and participation. In the same way as all parties (and every member of each party) are responsible for the conflict, everybody also has to take responsibility for its solution. A solution can only be achieved by consensus. Every side has to perceive the resolution as a win-win outcome, compatible with its own interests – which are not confined to the material sphere, but also comprise issues such as honour, prestige, saving one's face. To pursue an inclusive participatory approach at all levels of the conflict is extremely complex and time-consuming, but has greater chances of success than approaches that are confined to the 'leaders' of the conflict parties. Additional activities that supplement the real negotiations also are very important in this context. According to the holistic nature of custom, it is not appropriate to isolate specific political events (such as negotiations) from the overall context. Leisure, visits, cultural events, amusements, attendance at plays, and participation can be part of them. This mixing of activities within the negotiation setting can be highly functional with regard to the relationship that it helps to establish, reestablish, or strengthen. It makes efficient use of the nonlinear nature of the negotiation process and confirms the multiplicity of the levels at which it takes place (Faure 2000, 161).

Traditional approaches focus on the psycho-social and spiritual dimension of violent conflicts and their transformation. This dimension tends to be underestimated by actors

who are brought up and think in the context of western enlightenment. Conflict transformation and peace building is not only about negotiations, political solutions and material reconstruction, but also about reconciliation and mental and spiritual healing. Traditional approaches have a lot to offer in this regard. They do not only deal with material issues, reason and talk, but also with the spiritual world, feelings and non-verbal communication. As has been pointed out already, reconciliation as the basis for the restoration of communal harmony and relationships is at the heart of customary conflict resolution. By means of reconciliation relations between conflicts parties are restored, both the perpetrators and the victims are re-integrated into the community. Traditional approaches are inclusive, not exclusive. Traditional methods of purification and healing, carried out by customary healers, priests and other spiritual authorities are of utmost importance for the mental and spiritual rehabilitation of victims and perpetrators. The mental healing of those people who were deeply traumatized by the experiences of violent conflict is an aspect of peace building that is at least as important as material reconstruction. Traditional approaches are well suited to address this dimension. They take into account that conflict transformation and peace building is not only an issue of reason, rationality and talk, but also of affects, emotions, imagination and of the spirit.

The forgoing literature illustrate that Traditional Justice System (TJS) is appropriate in managing localized conflicts, and its influence in conflict management among communities deserved an empirical study.

2.4 Theoretical Framework

This study was guided by Restorative Justice (RJ) theory espoused by Charles Burton (Barton, 2000). A great consideration ought to be made regarding a fair and just response to a wrongful and criminal act on one hand, and the best way to determine this, on the other hand. According to Barton (2000), traditional wisdom is gradually considering adapting restorative justice interventions, which views the just and fair (or the most appropriate) response to a criminal act cannot best be addressed by formal justice professionals.

Accordingly, the critical decisions of a formal justice response (concerning justice, prevention, and welfare) are best made by the principal parties (victim and offender) themselves, preferably in dialogue with one another in the presence of their respective communities (typically family and friends). Generally, this is often the case wherever

there is an identifiable victim and responsibility for the offence is not in dispute, and both parties are willing to meet in an attempt to settle the matter through a process of discussion and negotiation in ways that are meaningful and right for *them*, provided that their agreements fall within the law and are not obviously harmful to the public interest. It is only when one or more of these conditions are not met, or where there is no mutually satisfactory agreement between the parties, should a case be dealt with through traditional processes of the criminal justice system.

In terms of providing long-term solutions to criminal behaviour, the success or failure of a criminal justice intervention, whether conventional or restorative, depends significantly on the degree to which it allows, or promotes, the realization of the critical factors identified in these theoretical accounts. An intervention will tend to be helpful and constructive with regard to underlying problems to the degree that it succeeds in: (re-)engaging the offender at a moral-psychological level with the consequences of their behavior; aiding the moral and social development of the offender, so that they learn and become wiser for the experience; aiding emotional and moral psychological healing from the trauma of the criminal incident through interaction between the parties and symbolic reparation; tempering unequivocal disapproval of the wrongful *behavior* (shaming) with expressions of respect and acceptance of the individual into their community (reintegration).

Key principles of Restorative Justice (RJ) include a view of crime as a conflict between individuals rather than between offender and the State. Closely related to this is a belief that the responsibility for governance of security, crime and disorder is to be shared among all members of the community. Restorative justice is viewed as a humanitarian approach that brings to the foreground ambitions of forgiveness, healing, reparation and reintegration (Zehr and Mika, 1998).

Therefore, RJ programs bring together the offender, victim, their respective families, friends and community representatives, and attempt to engage them in a process of reconciliation and reparation. The aim is to allow offenders and victims to meet in a face-to-face context (although indirect contact is often employed), to voice their experiences and understandings, and to achieve a mutually agreeable resolution. There are several different modes of practice in RJ. Victim-offender reconciliation, family-group conferencing, and sentencing circles are three popular models – and these vary in terms of

the facilitator's role and the number and type of participants included (Sharpe, 1998). Restorative justice has its roots in a number of indigenous cultures, embracing traditions of spirituality and holistic healing, and aiming to reconnect the offender with his/her environment and community (Sharpe, 1998). Restorative justice also draws from the non-retributive responses to harm promoted by many faiths (Hadley, 2001). Finally, Braithwaite and Pettit (1990) have also promoted a secular foundation – civic republican theory – for RJ.

Many advocates of restorative justice point out that the movement is best defined not by a specific set of programs, but instead by several key principles that they argue are different from traditional approaches found in the formal justice system. Formal justice processes often relegate victims and members of the community to a second-class status (McCorry, 2010), and often fail to take account of the harm suffered by victims and their families. As noted by Howard and Zehr (1990) as cited in McCorry (2010), when a crime is committed, the formal justice system has been primarily concerned with three questions: 1) Who did it? 2) What laws were broken? 3) What should be done to punish or treat the offender? In contrast, restorative justice advocates emphasize three very different questions: 1) what is the nature of the harm resulting from the crime? 2) What needs to be done to “make it right” or repair the harm? 3) Who is responsible for this repair? (McCorry, 2010). Hence, rather than defining crime and delinquency simply as law breaking against the state, advocates of restorative justice make the point that offenders harm victims and communities as well. In addition, one of the primary aims of restorative justice programs is to make amends for offending, rather than seeking retribution and inflicting pain upon the offender (Van Ness & Strong, 2001).

Thus, restorative justice processes are ideally designed to provide a supportive atmosphere in which victims, offenders, and community members are given a voice in the sanctioning process. In contrast to the retributive model associated with formal justice system, the restorative justice response to crime is designed to reintegrate the offender back into the community. Instead of a prison sentence, the outcome of restorative justice processes typically involves some type of apology and a restitution plan in which the offender will perform some type of service for the benefit of the victim or the community (Bazemore & Griffiths, 2003). Furthermore, by including family members, and other supporters of the offender in the collaborative sanctioning process, the hope is that the

restitution agreement is more likely to be completed because the offender can be monitored and supported by members of his family and community.

However, RJ has not gone without encountering criticisms. Existing studies have often focused on focused primarily on the outcome, using quantitative methods to evaluate certain restorative outcomes such as integration and restitution rates: what actually happens in the restoration process remains to be studied, as relatively little attention has been given to studying the restorative justice process using qualitative methods. In other words, although its quantitatively derived outcomes are important to consider, the quality of the restorative justice process is of equal importance to understand (Choi & Severson, 2009 p. 813).

Similarly, Haines (1998) argued that victims are often enticed into restorative justice before they are ready. Pressure to achieve “speedy trial” objectives for offenders can be quite contrary to the interests of victims. Indeed, even in terms of the interests of offenders, rushing into a restorative justice meeting can be counterproductive with a victim who with a bit more time would be ready to forgive rather than to hate. Furthermore, Retzinger and Scheff (1996) observed that restorative justice can be a shaming machine that worsens the stigmatization of offenders. The foregoing criticisms notwithstanding, RJ remains the only avenue for integrating and healing communities, more so those that have faced turmoil and high level of animosity. Restorative Justice (RJ) was considered suitable for this study because traditional justice system considers cultural and community values in managing conflicts, without losers or winners at the end of the process.

2.5 Conceptual Framework

This is a diagrammatical presentation of a relationship between independent and dependent variables (Sarantakos, 2005). The conceptual framework in this study represents a relationship between traditional justice system (independent variable) and conflict management (dependent variable). Figure 2.1 illustrates this relationship.

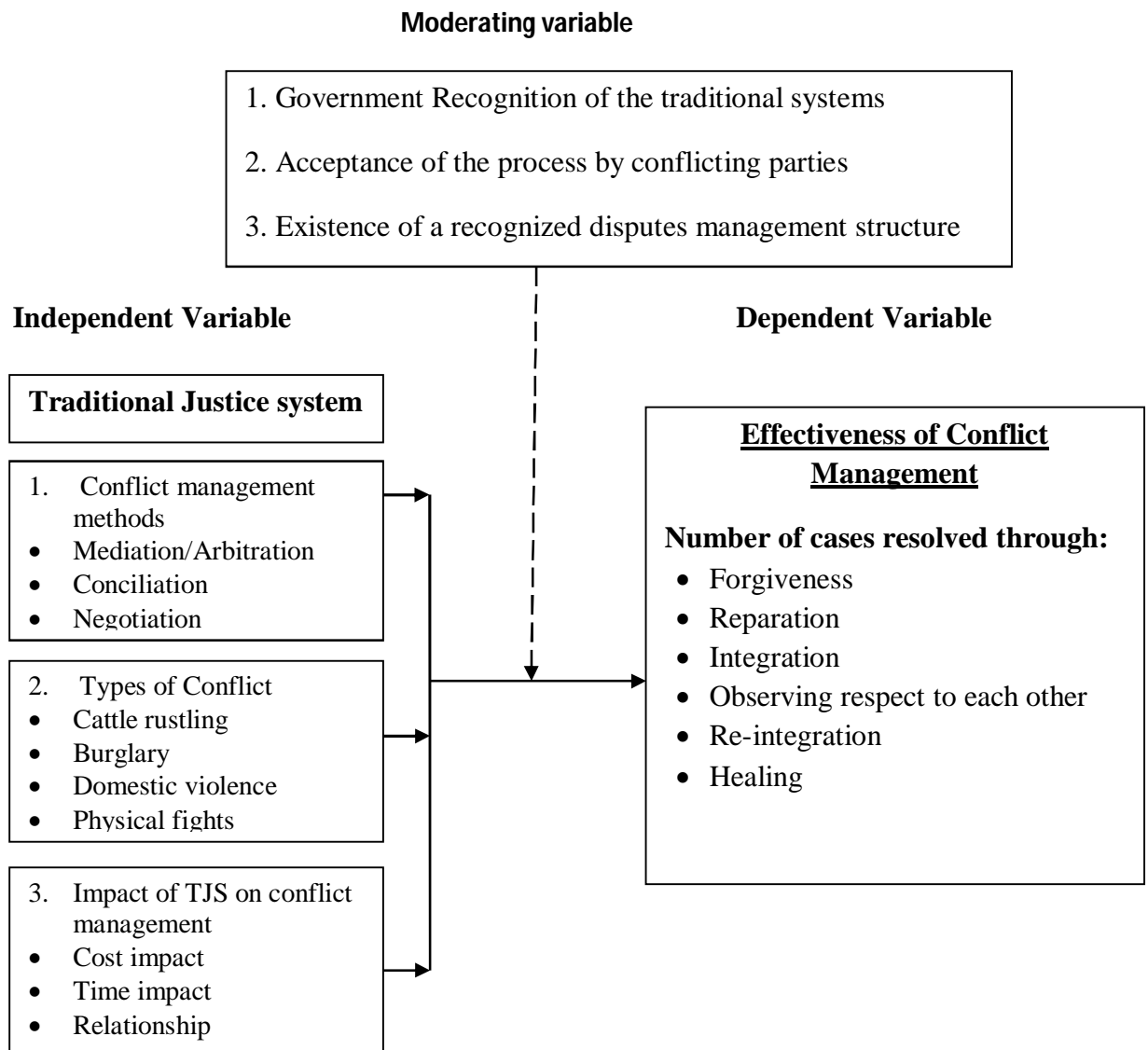


Figure 1: Conceptual framework representing the relationship between Traditional Justice System and Conflict Management

Figure 1: illustrates the relationship between traditional justice system and conflict management. In this study, conflict management depends on traditional justice system. In essence, forgiveness among members of a community or between one community and the other, integration, reparation against damage or losses incurred out of one's commission or omission, re-integration, and social healing depends on how conflicts are managed. The foregoing are key aspects of the dependent variable.

For the above (conflict management) to be successfully attained, traditional justice system has to be effectively implemented. This involves applying appropriate traditional conflict management methods (Mediation/arbitration, Negotiation, and Conciliation), identifying specific types of conflicts to be managed by the justice system, and continuously assessing the impact of the justice system on conflict management. These are the key elements of the independent variable of the study.

However, there are factors which may not enable traditional justice system to result into conflict management within our community. The policy of the government in regard to recognition accorded traditional justice system as an appropriate procedure for disputes resolution among or between communities can moderate the relationship between traditional justice system and conflict management. Similarly, the conflicting parties must prefer that their disagreement can be resolved through traditional justice system: without this acceptance, conflicts arising between members of the community or between communities cannot be resolved successfully through this system. Finally, for traditional justice system to be effective in managing conflicts in the community, there ought to be a known structure or process to be followed: that is, a properly recognised structure starting from reporting of dispute, process of dispute resolution, and dispute conclusion (judgment). These are the moderating variables of the study.

2.6 Summary of Reviewed Literature

The foregoing review of literature has highlighted various methods of conflict resolution using traditional justice system, and has also identified some of the conflicts best suited to resolved through this system. The review has also highlighted some of the impacts of traditional justice system on management of conflicts in the community. However, it should be noted that most of the traditional justice systems are applicable in communities ascribing to same cultural values. The applicability of this justice system in communities that ascribe to different cultural values (cosmopolitan communities) has not received much empirical study. This is the gap that the present study sought to bridge.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

Research methodology is a collective term for the structured process of conducting research. In this section, a description of research process which includes research design, target population, sampling procedures, sample size, as well as the instruments that were used in data collection and analysis are exhaustively described.

3.2 Research Design

The study employed both qualitative and quantitative approaches. Qualitative research design was adopted because it is systematic, besides being a flexible way to explore “naturally occurring, ordinary events in natural settings, so that we have a strong handle on what ‘real life’ is like” (Miles & Huberman, 1994, as cited by Odongo, 2009). This methodology also allows for responsive design modifications the moment the researcher comes across interesting circumstances or if theories that arise in the initial round of the investigation merit taking a sidetrack from the original plan (Brantlinger, Jimenez, Klinger, Pugach, & Richardson, 2005, p.198). One overarching goal of this study was to provide a comprehensive understanding on traditional justice system and its influence on conflict management (Stake, 2005).

Similarly, quantitative design was necessary for the determination of statistics pertaining to demographic information of respondents.

3.3. Area of Study

The area under study is Muhoroni Sub County. The Sub County lies between 34.75 degrees E and 34.764E longitude; while its latitude is between -0.079S degrees and -0.723S degrees. It borders Tinderet Sub County to the north, Kericho County to the North East, Nyakach Sub County to the South East, and Kisumu East Sub County to the South. The area has a population size of 268,909, with 124,760 being males and 144,149 females (KNBS, 2009); with a land area of 319 km². The main commercial activity in the area is sugar cane farming. The mean temperature ranges from a minimum of 20.00C to a maximum of 35.00C, with an annual average of 23.0°C. Annual rainfall ranges between 1200mm and 1,300mm per annum (Kenya Inter-agency Rapid Assessment, 2014). Figure 3.1 illustrates the map of the area.

Muhoroni Sub County was selected for the study because, being a settlement scheme, it has a cosmopolitan population which practice different methods of conflict resolution. This was deemed by the researcher to be suitable in providing rich coverage of information pertaining to traditional justice practices.

3.4 Target Population

Target population refers to the total number of subjects of interest to the researcher (Oso and Onen, 2009). The focus of this study was sub location and village administrators responsible for day to day conflict management. Therefore, the population targeted by the researcher to provide information was 15 assistant chiefs administrating sub locations, as well as 45 village elders from each of the 15 sub locations, thus making an accessible population of 60. The assistant chiefs were selected because they are in charge of the maintenance of peace within the sub locations, while the village elders are responsible for ensuring that harmony and peaceful coexistence is maintained in each village.

3.5 Sample Size and Sampling Technique

This refers to the actual number of the population from where the actual data for the study is collected (Kombo, 2006). There are several approaches to determining the sample size. These include using a census for small populations, imitating a sample size of similar studies, using published tables, and applying formulas to calculate a sample size (Yin, 2011). Using census method, all the 15 assistant chiefs will be selected to be the sample. On the other hand, 20% of the village elders will be selected to provide data for this study; this is in regard to suggestions by Mugenda and Mugenda (2003) that between 10 to 20 percent of the target population can be selected as a sample size in any social research. Therefore, the sample size for the study will be 24 respondents. Table 3.1 illustrates the sample size and sampling procedure.

Table 3.1: Sample size and Sampling Technique

Respondents	Target Population	Percent	Sample Size	Sampling Procedure
Assistant Chiefs	15	62.5	15	Census
Village Elders	45	37.5	9	Purposive
Total	60	100	24	

3.6 Data Collection and Procedures

The researcher sought permission to carry out the study from the board of post graduate school the University of Nairobi, and thereafter obtained a research authorization permit from the National Council for Science, Technology and Innovations (NACOSTI). The University and NACOSTI authorization permits were thereafter presented to the County Commissioner, who also provided the researcher with a clearing letter which allowed her (the researcher) to access the offices of assistant chiefs in the study area, as well as the attendance of village barazas during various meetings held by the leaders (chiefs and village elders). The researcher will state the aims and purpose of the study and the need for the participants to give their consent and co-operation, who will grant research clearance to gain access to the sub locations, participants, and other documents that would facilitate the study

3.7 Research Instruments

The approach adopted for data collection was participant-observer field based (Bogdan & Biklen, 1998, cited by Odongo, 2009). Interview schedule and observation guide were used to collect data for this study.

3.7.1 Interview schedule

Interview schedule for this study consisted of open ended questions asked by the interviewer and oral responses by the key informants, whereby the interviewer probed for further clarifications, while constantly taking notes. Interview questions were structured using flexible protocols that considered a broad, open ended questions focusing on participants' understanding on (a) different methods of traditional justice system used for conflict management, (b) different forms of Common conflicts often managed through Traditional Justice System, and (c) influence of different methods of traditional justice system on the management of various forms of conflicts.

This led to the obtaining of greater depth of information from a smaller number of carefully selected cases of respondents who were well versed on the study phenomena (Yin, 2011). The interview schedule that was used for key informant interviews is found in Appendix I.

3.7.2 Observation Guide

This qualitative study strived to capture live sessions of conflict resolution processes during village elders' and assistant chiefs' meetings (barazas) using a structured observation guide. Particular emphasis was paid to how different approaches were taken in introducing disputes by offended parties, how offenders were invited to defend themselves, how witnesses were invited to provide evidence and how they (witnesses) were interrogated. Similarly, the researcher keenly observed the manner in which the jury (village elders and the assistant chiefs) went about the process of resolving conflicts till the arrival of unanimous decision. Voice recording and pictures were taken throughout these observation exercises.

3.8 Data Analysis Techniques

Qualitative research gathers information that is not in numerical form. Whitte & Whitte (2009) define qualitative data as a set of observation; any single observation is a word, or a sentence or a description or a code that represents a category. Qualitative data collected was analyzed using thematic analysis. Thematic data analysis is a method for identifying, analyzing and reporting patterns (themes) within data. It minimally organizes and describes a data set in (rich) detail (Braun & Clarke, 2006). Thematic Analysis (TA) is considered most appropriate for any study that seeks to explore a phenomena using interpretations. It provides a systematic element to data analysis, allowing the researcher to associate an analysis of the frequency of a theme with one of the whole content. This conferred accuracy and intricacy, thereby enhancing the researcher's whole meaning. This method (TA) gives an opportunity to understand the potential of any issue more widely (Marks and Yardley 2004). Qualitative research requires understanding and collecting diverse aspects of data, by applying the following stages of thematic analysis:

Familiarizing yourself with your data

This involves the Immersion of one's self in information pertaining to study themes, thus becoming very familiar with it (the subject) and then transcribing it.

Generating initial codes

This stage involves the production of initial codes for your data. Coding can be done manually or with a software program (for example, NVivo). It is important in this stage to code for as many potential codes and themes as possible.

Searching for themes

This stage is focused on the broader level of themes and involves sorting the different codes into potential themes. Themes are made up of a subset of codes. Some codes may form main themes or sub-themes. At the end of this stage you should have a collection of themes and sub-themes.

Reviewing themes

This stage involves refinement of the themes. Some themes may collapse into other themes whereas some may need to be broken down into smaller components.

Defining and naming themes

Capture the essence of what each theme is about and what aspect of the data each theme captures. Create an overall narrative with all available data. Analyze each theme and its individual narrative

Producing the report

This stage involves final analysis and write-up of the report. Provide sufficient evidence of each theme using vivid examples from your data. (Braun & Clarke, 2006)

3.9 Ethical Consideration

According to British Psychological Association (2007), research ethics refers to the moral principles guiding research from its inception through to completion and publication of results. In this regard, the researcher observed the following: Respect for the autonomy and dignity of persons, scientific value, social responsibility, and maximizing benefit and minimizing harm. Moral rights, rights to privacy, self-determination and personal liberty were observed to fulfill the autonomy and dignity of human rights. Review and good conduct ensured that scientific value were achieved; while the avoidance of unwarranted disruptions ensured that social responsibility was met. Finally, utmost confidentiality was also observed.

CHAPTER FOUR

DATA ANALYSIS, PRESENTATION AND INTERPRETATION

4.1 Introduction

This chapter presents the findings and interpretation of the study findings. The chapter has been sub-divided into sections and subsections. The demographic information of the respondents such as gender, age, academic qualification, professional qualifications and experience of village elders and administrators (respondents) has been presented first. After the demographic findings of the study have been presented, the researcher presents the research findings on the basis of the study objectives.

4.1.1: Objectives of the Study

The following objectives of the study were used to guide the data analysis and their interpretation;

- (i) To examine appropriateness of different methods of traditional justice system used for conflict management on Muhoroni Sub County
- (ii) To identify different forms of common conflicts which are managed by traditional justice system in Muhoroni Sub County
- (iii) To establish the influence of different methods of traditional justice system on the management of various forms of common conflicts in Muhoroni Sub County

4.2: Demographic Information of the Respondents

The researcher used data obtained from 15 assistant chiefs and 9 village elders (making 24 respondents) using in depth interviews. Hence, the respondents were 15 Assistant chiefs (n=15), and 9 village elders (n=9). Information about conflict resolution processes was also gathered through field observations during village council meetings (Barazas), convened by various assistant chiefs or village administrators to solve numerous issues (including disputes) concerning community members.

The demographic characteristics of the respondents were summarized as follows

4.2.1 Distribution of Respondents by Gender

Table 4.1 shows the percentage of frequency distribution of respondents in relations to their gender.

Table 4.1: Distribution by Gender

Gender	Frequency	Percent	Valid Percent	Cumulative Percent
Male	20	83.33	83.33	83.33
Valid Female	4	16.67	16.67	100.0
Total	24	100.0	100.0	

The findings of the study in Table 4.1 show that there was a significant disparity in terms of the number of female respondents and their male counterparts who participated in the study; 83.33% of them were males and only 16.67% were females. It can therefore be concluded that there is gender imbalance in regard to recruitment of sub location administrators.

4.2.2 Distribution of Respondents by Age

The second part of demographic information of study respondent that the researcher sought was the age distribution of respondents.

Table 4.2: Distribution of Respondents by Age

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 20 - 30	3	12.5	12.5	12.5
31 - 40	6	25	25	37.5
41 and above	15	62.5	62.5	100.0
Total	24	100.0	100.0	

Table 4.2 illustrates that majority (62.5%) of the respondents aged 41 years and above. Another 25% of the respondents were of between 31 and 40 years of age. The remaining (12.5%) respondents were between 20 and 30 years of age. This indicates that assistant chiefs and village elders in the study area are individuals of mature age group who can be trusted in the management of local conflicts.

4.2.3 Distribution of Respondents by Academic Qualification

The researcher also sought information regarding academic qualifications of respondents. The findings are presented on table 4.3.

Table 4.3: Distribution by Academic Qualifications

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Primary Level	5	20.83	20.83	20.83
	Secondary Level	10	41.67	41.67	62.5
	College Level	7	29.17	29.17	91.67
	University	2	8.33	8.33	100
Total		24	100.0		

Table 4.3 indicates that majority (41.67%) of the respondents had secondary school level of education, while 29.17% had college level of education. Similarly, 20.83% of the respondents had primary level of education, with the remaining (8.33%) respondents having university level of education.

4.2.4 Experience in Administrative duties

The researcher also sought information on years of experience that the respondents had in performing administrative duties. The findings are presented in Table 4.4.

Table 4.4: Distribution by years of Experience

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less than 2 years	2	8.33	8.33	8.33
	3 to 4 years	8	20.83	20.83	29.16
	5 to 6 years	9	37.5	37.5	66.67
	Above 7 years	5	33.33	33.33	100.0
Total		24	100.0		

The findings of the study in Table 4.4 show that majority (37.5%) of the respondents had experience of between 5 and 6 years, while 33.33% had 7 years and above experience in administrative duties. Similarly, 20.83% of the respondents had between 3 and 4 years of experience, while the remaining (8.33%) respondents had less than 2 years of experience in administrative duties in the village.

It was surprising to note that most (over 70%) of the respondents had experience of 5 and above years. The finding illustrates that due to many years of experience, the sub location and village administrators sampled are well equipped with traditional justice system in the area under study.

4.3 Themes Generated from the Field

The findings in this qualitative study were as a result of rigorous and systematic interviews which consumed approximately 25 minutes that were responded to orally, as well as informal and formal observations, supported by field notes. Digital photographs of the process of conflict resolution during village barazas were also recorded. Individual comments by the administrators were also captured through both interviews and voice recordings.

4.3.1 Methods of traditional Conflict Management

The first objective of the study sought to establish common methods employed by traditional justice system in managing various conflicts in the community.

All the village administrators (assistant chiefs and village elders) reported having employed non-formal methods in resolving various conflicts in the community. In regard to particular traditional conflict management methods adopted by these village administrators, the following excerpts were the most representative comments gathered:

“Families often believe that negotiated disputes beget the benefits of reparation without causing undue pain or revenge to the offending party (ies). Thus, mistrust is minimized as a result, and cohesion as well as community values are upheld”

Four village elders confirmed that through the use of negotiation, cattle which had been stolen by rustlers from neighbouring communities were recovered:

“Negotiation for the identity of the rustlers to be hidden was agreed upon on condition that possession of the animals reverted to the owner. The negotiation was important since accomplices of the rustlers were relatives of owner of the cattle which were stolen, and exposing them would have been a cause of insecurity to them (accomplices).”

Further, six assistant chiefs stated that the use of negotiation has helped them (assistant chiefs) solve land disputes as well as marital conflicts involving different families. In the case of land disputes, this is what the researcher deduced from the interviews:

“Two brothers whose parents died without specifying who among them was to inherit which of the two parcels they (parents) had, claimed farming

rights to one parcel of land which was fertile and was lying next to an all seasons river. The other remaining parcel was unfertile all seasons. It was agreed through negotiation that the two parcels be divided into halves so that each family gets half of both the fertile and infertile parcels of land. The settlement was accepted and all the animosities became a thing of the past.”

In regard to a marital dispute involving two families, this is the representative statement derived from interviews with the administrators:

“While Mr. Sindo (not real name) claimed that his wife was unfaithful, and is begetting children from outside the wedlock, the spouse retorted that her husband was impotent (not functioning). Through the assistance of the village elders, the assistant chief, after establishing the truth, presided over a negotiation (involving the family of the man and the spouse) that everything should remain secretive on one hand, and the wife not to display open infidelity on the other hand. In this case, ‘all the children are to be treated as belonging to the husband (the father)’.”

Mediation (at times referred to as arbitration or adjudication) was another conflict management method that has been used extensively by communities living in Muhoroni Sub County, according to the assistant chiefs and village elders interviewed. Assistant chiefs and village elders have mediated (adjudicated or arbitrated) disputes involving land ownership, communal land tenure, conflict over exploitation of common pool resources, and conflicts caused by errant behaviour of a member (or members) of a community against the other.

Three village elders indicated that they have successfully arbitrated disputes caused by an abusive man who, after drinking alcohol, used to utter insolent words towards neighbours, and sometimes to his wives. The following excerpt represents the arbitration process which ensued:

“Rosa (not her real name), reported to the area assistant chief that her husband have become quite abusive after drinking alcohol, and is often shaming her in front of her children. Similar reports were also given to the assistant chief by two neighbours (Siprina and Selpa - both pseudo names).

The assistant chief therefore instructed the village elder to constitute a team which could mediate a peaceful coexistence between the abusive man and his wife on one hand, and the neighbours, on the other hand. The arbitration exercise was held on the compound of the village elder, presided over by the elder assisted by three other elders. The abusive man apologised and pledged desist from this habit. It was resolved that any further use of insolent language should be reported to the mediation team forthwith for further action. This habit has never been displayed since then.”

The other traditional justice method indicated by the study respondents was conciliation. Four village elders reported that they (elders) have used conciliation method to rescue a matrimony which had almost broken up. The following statement was obtained from interviews held with the village elders:

“When the daughter disagreed with her husband, bringing them to agreement proved very difficult to their parents. However, elders from the two clans came together and resolved the matter, albeit at a fee of two calves slapped on the husband.”

Findings established from interviews conducted with assistant chiefs and village elders show that, among other methods, negotiation, mediation, and conciliation are some of the traditional methods of conflict management that have been used to a varied degree of success. As obtained from the study area, negotiation has helped in recovery of animals from cattle rustlers without exposing the identities of the culprits, and with little or no intentions of revenge. Similar findings have been made by other studies across the globe.

Umunadi (2011) found out that in Delta State of Nigeria, where violence among various youth groups was rampant, mediation methods were used with varying success in resolving conflict. In this study, perceived mediation method was seen as being 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. Similarly, Nolan-Haley and Annor-Ohene (2014) established that the establishment of a new centre in central Ghana providing mediation services has resulted in general satisfaction on the part of users. In their study, majority of

respondents indicated that they were satisfied with settlements and felt that the mediation process was fair, respectful, did not impose too much pressure to settle, and provided ample opportunity to express their views (Nolan-Haley & Annor-Ohene, 2014).

Erica (2011) similarly found that mediation is popularly used by customary justice systems in Melanesia, the Asia-Pacific region. This approach succeeded in retaining strong local legitimacy and ownership, partly through maintaining positive elements of the system such as cultural, economic and geographic accessibility. However, studies related to traditional methods of conflict management have not received much attention in Kenya compared to other countries in Africa.

4.3.2 Types of Conflicts managed by Traditional Justice System

The second objective sought to establish the types of conflicts which are normally managed by traditional justice system. According to interviews done with the selected assistant chiefs and village elders, cattle rustling, physical fights, land disputes, and domestic violence are some of the types of conflicts managed by traditional justice system. All the respondents interviewed indicated that they (respondents) have presided over land dispute meetings at least twice every year.

The following is a representative statement derived from interviews with 9 assistant chiefs sampled:

“Conflicts over land ownership occur constantly among members of the community. Since most parcels of land are held communally, disagreement over farming rights have consistently happened”.

Similarly, cattle’s rustling is another other type of conflict which has threatened peaceful coexistence in this area. As stated by 4 assistant chiefs and 3 village elders:

“The vice (rustling) is often engineered by close relatives with the help of outsiders, and livestock are usually driven from homes not by strangers but people who know the vicinity quite well”.

Further, domestic violence, whereby husbands subject their spouses to undue mistreatment (battery and other inhumane treatment) was also found to be a common type of conflict in the area. Most of the respondents have presided over resolution meetings to

manage this type of conflict. Although this type of conflict is sometimes covert, village elders normally receive such complaints and are normally involved in finding lasting solutions.

The following is a representative statement derived from interviews with 7 village elders:

“Violence in families at times takes several forms and are not necessarily actual battery or physical violence. A parent may refuse to give food to some of his children, or refuses to pay school fees for a school going son or daughter. Some male parents sometimes fail to provide upkeep to their families. These are not visible violations, yet are reported to the village elders almost on a daily basis by different victims.”

Burglary and housebreaking were also indicated by the respondents to be offences that endanger peaceful coexistence among community members. This is so given that residents of the area have at least some blood relationships and common background. Basically, the researcher was able to derive the following excerpt from interviews held with 5 assistant chiefs:

“Theft of household goods by family members or close relatives is seldom reported to the police since it is viewed that by doing so, coherence will breakdown among community members. Normally such goods are recovered or the family where the thief comes from is asked to refund such goods. The village elder is crucial in ensuring that reparation is appropriately done”

Other respondents had the following to say in regard to theft of household goods:

“Some of those who steal household goods (more so from close relatives) claim that they needed to obtain some cash to help in solving personal matters which the relative (victim) has refused to assist in solving over time, and the only alternative left was through selling the goods ‘taken’ from the relative”.

The study findings also established that the types of conflicts which are normally managed by traditional justice system are numerous. According to interviews done with

the selected assistant chiefs and village elders, cattle rustling, physical fights, land disputes, and domestic violence are some of the types of conflicts that frequently occur within the communities living in the study area. Chikwe (2011) found in a study in Nigeria that overdue debts involving two friends are common where business interactions between friends take place. Similarly, levels of cattle rustling, burglaries, and usage of abusive languages against perceived foes were found by the study to be common in Muhoroni Sub County. These arise due to intolerance that some members of the community often display towards others.

4.3.3 Impact of Traditional Justice System on Management of Conflict

The last part of the interview schedule sought to establish the impact of traditional justice system on management of conflicts in the study area. The interviews held with the assistant chiefs and village elders confirmed that TJS has had numerous impacts on conflict management in the Sub County. The cost implications are minimal, both in terms of direct cost (cost of filing and representation) and indirect cost (cost of traveling, etc) and disputants are not impoverished as a result of such cases. The following is a representative statement from an interview with 3 assistant chiefs:

“As the cost of logging a dispute with the assistant chief is entirely free, the cumulative expenditure till the completion of the case is almost nil, save for a little fine imposed on the person who is found to be “guilty”: the fine which will be spent as the allowance for the council members”

Two other assistant chiefs compared the cost incurred between litigating a dispute in formal courts and through informal justice system (or informal system). They offered cost assessment such as:

“There are no costs incurred on advocates, transport, and other paperwork by both the disputing parties. The process is comparatively affordable by any means”

Further, 4 village elders were in agreement concerning cost aspects of informal justice processes in the perspective of poor villagers, some of whom are widows and elderly persons. This emerged as the most representative statement from the village elders:

“For the most vulnerable members of community including widows and the elderly poor, approaching formal courts for disputes resolution bears financial implications beyond their reach, and their disputes are best addressed by the area village elder, who is capable (sometimes with the help of the assistant chief) of resolving such disputes almost for free”

Other impacts indicated by the sampled assistant chiefs and village elders attributable to traditional justice system include the time it takes to dispose of a dispute. This is measured as the total time from filing a complaint to settling the case. The emerging common statement from 4 assistant chiefs includes:

“Most villagers are farmers or do manual labour in farms, and taking time out to attend to court cases becomes waste of otherwise productive time. Most disputants therefore prefer traditional justice systems for settling disputes”

Accordingly, other respondents considered the time taken to dispose of a particular case. According to a common statement derivable from responses from 2 assistant chiefs and 4 village elders:

“Of the cases handled through either the councils of village elders or the assistant chiefs, 80% of the cases were resolved successfully within 2 months from the date of filling”

Similarly, two assistant chiefs who had taken note of some cases which were once reported to their offices but were later withdrawn and taken to formal courts for litigation, compared time taken till disposal of cases between formal and informal systems of justice. The following emerged as the representative statement from their responses:

“In the last one year, around 5 cases out of 7 which were withdrawn from our system by the complainants and taken to formal courts were not yet disposed of compared to all the remaining 40 cases which were successfully disposed of through our system in the first 2 months of filling”

As the findings illustrate, traditional justice system has numerous impacts both on the conflicting parties and to the community at large. Midodzi and Jaha (2011) investigated the effectiveness of the alternative dispute resolution in Ghana, using the Alavanyo-Nkonya peace mediation as a reference point, and found that revealed that the method of alternative disputes resolution was preferred by the people of the two communities compared to traditional method of litigation owing to the delays and judgmental posture of these traditional methods. Similarly, the process of traditional justice system has also been found to be cheaper compared to other formal systems. International Finance Corporation (IFC 2006) evaluated more than 1, 000 cases resolved through mediation and compared the outcomes with those of similar court cases in the former Yugoslav Republic of Macedonia, and found that the direct costs of mediation averaged US\$225, about 50 percent of the costs of litigation (about US\$470). The current study also established that disputants in this area prefer using the village elders or assistant chiefs in solving disputes owing to cheapness of the process.

The other benefit associated with this process (traditional justice system) established by the researcher is that it (the process of traditional justice system) is less time consuming compared to the formal justice process. In a study by Bingham, et al (2009) on outcomes of alternative disputes resolution ADR use by the U.S. federal government, estimated that ADR saved about 88 hours of staff time and about 6 months of litigation time per case—showing that ADR can reduce public costs as well as private. By highlighting these benefits, parties to disputes are well placed to choose a suitable justice system for resolving any dispute that may occur among them.

CHAPTER FIVE

SUMMARY, DISCUSSIONS CONCLUSIONS, AND RECOMMENDATIONS

This chapter presents the summary of findings, conclusions, recommendations as well as areas for further research.

5.1 Summary of Findings

This study sought to establish the influence of traditional justice system in conflict management in Muhoroni Sub County of Kisumu County, Kenya. Three specific objectives guided the study: to examine appropriateness of different methods of traditional justice system; to identify different forms of common conflicts; and to determine the impact of different methods of traditional justice system on the management of various forms of common conflicts in Muhoroni Sub County. Data was collected from primary sources through interviews and field observations. Organization and analysis of collected data was done using thematic analysis and presented in statements which represent common themes extracted from interviewee remarks.

The first objective examined different methods of traditional justice system used in the management of conflict in Muhoroni Sub County. The methods were categorised as mediation, negotiation, and conciliation. The participants considered mediation, negotiation and conciliation as methods that have contributed to the enhancement of peaceful coexistence amongst communities living in the study area. Mediation is seen as a method used to resolve disputes between families, that is, inter-familial disputes. This method (mediation) is also commonly used to settle grievances between villages or communities. On the other hand, negotiation method is commonly applied in disputes that involve members of the same family or clan: basically, it is used in intra-familial disputes. Further, conciliation method is seen by the respondents as useful in resolving disputes involving parties who ones were in a cordial relationship (intimate partners or business partners, etc.).

The second objective sought to determine the types of conflicts commonly addressed by traditional justice system in Muhoroni Sub County. From the perspectives of the assistant chiefs and village elders, land-boundary disputes, cattle rustling, burglary, physical violence against family members, and child maltreatment are considered as common conflicts in Muhoroni Sub County. Land boundary (or land holding rights) and burglary

cases are noted to be mostly involving close family members, and offenders seem to claim to be right in their deeds. Cattle rustling, on the other hand, are done in collaboration with (or knowledge of) close family members, where the proceeds are shared across between the actual rustlers and the planners. Lastly, physical domestic violence and child maltreatment are often perpetrated by men (husbands) or women (wives) who either hold physical or economic power over their victims. These types of violence often take place within homes or places where both the victim and the culprit live.

The last objective examined the impact (or benefit) of traditional justice system in the management of conflicts. These impacts were categorised as cost impacts, time impacts, and other generic impacts or impact on other impacts. Respondents in this study opined that costs incurred in settling disputes through traditional justice system is almost 50% less than costs incurred when disputes are settled through formal justice system. Similarly, time taken in completing disputes in the traditional justice system is indicated to be twice less the time taken to complete a dispute through the formal judicial system. In regard to responses derived from the interviews, reduced costs and time saved impacts on economic status, reduced absenteeism from work places, and further reduce animosity among community (or family members), thus enhances cohesion and peaceful coexistence.

5.2 Discussions

This section deals with discussion of the results according to the objectives of the study. It discusses the findings of methods of traditional justice system, types of conflicts that are being managed by traditional justice system, and the impact of TJS on conflict management in Muhoroni Sub County.

Findings established from interviews conducted with assistant chiefs and village elders show that, among other methods, negotiation, mediation, and conciliation are some of the traditional methods of conflict management that have been used to a varied degree of success. As obtained from the study area, negotiation has helped in recovery of animals from cattle rustlers without exposing the identities of the culprits, and with little or no intentions of revenge. Similar findings have been made by other studies across the globe.

Umunadi (2011) found out that in Delta State of Nigeria, where violence among various youth groups was rampant, mediation methods were used with varying success in resolving conflict. In this study, perceived mediation method was seen as being 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. Similarly, Nolan-Haley and Annor-Ohene (2014) established that the establishment of a new centre in central Ghana providing mediation services has resulted in general satisfaction on the part of users. In their study, majority of respondents indicated that they were satisfied with settlements and felt that the mediation process was fair, respectful, did not impose too much pressure to settle, and provided ample opportunity to express their views (Nolan-Haley & Annor-Ohene, 2014).

Erica (2011) similarly found that mediation is popularly used by customary justice systems in Melanesia, the Asia-Pacific region. This approach succeeded in retaining strong local legitimacy and ownership, partly through maintaining positive elements of the system such as cultural, economic and geographic accessibility. However, studies related to traditional methods of conflict management have not received much attention in Kenya compared to other countries in Africa.

The study findings also established that the types of conflicts which are normally managed by traditional justice system are numerous. According to interviews done with the selected assistant chiefs and village elders, cattle rustling, physical fights, land disputes, and domestic violence are some of the types of conflicts that frequently occur within the communities living in the study area. Chikwe (2011) found in a study in Nigeria that overdue debts involving two friends are common where business interactions between friends take place. Similarly, levels of cattle rustling, burglaries, and usage of abusive languages against perceived foes were found by the study to be common in Muhoroni Sub County. These arise due to intolerance that some members of the community often display towards others.

As the findings illustrate, traditional justice system has numerous impacts both on the conflicting parties and to the community at large. Midodzi and Jaha (2011) investigated the effectiveness of the alternative dispute resolution in Ghana, using the Alavanyo-Nkonya peace mediation as a reference point, and found that revealed that the method of

alternative disputes resolution was preferred by the people of the two communities compared to traditional method of litigation owing to the delays and judgmental posture of these traditional methods. Similarly, the process of traditional justice system has also been found to be cheaper compared to other formal systems. International Finance Corporation (IFC 2006) evaluated more than 1, 000 cases resolved through mediation and compared the outcomes with those of similar court cases in the former Yugoslav Republic of Macedonia, and found that the direct costs of mediation averaged US\$225, about 50 percent of the costs of litigation (about US\$470). The current study also established that disputants in this area prefer using the village elders or assistant chiefs in solving disputes owing to cheapness of the process.

The other benefit associated with this process (traditional justice system) established by the researcher is that it (the process of traditional justice system) is less time consuming compared to the formal justice process. In a study by Bingham, et al (2009) on outcomes of alternative disputes resolution ADR use by the U.S. federal government, estimated that ADR saved about 88 hours of staff time and about 6 months of litigation time per case—showing that ADR can reduce public costs as well as private. By highlighting these benefits, parties to disputes are well placed to choose a suitable justice system for resolving any dispute that may occur among them.

5.3 Conclusions

This study, in its endeavour to establish how traditional justice system aids the management of conflicts in Muhoroni Sub County, concludes that mediation, negotiation, and conciliation methods of conflict management is commonly used in resolving different types of disputes. Mediation is commonly applied in disputes between families or villages; negotiation is mostly used in disputes involving family members or members of the same village; while conciliation method is used to resolve disputes between parties who are (or have been) in close relations.

Similarly, conflicts which are managed through traditional justice system were identified by respondents to include cattle rustling, land-boundary disputes, burglary, physical domestic violence and child maltreatment. Those who participate in these conflicts are collaborators of close family members, immediate family members, and family members with both physical and economic power over other members of the same family.

Further, traditional justice system has costs, time, and several other generic impacts (or benefits) to those involved or disputants. This system is comparatively cheaper, takes shorter duration to complete, and restores relationships amongst community members.

5.4 Recommendations

The researcher makes the following recommendations for improvement and further research that should be done to perfect the application of traditional methods in the management of conflicts amongst community members.

For mediation, negotiation, and conciliation methods of disputes resolutions to be effective and contribute to realisation of justice across board, adequate training should be done to mediators, negotiators, and conciliators. In this case, assistant chiefs and village elders should be equipped with skills necessary to enable them to preside over conflict resolution without any bias or instigation of further conflicts.

In regard to conflicts that commonly arise amongst community or family members, the researcher recommends that reporting mechanism should be done in first instance or immediately when a particular offence takes place. This would allow for immediate response from the responsible administrators, thus minimising chances of escalation.

Lastly, to maximize gains or benefits derivable from traditional justice system, the researcher recommends that more mediation, negotiation, and conciliation centres (or, and personnel) should be established (or engaged) so that more disputes can be brought into the system.

5.5 Recommendations for Further Research

In order to further the knowledge in traditional justice system and conflict management, the researcher recommends that studies should be conducted in the following areas. Given the fact that assistant chiefs often preside over traditional justice systems yet they are an arm of the government, a study should be done on the influence of hybrid (formal and informal) justice system on conflict management. Similarly, since traditional justice systems often tend avoid reparation, a study should be done on the influence of traditional justice system on human rights enhancement.

REFERENCE

- Ary, D. Jacobs, C. L. & Razavieh, A. (2010). *Introduction to Research in Administration*. USA: Wadsworth Thompson Learning.
- Barton, C. (2000) Theories of Restorative Justice; *Australian Journal of Professional and Applied Ethics*, 2, (1), pp.41 – 53
- Bazemore, S. G., & Schiff, M. (2005). *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*. Portland, OR: Willan Publishing.
- Boege, V. (2008). *A Promising Liaison: Kastom and State in Bougainville*. ACPACS Occasional Paper No 12; Brisbane: Australian Centre for Peace and Conflict Studies (ACPACS).
- Braun, & Clarke, V. (2006). Using Thematic Analysis in Psychology. *Qualitative Research in Psychology* .(312), pp 77-101.
- British Psychological Society (2007) *Psychological Testing: A user's guide*, Psychological Testing Centre, Leicester.
- Hadley, M. (ed) (2001). *The spiritual roots of restorative justice*. New York: Suny Press.
- Huyse, L. (2008). *Tradition-Based Approaches in Peacemaking, Transitional Justice and Reconciliation Policies*, Stockholm: International IDEA, 1-22.
- Faure, G. (2000). Cultural Aspects of International Negotiation. In: P. Berton, H. Kimura, and I. W. Zartman, *International Negotiation: Actors, Structure/Process, Values*. New York, St.Martin's.
- Ikdahl, A. Hellum, R. Kaarhus, T.A. Benjaminsen, P. Kameri-Mbote (2005). *Human rights, formalization and women's land rights in southern and eastern Africa* (xiv).
- Kombo, D.K. & Tromp, D.L.A. (2006). *Proposal and thesis Writing. An Introduction*. Paulines Publications Africa. Nairobi.
- Marks, D. & Yardley, L. (2004). *Research Methods for Clinical and Health Psychology*. SAGE
- McCorry, T. (2010) Alternatives to the Traditional Criminal Justice System: An Assessment of Victim-Offender Mediation and Neighborhood Accountability Boards in the United States; *The New York Sociologist* 4, 75
- Mugenda, O.M & Mugenda, A.G. (2003). *Research methods: Quantitative and Qualitative approaches*, Acts press, Nairobi.
- Muigua, K. (2014) *Natural Resources and Conflict Management in East Africa*; Paper Presented at the 1st NCMG East African ADR Summit held at the Windsor Golf Hotel, Nairobi on 25th & 26th September, 2014
- Mwagiru, M., (2006) *Conflict in Africa; Theory, Processes and Institutions of Management*, (Centre for Conflict Research, Nairobi, 2006), 42.

- Nancy A. Welsh, 'Perceptions of Fairness in Negotiation', *Marquette Law Review*, 87, 753 – 767.
- Ireland Law Reform Commission (2008) *Consultation Paper on Alternative Dispute Resolution*, July 2008 P 43
- Isurmona, V.A. (ed.) (2005). *Problems of Peacemaking and Peace Keeping. Perspective on Peace and Conflict in Africa*, Ibadan: John Archers Publishers Ltd.
- Lincoln, Y. S., & Guba, E. G. (1985); *Naturalistic inquiry*, Beverly Hills, CA: Sage.
- Kamau, W.W. (2007), *Law, Family and Dispute Resolution: Negotiating Justice in a Plural Legal Context*, PhD Dissertation, York University
- Odongo, B. C. (2007) *Promoting Child Development through Music: A comparison of Preschool Assistant Chiefs' Perspectives in Kenya and United States*; Unpublished Thesis, Kenyatta University. Nairobi.
- Olaoba, O.B. (2005). "Ancestral Focus and the process of conflict resolution in Traditional African societies": Albert, A. O. (ed.) *In Perspectives on Peace and Conflict in Africa in Essays in Honour of General (Dr) Abdul Salam A, Abubakar*, Ibadan: John Archers Ltd.
- Oso, W.Y, and Onen, D (2009), *General Guide to Writing Research Proposal and Report: A Handbook for Beginning Researchers*, 2nd ed. Makerere University, Kampala
- Ray, B., (2009) 'Extending The Shadow Of The Law: Using Hybrid Mechanisms To Develop Constitutional Norms In Socioeconomic Rights Cases' *Utah Law Review*, (3) 802- 803.
- Sharpe, S. (1998). *Restorative justice: A vision for healing and change*. Edmonton, Canada: Mediation and Restorative Justice Centre.
- Sandefur and Siddiqi (2011) *Forum Shopping and Legal Pluralism*, Oxford University, Centre for the Study of African Economies
- Theresa, A.A and Oluwafemi, B.L (2014) Methods of Conflict Resolution in African Traditional Society; An International *Multidisciplinary Journal, Ethiopia* 8 (2):138- 157
- Van Velsen, J. (1964), *The Politics of Kinship: A Study of Social Manipulation Among the Lakeside Tonga of Nyasaland*. Manchester University Press, Manchester.
- Whitte, R. S. & Whitte, J. S. (2009). *Statistics*. John Wiley & Sons.
- Yin, R. (2011). Case Study Research: Design and Methods, the *Modern Language Journal* Volume 95, Issue
- Zartman, I. W. (2000). Introduction: African Traditional Conflict 'Medicine', in: I. William

Zartman (ed.). *Traditional Cures for Modern Conflicts. African Conflict
"Medicine"*. Boulder, CO: Lynne Rienner,

Zehr, H. and Mika, H.(1998). Fundamental concepts of restorative justice. *Contemporary
Justice Review* 1, 47-55.

APPENDICES

APPENDIX I: INTRODUCTORY LETTER

Emily Akinyi Kungu

University of Nairobi,

Conflict Management and Peace Building,

P.O. Box,

Nairobi.

Dear Respondent

RE: INFLUENCE OF TRADITIONAL JUSTICE SYSTEM ON CONFLICT MANAGEMENT IN MUHORONI SUB COUNTY

I am a post graduate student at the University of Nairobi pursuing a Master of Arts in Peace Administration degree. I am carrying out a study on the influence of Traditional Justice System on the Management of Conflict in Muhoroni Sub County. I hereby request you to participate in the study by responding to interview questions as honestly as possible and to the best of your knowledge. The information you give is entirely for the purpose of this study and not for any other thing. All your responses will be treated with the highest confidentiality.

Thanking you in advance

Emily A. Kungu

Researcher

APPENDIX II: INTERVIEW SCHEDULE FOR RELIGIOUS LEADERS

My name is Emily Akinyi Kungu, and I am a student at the University of Nairobi undertaking a Masters Degree course in Arts and Peace Administration.

This Interview Schedule is meant to obtain information regarding the influence of traditional justice system on conflict management in Muhoroni Sub County. The information you will provide will be treated with utmost confidentiality, and will not be used for any other purpose except to aid identifying gaps in knowledge as well as recommending appropriate policy formulations in regard to traditional justice systems' role in conflict management.

Section I: Different methods of traditional justice system used for conflict management

With regard to different methods of traditional justice system used for managing conflict in Muhoroni Sub County, kindly provide your opinion under the following common methods:

- i. Coercion methods of resolving disputes
- ii. Negotiation methods
- iii. Litigation methods
- iv. Compromise methods

Section II: Different forms of Common conflicts often managed through Traditional Justice System in Muhoroni Sub County.

In relation to various common disputes (or conflicts) that often occur in each community, kindly offer your views concerning the following conducts which have the potential to bad relations among different classes of people:

- i. Wife battery
- ii. Land boundary disputes
- iii. Cattle rustling
- iv. Burglary and housebreaking
- v. Misconduct or misbehaviour privately and publicly
- vi. Child defilement or defilement of minors
- vii. Assault problems
- viii. Use of foul or abusive languages against neighbours, etc

Section III: Influence of different methods of traditional justice system on the management of various forms of conflicts.

Justice systems are supposed to help in minimizing the bad effect attributable to conflict among members of a given community. Various forms of conflict are best managed through different methods of justice system. Kindly provide your opinion concerning the influence of these methods on the management of the various forms of conflict under the following themes:

- i. Coercion and wife battery
- ii. Negotiation and Cattle rustling
- iii. Compromise and land boundary disputes
- iv. Litigation and burglary/housebreaking incidents

APPENDIX III: OBSERVATION SCHEDULE FOR TRADITIONAL JUSTICE PROCEDURE

To be filled by the researcher

SUB LOCATION: *DATE:*

Conflict resolution processes (Arbitration/Mediation, Conciliation, Negotiation, etc.)

These are traditional conflict management processes. Kindly observe and indicate appropriately.

Traditional Conflict Management Process	Where used	
	Dispute types	Comment
Negotiation		
Mediation (Arbitration/adjudication)		
Conciliation		
Any others (Specify)		

APPENDIX IV: Questionnaire

QUESTIONNAIRE FOR ASSISTANT CHIEFS AND VILLAGE ELDERS

My name is Emily Akinyi Kungu, and I am a student at the University of Nairobi undertaking a Masters Degree course in Arts and Peace Education.

This Questionnaire is meant to obtain information regarding the influence of traditional justice system on conflict management in Muhoroni Sub County. The information you will provide will be treated with utmost confidentiality, and will not be used for any other purpose except to aid identifying gaps in knowledge as well as recommending appropriate policy formulations in regard to traditional justice systems' role in conflict management.

SECTION A: BIOGRAPHICAL DATA

This section seeks to establish the background information of the respondents. It seeks to examine the gender, age, marital status, education/training level, engagement type, and the period taken in a particular engagement. Kindly indicate precisely by or providing a in the boxes provided or indicating the open space (_____) the required response.

1. Indicate your gender: i) Male ii) Female
2. Indicate your age; i) Below 30 years; ii) 30 – 40 years; iii) Above 40 years;
3. Marital Status: _____
4. What is your level of education/training? _____
5. In which area are you engaged? _____
6. Period taken in working in the aforementioned (5) engagement _____

SECTION B: DIFFERENT METHODS OF TRADITIONAL JUSTICE SYSTEM USED FOR CONFLICT MANAGEMENT

Traditionally, there exist different informal ways of managing conflict within a particular community. For example, there are methods of solving household (domestic) conflicts,

No.	Items	1	2	3	4	5
1	Coercion method is best employed in land boundary conflict					
2	Litigation methods are appropriate for household conflicts					
3	Negotiation methods are appropriate for burglary cases					
4	Compromise method is unsuitable for cattle rustling and burglary cases					
5.	Land boundary conflicts are best addressed through litigation					
6	Conflicts related to domestic issues are better solved through negotiation					
7.	General misconduct conflicts should not be managed through compromise					
8.	Assault conflicts should not be solved through coercion					

land boundary conflicts, cattle rustling, burglary, assault, and general misconduct (among others). Please, could you respond to the following statements related to the appropriateness of different methods of traditional justice system used for conflict management by stating the level of your agreement or disagreement as: **1=MOST Inappropriate (MI); 2=Inappropriate (D); 3=Un Decided (UD); 4=Appropriate (A); 5=MOST Appropriate (MA).**

SECTION C: DIFFERENT FORMS OF CONFLICTS MANAGED BY TRADITIONAL JUSTICE SYSTEM

Conflicts have become prevalent in the society for some time, and they (conflicts) come in different forms. For example, there are often cases of wife battery, land boundary conflicts, non ‘functioning husbands’, cattle rustling, burglary, general misconduct by individuals, assault, child defilement, and use of foul language towards other people (among many other cases). As an elder or an administrator within the community, would you respond to the following questions which relate to the types or forms of conflicts experienced in the society by expressing the level of your agreement or disagreement as; **1=STRONGLY Disagree; (SD); 2=Disagree; (D); 3=Un Decided; (UD); 4=Agree; (A); 5=STRONGLY Agree (SA).**

No	Items	1	2	3	4	5
1	Male adults often beat up their spouses due to minor issues					
2	Cattle rustling remains a traditional practice in the community					
3	Land boundary rows often erupt into violent conflicts					
4	Burglary and housebreaking cases are often witnessed in the community					
5.	Misconduct and misbehavior among adults are common occurrences here					
6	Assault problems have not been occurring lately in the area					
7.	Defilement of minors have risen in the area					
8.	Usage of foul language and misconduct is often not treated as offence					

SECTION D: INFLUENCE OF DIFFERENT METHODS OF TRADITIONAL JUSTICE SYSTEM ON THE MANAGEMENT OF VARIOUS FORMS OF CONFLICTS

Justice systems are supposed to help in minimizing the bad effect attributable to conflict among members of a given community. Various forms of conflict are best managed through different methods of justice system. The following statements relate to the influence that different traditional justice systems have on conflict management. Please, could you respond to them by stating the level of your agreement or disagreement as:

1=STRONGLY Disagree (SD);

2=DISAGREE (D); 3=Un Decided (UD); 4=Agree (A); 5=Strongly Agree (SA).

THANK YOU FOR AGREEING TO PARTICIPATE IN THIS DATA COLLECTION EXERCISE

No.	Items	1	2	3	4	5
1	Through coercion, wife-beating husbands often embrace household peace					
2	Negotiation hardly reduce incidents of cattle rustling					
3	Compromise often bring peace and understanding among conflicting parties in boundary rows					
4	Litigation normally worsens burglary and housebreaking incidences					
5.	Coercion often aggravate most conflicts					
6	Negotiation often leave permanent grudge and mistrust among conflicting parties					
7.	Equity cannot be achieved through compromise in land boundary rows					
8.	Litigation reduces burglary and housebreaking incidences					

APPENDIX V: WORK PLAN

