

**ETHICS, VALUES AND NORMS: EXPLAINING CONFLICT MANAGEMENT
IN THE MAASAI COMMUNITY, 2009-2012**

PHILIP MUNGAI NGANGA

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DECLARATION

This thesis is my original work and has not been presented for a degree in any other University.

.....
Philip Mungai Nganga

.....
Date

This thesis has been submitted for examination with my approval as University supervisor.

.....
Dr. Ibrahim Farah

.....
Date

DEDICATION

To my lovely wife, Eve Sikukuu Nimwaga, who embraced this quest like her own and loved me through it all, and the great minds and souls at the Institute of Diplomacy and International Studies (IDIS).

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ABSTRACT

The study examined ethics, norms and values of the Maasai and how they contribute to conflict management in the community. The study made an attempt to establish the main causes of conflict in the community that lives in East Africa, and how their culture has contributed towards resolving the conflicts, in an effort to learn and share the learning across the board in the field of International Conflict Management. Since 1890, the community has been faced with serious threats of survival as their culture has been scoffed at as backward and primitive, an excuse that has been used to decimate their most vital resource, land. Various agents have been the perpetrators behind this onslaught, but the overriding theme is modernity. The overall objective of the study was to examine the influence of ethics, values and norms on conflict management in the Maasai community. The study explored the duty theories, value theories and norm theories and beliefs and how they contribute to group cohesiveness, and help in management of divergent ethics values and norms. The research design used in this study was descriptive survey method as it allows for prudent comparison of the research findings. It also used both primary and secondary data to collect relevant information. Interviews were used to collect primary data from key informants while secondary data was obtained from textbooks, journals, and academic papers. These provided divergent practical, analytical and academic views on the Maasai dilemma. The major findings of the study is that there is a serious threat that the culture of the Maasai people is under a lot of pressure, and even though their culture has sustained them in spite of the attempts for erosion, modern practices have led to significant shifts in the culture. The other key finding is that the Maasai's way of life, their rites and beliefs have held strong because of the strength of their ethics. It has held them together. The study also established detrimental effects of the conflict, which are associated with some of the people abandoning their way of life for a modern life they have not been prepared well to fit in. The study concludes that governments of Kenya and Tanzania, NGO's and community based organizations must use integrated approaches, ensuring that their way of life is not interrupted and that their culture is harnessed, not castigated, through education. The study recommends the government should make it easy for the indigenous system to be incorporated into the contemporary conflict resolution system. The study recommends that conflict resolution and peace building mechanisms should be based on principles cherished and internalized by a community, and should be contextualized to capture their collective knowledge and experiences.

LIST OF ABBREVIATIONS

ADR	-	alternative dispute resolution
HIV/AIDS	-	Human Immunodeficiency Virus/ Acquired Immunodeficiency syndrome
IDRC	-	International Development Research Centre
ILCA	-	International Livestock Centre for Africa
ILIDP	-	Ilkerin Loita Integral Development Programme
NGOs	-	Non Governmental Organizations
PSWs	-	Problem Solving Workshop number
SALW	-	small arms and light weapons
UN	-	United Nations
WTO	-	World Trade Organization

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Introduction

Conflict refers to a situation where there are more than one group of people engage in a situation where they are in opposition to one another, have differing opinions or competition of interests that may lead to a struggle, tension violent or non-violent struggles or activities that are injurious to members of the opposite group.¹

The Maasai people of East Africa inhabit the vast Mara Basin, a very important eco-system to the sustenance of livelihoods, supporting the economies of Kenya and Tanzania, and deemed to be one of the new wonders of the world.² This area supports one of the largest concentrations of wild life in the world. It was for many years the traditional habitation of the Maasai and their *Maa* speaking group of communities. Their traditional way of life was characterized by pastoralism. However, the turn into the 20th century saw not only their land threatened by forces stronger than what they had been used to before; the forces of modernity through colonization and rapid urbanization. Not only were their lives and that of their livestock at stake, but also a long held tradition of culture, values and norms that have held them together in peace, managing their conflicts with their neighbours the Kikuyu, Kamba, Rendille among others with gait and honour that it earned them respect among community of tribes that formed the continent then. Today, they are faced with conflict managers, legal and policing mechanisms strange to their culture.

¹ Getui N.M. (2009) “*The Ethnicity factor in politics, religion and conflict*:. In A. Tarimo and P. Manwelo (eds) *Ethnicity, conflict and the future of African States*, Nairobi: Paluline Publicationond Africa.

² <http://abcnews.go.com/GMA/7Wonders/story?id=2660801&page=1> Accessed on 14th September 2013.

1.1 Background of the Study

The Maasai people originated from the lower Nile valley north of Lake Turkana (North-West Kenya) in fifteenth century. Their territory covered almost all of the Great Rift Valley and adjacent lands from Mount Marsabit in the north to Dodoma in the south.³ The community is straddled between Kenya and Tanzania. They are semi-nomadic pastoralists and they keep different species of livestock that forms the foundation for their traditional occupations and livelihood.⁴ There are several Maasai sections based on their socio-territorial set-ups, traditional occupations and cultural practices. In Kenya they live on the southern and north central parts of the country and in Tanzania, the majority are found in North Tanzania.⁵ Their population in Kenya is estimated to be approximately at least a million- if different.

Although the Maasai are some of the most researched people groups in the Kenya by academicians, anthropologists and planners and visited by tourists and collectors, they still remain among the misunderstood and misinterpreted communities by government, development agencies and other agencies working in the areas.⁶ Some research studies have only managed to strengthen and deepen stereotypes and misunderstandings about the Maasai as a people and their pastoralists' way of life.

The social organization of the Maasai is based on a clan and also an age—set system. This is what informs and forms their social and traditional decision-making and governance institutions and systems. Their continued interaction with nature and

³ Toyin Falola, Boydell & Brewer. Christian Jennings (2003), Sources and Methods in African History: Spoken, page 18 2.

⁴ Eliot, Charles (1966). East African Protectorate. Routledge. pp. 141.

⁵ McCabe, Terrence. (2003). "Sustainability and livelihood diversification among the Maasai of Northern Tanzania". Human Organization. Vol 62.2. p. 100-111.

⁶ Nestel, P. (1989). Livestock as food for pastoralists in Africa. J. M. Suttie. A society in transition: developmental and seasonal influences on the nutrition of Maasai women and children ILCA, Nairobi

environment has enabled them to establish skills and customary laws that had traditionally ensured that natural resources are utilized in a sustainable manner.⁷ This has lately been violated by greed for land and either natural resource to feed the ever-growing demand for indigenous resources including the grasslands that they depend on for their livelihood.

The Maasai community is one of the communities claiming indigenous Rights and identity in Africa. The notion and concept of indigenous peoples is being used by pastoralists and hunter-gatherers to advance their struggle for recognition, respect and restitution of their ancestral land, as they lay claim to their rights and fight against social and policy exclusions.⁸ Through the long term direct and sustained interaction with nature, the Maasai have developed, evolved and propagated unsurpassed indigenous skills, knowledge and practices that has enabled the community to survive in areas considered as wastelands, dry lands or rangelands.

The Maasai community has managed to overcome the strong currents of the Western cultural influence but now it is being faced by a lot of cultural erosion threats, cultural disposition, cultural and natural resources piracy. The Laikipia Maasai community has responded to these threats and challenges through community owned and managed Trust; The Maasai Cultural Heritage.⁹ The Maasai people were respected for their advanced spiritual and traditional knowledge and were often sought out as healers, trackers and animal behaviorists. However, due to marginalization and commercialization under colonialism and thereafter, they have now been excluded and the ancestral lands and natural resources has been

⁷ McCabe, Terrence. (2003). "Sustainability and livelihood diversification among the Maasai of Northern Tanzania". Human Organization. Vol 62.2. p. 100-111

⁸ Goodman, Ric. (2002). "Pastoral livelihoods in Tanzania: Can the Maasai benefit from conservation?" Current Issues in Tourism. Vol 5.3,4. P.280-286.

⁹ Mohamed Amin, Duncan Willetts, John Fames. 1987. The Last of the Maasai. Pages 53, 54. Camerapix Publishers International.

expropriated from them and are now exclusive world class tourism destinations as stated by Suttie.¹⁰

The cultural, traditional occupations and economies of the Maasai community are at risk due to policies and National practices that do not take their needs and knowledge into account. In such regards where people are not part of National Development Planning, they can become victims of progress that ends up destroying the wealth of skills, heritage, livelihood practices and cultures that have been built over years.

In view of this, the Maasai cultural Heritage foundation in collaboration with the Maasai community leads a collaborative process of establishing a cultural resource museum to promote protect and preserve this culture and enhance full and effective participation of this community in protecting its culture for future generation. Globalization has made the world into one village and with Modern Technology people can now read, get and share information of any kind of different cultures in this earth. Development of a website could make the Maasai culture known to different people across the globe and through networking this culture could be protected as friends, individuals, organizations, researchers could assist in documentation, recording of songs for information dissemination and awareness creation and providing cultural talks to friends who are interested in identifying with the objectives.¹¹ The threats the Maasai cultural is facing currently which includes lack of formally documented facts about the culture, exploitation of cultural linked resources like traditional herbs, patenting of traditional knowledge, commercialization of culture for other people's gains and use, curving of people's culture without

¹⁰ Suttie J. M., Nestel, P. 1989. Livestock as food for pastoralists in Africa. A society in transition: developmental and seasonal influences on the nutrition of Maasai women and children ILCA, Nairobi

¹¹ Hassan (2008). Y-chromosome variation among Sudanese: restricted gene flow, concordance with language, geography, and history.. 137. pp. 316—23.

consent and benefits from culture without adequate benefit sharing. All this has prompted the existence of Maasai cultural heritage foundation to act as an eye opener on what is happening in the global levels and linking it to the local level.

The disintegration, assimilation and erosion of cultures particularly in Africa have transformed communities into spectators rather than rights holders. This position has further accelerated rapid loss of their social and traditional structures and as a consequence continued to disrupt their socio economic, cultural and political rights. According to Mohamed Amin, et al, the external pressures such as privatization, new concept of wildlife conservation and extension of multinational companies to rural areas has continued to be a threat to people's culture as this has completely interfered with the traditional way of governance, disrupted the survival mechanisms of sharing communal resources and hence people loose their focus i.e. traditional way of life and ends up confused by the abrupt new modern development approaches. As a remedy to this, the Maasai cultural Heritage foundation intends to engage a development approach through harmonizing the traditional system of governance with modern ways by building and strengthening the already existing community traditional systems. This is the starting points in a bid to empower the community to participate in their own development.

1.2 Statement of the Research

It is widely recognized that conflict is an inherent part of modern, complex society, especially when interests are organized and self – seeking. It is more intense when interests seeking fulfillment or redress meet stubborn resistance. The latter situation is generally more likely when resources are scarce or where contesting parties view their efforts to advance or maintain the status quo as zero—sum affairs.

Conflict can take many forms, some violent, others not. People find that their ideas, their preferences, their interest vary from those of their neighbors every day. Those ideas, preferences, and interests are in conflict, but they are normally either sublimated or acted upon and resolved in peaceful ways. The means of resolving daily conflict include negotiation, compromise, and reliance on institutions like village councils, courts, or the police. Violence often reflects the failure of institutions to allow for the pursuit of particular interests. Sometimes, e.g. in southern Sudan, it may continue unabated without institutional response or transformation.

Traditional conflict management, according to Hoffmann, attempts to place the decision- making onus on the participants by eschewing reliance on outside norms and by ensuring the neutrality of the mediator.¹² The principles and rules of justice governing legal and civil interaction between persons are suspended in mediation and the parties are free to create their own understandings of such principles and rules.¹³ Core Competencies suggests that a pure facilitation or a pure mediation approach might yield a consensus that falls outside of culturally enshrined and socially acknowledged ethical and legal limits. Such criticisms seem to loom from playing any appropriate role in ethics, norms and values.

1.3 Objectives of the Study.

The overall objective of the study was to examine the influence of ethics, values and norms on conflict management in the Maasai community. Specifically, the study aims to: -

1. Provide and overview of conflict and management practices in the Maasai community.

¹² Hoffmann, D. (1994). Case consultation: Paying attention to process. HEC Forum 6(2): 85-92.

¹³ Toyin Falola, Boydell & Brewer. Christian Jennings (2003), Sources and Methods in African History: Spoken, page 18 2.

2. Examine indigenous and ingenious ways of conflict management in the community.
3. Assess the contribution of Maasai cultural ethics, norms and values to conflict management in the community.

1.4 Justification of the Study

The purpose of the research is to illustrate the influence of ethics, values and norms on conflict management in the Maasai community. The case study puts to light the issues that lead to conflict and also the major source(s) of conflict in the community, which can mirror most of the pastoralists' community in Kenya. However, the Maasai case is worth investigating. Therefore the study could be justified from an academic and policy perspective. The academic justification for the study centers on providing a conflict perspective of ethics, values and norms on conflict management in the Maasai community. Current contributions to these causes of conflict have mainly been from the perspective of political science, history and socio-economic theories. A structural conflict perspective, which is situated within the discipline of conflict studies, is however vital to understanding the conflict arising. The study enlarges the theoretical discourse on the linkages between structural violence and conflict causes. It is also on this premise that the study is justified in its contribution to the existing body of knowledge in this field.

At policy level, the finding of the study would prove useful to policy makers in integrated legal approaches organs of states and other institutions, by providing them with additional insights about causes of conflict in communities in Africa. They may also find the study useful for analyzing and developing the best practices on the influence of ethics, values and norms to prevent conflicts.

1.5 Literature Review

The literature review looks at four areas that will form the sub-titles: the first gives an overview of the conflict management, second on ethics on conflict management, third is on values and conflict management and fourth norms on conflict management. The literature review therefore encompasses of ethics, values and norms on conflict management in the Maasai community.

1.5.1 Conflict Management

Conflict situations have existed worldwide for a long time as a result of incompatibility of interests, differences in opinion, aims and beliefs characterized by a strain in the way two parties relate with each other. Conflict ranges from community, regional, national or interstate levels and further escalation of conflict situations may have irreversible impacts depending on whatever level they occur.¹⁴ A conflict arises when parties have incompatible goals about something. This arises because they may both have different perceptions, goals and ideas about how to achieve them. Conflict is an inherent part of modern, complex society, especially when interest is organized and self-seeking.

According to Holsti, conflict can take many forms, some violent, others not. People find that their ideas, their preferences, their interests vary from those of their neighbors every day.¹⁵ Those ideas, preferences, and interests are in conflict, but they are normally either sublimated or acted upon and resolved in peaceful ways. The means of resolving daily conflict include negotiation, compromise, and reliance on institutions like village councils, courts, or the police. Violence often reflects the failure of institutions to allow for the pursuit of particular interests. Sometimes, as has

¹⁴ Mwagiru Makumi (2004), African Regional Security in the Age of Globalization. Heinrich Boll Foundation, Nairobi

¹⁵ Holsti, R. International Politics: A framework for Analysis (2nd edition) New Jersey: Prentice Hall, Inc. Engelwood Cliffs, 1972 P. 447

been witnessed in South Sudan, it may continue unabated without institutional response or transformation. Holsti reiterates that conflict, violent or not, may be restricted to local groups without wider intention or impact. But conflict can also aim at and involve national-level issues and participants. In still other cases, actors beyond national borders are engaged, indirectly, through proxies, or directly.¹⁶

Conflicts in Africa arise from human relations in these principal ways: first individuals or groups have different values, needs and interests; and second, most resources are not available in unlimited quantities and so access to them must be controlled and fought for. Competition for resources typically lies at the result of conflict these accounts for the intensity of the struggle for political power in many African countries where political power is sought in order to acquire control over means of production.¹⁷

Conflict management is another way of controlling conflict before, during and after it has occurred. It is more elaborate and wider in conception and application, when necessitated; it involves conflict resolution and transformation. It is more of a long-term arrangement involving institutionalized provisions and regulative procedures for dealing with conflicts wherever they occur. Sandole further stresses this view of the comprehensiveness and institutionalization involved in conflict management, when he wrote that ‘conflict management refers to the elimination, neutralization of conflict from erupting into crises or to cool a crisis in eruption.’¹⁸

¹⁶ Holsti, R. *International Politics: A framework for Analysis* (2nd edition) New Jersey: Prentice Hall, Inc. Engelwood Cliffs, 1972 P. 447

¹⁷ Mwagiru, M, *Conflict in Africa: Theory, Process and Institutions of Management*, Nairobi: Centre for Conflict Research, 2006 p3

¹⁸ Otite, Onigu & O. Albert (eds) (1999) *Community conflicts in Nigeria: Management, Resolution and Transformation*. Ibadan: Spectrum Books.

1.5.2 Ethics towards Conflict Management

Ethical Culture is premised on the idea that honoring and living in accordance with ethical principles is central to what it takes to live meaningful and fulfilling lives, and to creating a world that is good for all. Practitioners of Ethical Culture focus on supporting one another in becoming better people, and on doing good in the world.¹⁹

Ethnic groups are social formations distinguished by communal character of their boundaries. The relevant communal factor may be language, culture or both. In Africa, language has clearly been the most crucial variable. Ethnic groups exist only within a political society consisting of diverse ethnic groups. Ethnicity is characterized by a common consciousness of being one in relation to the relevant ethnic group. It is necessary to quickly make a distinction between the “ethnic group in itself” and the “ethnic group for itself.”²⁰ The former refers to a group marked out by linguistic and/or cultural similarity but without a common consciousness or identity, which identifies with the later.

According to Barry, for ethnic groups inhabiting the same state, the interaction is frequently characterized by competition for resources, power and the assertion of cultural identity.²¹ Conflict arises out of the attempt to include one’s members and at the same time exclude people from other groups. Barry further gives two types of ethnic conflicts: symbolic ethnicity; this takes the form of continuous contestation over cultural and identity issues. The second one he calls it clientelistic ethnicity. These are cases in which ethnicity becomes a destructive force for the economic and social development of the state. In particular, ethnic favoritism replaces merit and

¹⁹ Sandole D. and Sandole-Staroste, (1987) [eds], *Conflict Management and Problem-Solving: Interpersonal to International Applications*, New York University Press, NY,

²⁰ Brown, Stuart C; Collinson, Diane, (2000), *Biographical dictionary of twentieth-century philosophers*, Books, Google, p. 7

²¹ Barry, B., (2003) “Political accommodation and Consociational democracy”, in *Democracy and Power: Essays in Political Theory*, Oxford University Press, Oxford,

need in determining who benefits from the resources controlled by the state. In turn, this undermines the efficiency of the state and promotes widespread corruption, nepotism and hence a strong sense of injustice.²²

Gender inequality, while never seeming to have been the source of conflict in modern history, at least serves as a possible platform or test case for governance approaches to offset other sorts of power inequalities. Gender inequalities should be addressed as a bi-product of addressing far more fundamental asymmetries, an opportunity for good governance to deal not only with conflict but also injustice according to Gasas.²³

Smith gives taxonomy of “six main attributes of ethnic community” as follows: “a collective proper name; a myth of common ancestry; shared historical memories; one or more differentiating elements of common culture: association with a specific homeland; and a sense of solidarity for significant sectors of the population.”²⁴

In response to the claim that ethnic conflicts are too intense for effective intervention, Crocker concedes, “it may be that internal wars based on primordial sentiments tend toward zero-sum thinking and the progressive elimination of neutral or common ground”.²⁵ However, very few conflicts are in fact based purely on such primordial sentiments. The author argues that ethnic conflicts are shaped by a number of factors. These factors include the actions of foreign powers, the current balance of power and potential for change, the leader’s goals and opportunities, and access to appropriate military hardware. So-called ethnic conflicts are precipitated by a number

²² Ibid (2003) p. 23

²³ Gasas, L.L.P. van (1994). *Conflict and Development: The Causes of Conflict in Developing Countries*. The Hague: NIIR, Clingendael.

²⁴ Smith, M., (1991). *Burma: Insurgency and the Politics of Ethnicity*, Zed Press, London.

²⁵ Crocker Aall, Pamela (1996) ‘Nongovernmental Organizations and Peacemaking,’ Fen Hampson and Pamela Aall (eds) *Managing Global Chaos*. Chester, (Washington, D.C.: United States Institute of Peace Press, 1996) pp. 433-444.

of other factors also. The collapse of a nation's basic institutions, holding faulty or premature elections, politicians who exploit ethnicity to promote their own agendas, the availability of the means and resources to wage war: such situations can set the spark which erupts into ethnic conflict.

1.5.3 Values towards Conflict Management

Traditional Maasai social structure and cultural institutions fundamentally constrain development initiatives. Nevertheless, equally stressed is the importance of pastoralist control of land tenure, resources and productive assets. Moreover, the likelihood of pastoralists following the precedent of Kenya's small farmers in responsiveness to opportunities for profitable innovation is granted. For the transition to a livestock production for cash economy, market production and market consumption will need to build upon the other. And in that process, pastoralist initiative and their ability to self-impose controls over their resource use is vital.

1.5.4 Norms towards Conflict Management

Norms are obligations, permissions and prohibitions associated with a particular society or members of a society. They provide a useful abstraction with which to specify and regulate the behavior of self-interested software agents in open, heterogeneous systems. Kollingbaum adds and says that any realistic account of norms must address their dynamic nature: the norms associated with agents will change as agents act (and interact), whereby prohibitions can be lifted, obligations can be fulfilled, and permissions can be revoked as a result of agents actions. The challenge posed with norms is that sometimes they can be confusing, in one breath prohibited and in one permitted, and in this paper, I will expound some of the instances where conflicts have caused a paralysis especially among the Maasai as they relate with others, including entities beyond ethnic boundaries like government. Majority of the Community decisions are made by men (senior or both senior and

junior elders), often under a tree designated as a 'council'. Women may sit in an outer circle and usually will not speak directly in the open council, but may convey a comment or concern through a male relative. However, women may have their own 'council' discussions and then carry the results of such discussions to men for consideration in the men's council. The Maasai traditional religion is based on acknowledgment of the Creator God whom they call *Nkai*, as do other Maa-speaking peoples. They think of him as living in the mountains around their land, such as Mount Marsabit. They also believe in charms and have traditional ritual for fertility, protection, healing and other needs. But it is common to have prayer directly to *Nkai* in their public gatherings. Maasai Christians use traditional Maasai prayer patterns in prayer and worship. They also use the term *Nkai* for various spirits related to trees, rocks and springs, and for the spirit of a person. They believe in an evil spirit called *Milika*.

1.6 Theoretical Framework

Conflict management will inform the study. Realism, unlike idealism, does not construe generative mechanisms in the natural and social sciences as merely imaginary.²⁶ Realism describes any manifestation of the belief that reality exists independently of observers, whether in philosophy itself or in the applied arts and sciences. Political realism is a theory of political philosophy that attempts to explain, model, and prescribe political relations.²⁷ It takes as its assumption that power is (or ought to be) the primary end of political action, whether in the domestic or international arena. Theorists have also identified additional forms of third-party intervention designed to complement negotiation that are distinguished primarily by the degree of power that the intervener exercises over the process and outcome of the

²⁶ Gene Callahan, (2010). Critical Realism ... or Critical Idealism?, International Journal of Social Economics, Vol. 37 155: 11, pp.867 - 879

²⁷ M. (2005). Political Realism. Internet Encyclopedia of Philosophy.

conflict.²⁸ This continuum of power is characterized not only by a varying capacity to influence, but also by a noteworthy shift in the type of power exercised. Thus, more traditional, coercive methods such as arbitration engage influence and control as “power over”, while more recent innovative methods such as problem solving workshops (PSWs) seek to engage and induce “power with”, to draw on a useful distinction identified and evident in feminist literature.

A contemporary notion in the third-party literature is the idea that not all conflicts at all points in time will be amenable to a single and unified method of intervention. The defining characteristics of the conflict, particularly the stage of escalation need to be considered in the light of the question as to which type of third party might intervene in the conflict most effectively and in which manner. Likewise, the interplay between different forms of third-party intervention and conflict transformation must be considered carefully, particularly because the various forms will typically play different roles in the overall process. Conflict transformation further requires that the antagonists agree upon and create the political, economic and social structures that will engender positive peace with social justice over the longer term. It is clear that these kinds of outcomes require more complex and coordinated third-party activities than the field of conflict resolution has been able to develop and implement so far, along with, of course, local empowerment and engagement. There is general agreement in the literature that “the success or failure of conflict management is largely determined by the nature of the dispute”. Naturally the choices of conflict management modes and the chances of successful conflict management are affected by the importance each adversary attaches to the issues in the dispute.

²⁸ Folberg J. and Taylor, A. (1984). *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation* San Francisco: Jossey-Bass

1.7 Research Questions

The study examined the following research questions:

1. Do Maasai ethics, norms and values contribute to effective management of conflict in the community?
2. What are the challenges facing the sustenance of the ethics, values and norms of the community?
3. Is modernity helpful or harmful for the Maasai way of life?
4. What is the role of Alternative Dispute Resolution Mechanism in community conflict management mechanism?
5. How do the western conflict management theories compare to the Maasai indigenous conflict management practices?
6. Can the western conflict management theories help explain and manage conflict among the Maasai?

1.8 Research Methodology

The research design used in this study was the descriptive survey method. This method is preferred because it allows for prudent comparison of the research findings.²⁹ The qualitative design chosen for this research is theory grounded, or natural inquiry. Grounded theory research unfolds and emerges empirically from the data and is more responsive to contextual values rather than researcher values. According to Cooper, et al, descriptive statistics discover and measure cause and effect relationships among variables. The study used a descriptive design because it enables the researcher to collect in-depth information about the population being studied. It was mainly bounded among the community and also persons whose

²⁹ Cooper D. R. and P. S. Schindler 2000, Research Methods (7th ed. New York: Irwin/McGraw-HiH, 2000) p.112

knowledge, experience and skills give them authority to objectively give views on the community and the conflict.

The study used both primary and secondary data to collect relevant information. Primary data is that which is collected directly by the research by unstructured and structured interviews with the population and sample. Data was collected via the use of interview guide. An interview guide is the preferred mode of data collection as it allows for the collection of a lot of data over a short period of time and with minimal interruption to the respondents schedules.³⁰ The study also relied on secondary data such as textbooks, journals, and academic papers that are to be found in the University of Nairobi and other libraries. For sensitive data or information corrected, the researcher ensured that the safety of interviewees is not compromised.

1.9 Chapter Outline

The study is structured in five chapters: -

Chapter one: - Introduction to the study

Chapter two: - Ethics, values and norms in the Maasai community.

Chapter three: - Ethics, values and norms: Explaining conflict management in the Maasai community.

Chapter four: - Conflict and Management amount the Maasai

Chapter five: Conclusion

³⁰ ibis p. 112

CHAPTER TWO

ETHICS, VALUES AND NORMS IN THE MAASAI COMMUNITY: AN OVERVIEW

2.0 Introduction

The previous chapter established the foundation of the study by giving an introduction to the study, statement of the research problem, objectives of the study and also providing the literature review of conflicts, ethics, values and norms. The chapter also gave a theoretical framework, research questions, the research methodology and the chapter outline.

This chapter will explore the theories of ethics, values and norms and how they relate to the issues affecting the Maasai community. It will discuss cultures and their roles in conflict, and attempt to answer the questions on ethnicity, with the Maasai as an ethnic group being a point of study. It will also give a short overview of the ethnic problem in Rwanda.

2.1 Understanding Ethics

So much has been said about the Maasai people, from written books to news and documentaries around the world, such that many people abroad imagine that every Kenyan is a Maasai. It almost begs the question of whether more should be written. It is the purpose of this study to prove that justice has not been done to what the community in respect to what has been said so far, but also to point out that the community faces a tough dilemma insofar as they are going to survive and thrive in the next decades due to the conflicts that have risen amongst themselves as a community, their neighbors and to an extent, the government. In the recent past, many lives has been lost in Kenya and Tanzania as a result.

Studying and writing on the conflict management among the Maasai is very important, yet interesting in several respects. One of them is that their conflict has persisted for a long time, since before the early settlers started streaming in and hived off massive pieces of lands belonging to the community in the name of development. The same issues that were there then persist today, and as a matter of fact escalated. It is therefore in the interest of conflict management experts to help all parties concerned to manage this conflict and quell the periodic destruction of lives, property and livelihood. But the other most interesting and relevant concern for this study is the fact that the social construct of the Maasai, in particular their ethics, values and norms have not been diluted as much as many other communities. There has been lots of outside influences. Even though the culture has become a little bit more uncertain now than in the past in the face of modernism, western religion and environmental pressure, the people have stuck to a wonderful saying held dear to them; “It takes one day to destroy a house; to build a new house will take months and perhaps years. If we abandon our way of life to construct a new one, it will take thousands of years”. It is therefore a worthy academic pursuit to look into how the ethics, norms and values of the community has helped manage the protracted conflict, and how this can be enhanced, and be a point of learning for the field of International Conflict management.

Ethics have guided human co-existence for many years, and it is said without their existence, there would be no human society. The horror of the absence of ethical behavior is told in instances where human beings have exhibited characters that would be said to be inhuman. That is why ethics is mostly covered in the academic discipline of moral philosophy. This is the branch of philosophy that involves systematizing, defending and recommending ideas and concept of what is universally

considered as right or wrong.³¹ The term ethics has been derived from the Greek word, Ethos, which means “Character”. Whereas in the study we are going to be dealing with the main subject as ethics, it is important to recognize that there are various areas of study in ethics, namely meta-ethics, normative ethics, applied ethics and descriptive ethics.

2.1.1 Theories of Ethics

There are several forms and theories of Ethics. Meta-ethics is the broad picture of ethics, which will even involve a discussion of whether ethics exist or not. Normative ethics involves the regulation of what is right and wrong, with the major intention being to create a standard, or standardize a barometer for what would be considered as the proper behavior. It applies what has been considered as the “golden rule” or in other words “the ethic of reciprocity.”³² The positive form of this rule is that one should treat others, as one would like the other to treat oneself. The negative form of the same rule is that one should not treat others in ways that one would not like to be treated. The concept describes therefore a two-way fusion of relational behavior, where both sides relate on an equal platform. This rule is applied in different studies, where psychologically it is about showing empathy to others, philosophically it is about perceiving the neighbor on the same platform or parameter as “self”, and for purpose of this study, sociologically, it means ensuring a relationship between individuals or in a group such that there is cohesion, consideration and respect for each other. Historically, the golden rule dates back to the 1670s.³³ It therefore has its roots in a wide range of world cultures, and we are supposing that the Maasai have a strong claim to this presupposition. Many of the religions of the world have also been

³¹ Anscombe, Elizabeth “Modern Moral Philosophy”, *Philosophy*, 1958, vol. 33, Reprinted in her *Ethics, Religion and Politics* (Oxford,: Blackwell, 1981)

³² Antony Flew, ed. (1979). “golden rule”. *A Dictionary of Philosophy*. London: Pan Books in Association with Macmillan Press. P. 134.

³³ Douglas Harper. “Entry for golden”. Online Etymology.

formed with the golden rule as the major convergence for peaceful co-existence and being mindful of one another.³⁴

In a discourse on Confucianism, Rushworth Kidder notes that in the major religions of the world, the golden rule is an ethical concept that they will dare not miss.³⁵ Simon Blackman also notes that the rule can be found in some form in “almost every ethical tradition”.³⁶ In our study, we are going to mainly dwell on the normative ethics as a general rule of ethics that which field of international conflict management would benefit more and that which the community under study has used for generations. However, to conclude this narrative, applied ethics, as another major area of study in ethics is whereby we look into how moral outcomes can be achieved in specific situations. This is mainly used in applying ethics in public policy, political ethics (which involves making judgments about political action and agents) and public sector ethics, which are a guide to how public officials, serve their constituents.³⁷ The other form of ethics that is normally studied is descriptive ethics, which is a value-free approach to ethics.

In normative ethics, there is one key assumption; there is only one ultimate criterion of moral conduct, whether it is a single rule or a set of principles. There are three strategies which have been identified that we are going to utilize in this study; virtuous theories, duty theories and consequential theorists.

Many philosophers argue that morality is about defined rules of conduct, such as “don’t kill,” or “don’t steal.” The belief is that one should study these rules and

³⁴ W.A Spooner, “The Golden Rule” in James Hastings, ed. *Encyclopedia of Religion and Ethics*, Vol. 6 (New York: Charles Scribne’s Sons, 1914) pp. 310-12.

³⁵ Rushworth M. Kidder, *How Good People make Tough Choices: Resolving the Dilemmas of Ethical Living*, Harper, New York, 2003 p. 159.

³⁶ Simon, Blackman (2001). *Ethics: A very Short Introduction*. Oxford: Oxford University Press. P. 101.

³⁷ Thompson, Dennis F. “Political Ethics.” *International Encyclopedia of Ethics*, ed. Hugh LaFollete (Blackwell Publishing, 2012).

adhere to them, sort of like the 10 commandments in the bible. In virtue ethics, less emphasis has been laid on learning the rules, but rather developing good habits of character, and then working out your character in such a manner to apply what you have learnt. Historically, the ancient Greek civilization also gave us these theories.³⁸ Plato was to emphasize for virtues in particular; wisdom, courage, temperance and justice. Others that are emphasized are fortitude, generosity, self-respect, good temper and sincerity. The virtue theorists also posit that we should avoid acquiring bad character traits like cowardice, vanity, injustice and insensibility. These virtues dating back to the dates of Plato are not only evident in the traditional African communities including the Maasai, but also in the contemporary community and serve as guides to living.

Another Greek Philosopher, Aristotle, argued that virtues were good habits that we acquire, which regulate our emotions. He argued that most virtues fall at a mean between more extreme character traits. One of the most celebrated, courage, if one does not have enough courage; they develop the disposition of cowardice, and vice versa. If I have too much courage, then I can become rash, which now becomes a vice.³⁹ Virtue theory declined in the 19th century with the rise of Christian theological virtues of Faith, Hope and Charity, and thereafter the rise of alternative moral theories. It rose again when philosophers started realizing there was too much emphasis on rules and actions. It was argued that virtues are central to the way we live and are indeed grounded in and also emerge from within social traditions⁴⁰. As such, it is important to allow societies to evolve with their virtues that would guide peaceful

³⁸ Plato, *Republic*, 6:510-511, in Cooper, John M., ed., *Plato: Complete Works* (Indianapolis: Hackett Publishing Company, 1997).

³⁹ Aristotle, *Nicomachean Ethics*, in Barnes, Jonathan, ed., *The Complete works of Aristotle* (Princeton, N.J: Princeton University Press, 1984).

⁴⁰ Macintyre, Alasdair, *After Virtue*, Second Edition, (Notre Dame: Notre Dame University Press, 1984).

co-existence amongst a people group or between people groups. If it does emerge from inside out, then it will have tried and tested and is able to withstand the challenge of time and adherence, as opposed to sticking to imposed rules and regulations, which are the mostly contemporary means of policing the world for attempts to conflict management.

2.1.2 Duty Theories

The German philosopher Samuel Pufendorf is a strong proponent of an alternative theory known as Duty Theories. They base morality on specific and foundational principles of obligation. They are also known as *deontological*, from the Greek work *Deon*, which means duty. They are also considered to be obligatory, and they must be carried out, irrespective of the consequences that might follow.

One common duty based approach to ethics is what is commonly known as *rights theory*. A right is a justified claims against another one's behavior. One of them is a right not to be harmed, commonly known as human rights, and which has become common discourse especially among the Maasai community when t has come to dealing with recent conflicts. John Locke argued that the laws of nature are such that we should never harm anyone's life, health, liberty or possessions. These are natural rights, inalienable, and granted to us by God.⁴¹ The United States of America Declaration of Independence is one of the major reference points for rights, and it recognized life, liberty and the pursuit of happiness as the major rights under which all others will fall.

Kant proposes another category of ethic theory under duty theories. He talked of a single, self-evident principle of reason that he called "categorical imperative". A

⁴¹ Locke, John, *Two Treatises*, ed., Peter Laslett (Cambridge: Cambridge University Press, 1963).

categorical imperative mandates an action, irrespective of one's desire⁴². He proposed that people should treat people as an end, and never as a means to an end. They should be accorded dignity, and not as instruments.

A more recent study on duty-based theory emphasizes prima-facie duties. The theory argues that our duties are “part of the fundamental nature of the universe”. Ross is the author of this theory. He gives a classical example in what has now become known as the case of the borrowed gun. David has borrowed a gun from his friend Mitch, agreeing that he would return it as soon as he is asked for it. However, Mitch shows up at his house in a feat of rage asking for his gun back. Mitch is angry with someone. Should David give away the gun or not? There is a duty of fidelity to keep, since David promised he would give back the gun. There is also the duty of no maleficence that obligates David not to return the gun so as to avoid hurting others. What the British Philosopher proposes is that when faced with such contending duties, one should be able to tell which one of these is their actual duty and go ahead and do it. Ross's list of duties, which he believed reflects on the moral convictions of human beings are:

Fidelity: The duty to keep promises. It stems from our explicit and implicit promises.

Reparation: The duty to compensate others when you harm them. If you have done a wrong to someone, say for example you have caused someone's car to have an accident; you should take care of the repairs;

Gratitude: The duty to thank those who help us;

Justice: The duty to recognize merit;

Beneficence: The duty to improve the conditions of others;

Self-Improvement: The duty to improve our virtue and intelligence;

⁴² Kant, Immanuel, *Grounding for the Metaphysics of Morals*, tr, James W. Ellington (Indianapolis: Hackett Publishing Company, 1985).

No maleficence: The duty not to hurt, harm or sadden other people;

Where the duties conflict, Ross has suggested the theory of right action, where one then decides which among them to apply.

One of the most commonly considered and applied theories from the proposals of Ross are the Duty of Reparation. In many traditional societies, especially in Africa, this duty has helped to resolve intra-conflicts and extra-conflicts for generations, yet it has not been fully taken up as a viable practice in the neo-practices of International Conflict Management. Such are the various facets of theories of ethics that will inform our analysis of the Maasai community. There are various others and the knowledge base continues to grow.

2.2 Understanding Values

The values by which individuals or a community govern their lives are very important to the sustenance of life, both for the individual or for the society. Many times, scholars have confused values and ethics, or used both theories and premises interchangeably. In the study, I propose that both ethics and values are important to each other, but for this to happen, there will be need to look at them differently and then link them to form the basis and the conclusion of the study. The proposal I am making is that that which a person or a community hold as values can not be confused as ethics, and the purpose of this study is to extrapolate the theories and merge them to a linear discourse of how they relate, and not how they exist interchangeably. Value is good to Ethics and vice versa, and not the same thing, hence the need to look at historical and etymological perspectives of both independently.

Values influence social behavior. A personal value is either absolute or relative. The assumption to any of this can be a basis for an ethical action. A principle value is a value under which most other values and based on. Values form an internal point of

reference as to what to do, what is good, what is of benefit to an individual or a group of individuals, what is desirable and the vice versa. Values generate behavior and they help solve common human survival issues.⁴³ It therefore means that values help determine why someone, or a group of people do what they do and why they choose to do what they do in a particular protocol that another. Over a period of time, the public expression of values, be they personal or group values, will lay the foundation of law, custom or tradition. This is why the laws, customs and traditions of different people groups and a nation are as diverse as the people's behavior.

It is important to note that personal values relate and exist in relation to cultural or group values. In this case, culture is the system where the individual dwells and where the affinity to the culture is based on an agreed set of values that they adhere to. Individuals will therefore develop values that their members share. Values identify what should be judged as good or evil. Values are therefore not very standardized, but rather abstract concepts of what is considered to matter most. In sticking to what is right or wrong, a member who expresses values that conflict with what is held as a cultural value may be encouraged by the cultural system to conform or ends up being punished. In a very global world, it is therefore no doubt that there is bound to be conflict as a result of various people groups holding various values based on their diverse cultures. This has led to what is now being referred to as a "triangle of coherence".⁴⁴ This is where a framework of global legitimacy through accountability is formed. It is why you will find a Maasai young man walking in the city with an assortment of weapons but nobody will be paying attention, or feeling their security is threatened for that matter. Values are sustained through cultures

⁴³ Rokeach, M. (1973). *The Nature of Human values*. New York: The Free Press

⁴⁴ Lamy, Pascal, WTO Director-General, Speech to the European University institute in Florence on 19th February 2011.

mainly through transmission from parents to their children. It is a form of inheritance. Different cultures therefore have different values.⁴⁵ The Maasai culture is such that practical survival skills are taught at a young age, and that is why young men in the community will walk everywhere while armed. This has defined many communities and can lead to their demise or posterity, which is why they pay enough attention to create habits, behaviors and practices around those values. No community wants to be extinct.

According to Morris Massey, values are formed during three significant periods: Imprint period from birth to 7 years, whereby the human being absorbs everything around them, accepting much of it as true, especially if it is coming from the parents; Modeling period from 8-13 years, where the human beings transform into a copycat; Socialization period from 13-21 years, where we largely depend on our peers for any new knowledge. The media in the current world has become a strong socialization agent.

2.2.1 Value Theory

Theories of value are important to ethics. There are several dissections that have been made by scholars such as Plato, who in his work “Republic” distinguished instrumental value and distinguished value. An instrumental value is worth having a means toward getting something else that is good whereas an intrinsic value is worth having for itself, but not as a means to something else.⁴⁶

As stated earlier, Immanuel Kant was also a great influence in the development of Moral theories, and particularly his analysis that moral value was a unique and identifiable property, as an absolute value rather than a relative value. Kant

⁴⁵ Day, Nicholas (10 April 2013). “*Parental ethnotheories and how parents in America differ from parents everywhere else*”. *Slate*

⁴⁶ Debreau, G (1972). *Theory of Value. An axiomatic analysis of Economic Equilibrium*. Cowles Foundation – Yale University.

differentiated what he termed as “categorical goods” from “hypothetical goods”, whereby a categorical good is unchangeable and is not dependent on an “if-then” clause. Kant saw a good will as acting to in accordance with a moral command, which in this case is the categorical imperative. He was careful to distinguish this from the golden rule, also known as the ethic of reciprocity. Kant argues that with the golden rule, I am allowed to kill somebody if I want others to kill me, since it is the rule of do unto others, as you would wish for them to do to you. Kant wants us to critically analyze whether everyone without exception can do an act. He therefore seeks to avoid this flaw.⁴⁷

According to Dewey, goodness is an outcome of ethic valuation. He proposed that goodness of a value should be based on balancing of “ends in view”. The end in view in this case is an objective that is potentially adopted, but it can be changed over a period of time in consistency with other objectives. The premise is that there is nothing as intrinsic value, because they are not cast on stone, but as a learning process.

2.3 Understanding Norms

Social Norms have been studied over the years, and they govern the behavior in groups and societies. Different social norms function different in different cultures.⁴⁸

The social norms are also known to function and motivate people to act in a particular manner.⁴⁹ The field of economics has studied social norms in order to predict of plan the market shifts to maximize on profits, and even more recently, scholars in the legal field are examining social norms as efficient alternatives to legal rules, as they may

⁴⁷ Kant, I & Banham G. (1787-2007). *The Critique of Pure Reason*. Macmillan.

⁴⁸ Geertz, C. (1973). “Thick Description: Toward an Intepretive Theory of Culture”, in *The Interpretation of Cultures: Selected Esays*, New York: Basic Books

⁴⁹ Durkheim, E. (1950). *The Rules of Sociological Method*, Glencoe, IL: The Free Press.

internalize negative externalities and provide signaling mechanisms at little or no cost.⁵⁰

Norms are mostly perceived to be constraining behaviors. As such, the differences between the various types of norms have been blurred, and this is beneficial for purposes of this study. Social norms are very central to the production of social order or social coordination. Hence the need to look into the same a factor in International Conflict management that needs to be explored within the context of pragmatic action in a community, and in this case, the Maasai. The fact that a particular social norm may be used to fulfill an important social function such as elimination of externalities, it cannot be explained solely on the basis of the functioned it has performed since that may not be the reason it came into existence in the first place.⁵¹

Philosophically, norms are seen as endogenous products of individual's interactions⁵². The norms are presented as games of strategy, and hence supported by a cluster of self-fulfilling expectations. Beliefs, expectations, group knowledge and common knowledge hence with become the premise by which the social norms are analyzed on. It has been posited that social norms can be the language by which you get to understand a people. For example if you want to understand the Kamba community, then the language to understand them would be for you to decode their social norm. Bicchieri says that social norms ought to be understood as a kind of a grammar of social interaction. It is worth noting that norms relational comparison to grammar goes beyond just the above-mentioned level, but also just as grammar unfolds without necessarily humanity charting the course, so does social norms.

⁵⁰ Ellickson, R. (1991). *Order Without Law: How Neighbors Settle Disputes*, Cambridge: Harvard University Press.

⁵¹ Elster, J. (1989). *The Cement of Society*, Cambridge University Press.

⁵² Lewis, D. (1969). *Convention: A philosophical Study*, Cambridge, MA, Cambridge University Press.

Norms are often meant to present or represent a solution to the problem of attaining or maintaining social order. To attain social order, you need social cooperation. This is the reason that many studies have focused on norms that build on cooperation. In this study, I pose it that norms of honesty, loyalty, reciprocity and promise keeping as has been extrapolated by Plato are key to the survival of social groups, both within the group but also outside of the group. According to Hardin social norms emerge in small groups, where they have had interactions for a significant period of time. In repeated encounters, people have an opportunity to learn from each other the behavior patterns. The cooperative norms that are likely to develop in the groups that are close-knit are the simple ones.⁵³ Norms are most possible to develop from within a small close group, but they often will live far beyond the boundaries of the original group, and hence making it difficult to analyze how a particular people population may have acquired the norms or not. Did they grow it or did they learn it? This can prove to be an interesting field of study. It is worth noting that if norms can develop, thrive and spread, then they do have a life, and whatever that has a life faces the danger of dying out.

A challenge here emerges that if a particular norm is found useful to a community, yet it is not reinforced or propagated, then it runs the danger of running out and hence with propagating “backwardness” in the community. This is why in many traditional African societies there is a very strong emphasis on the need to pass on the knowledge and the wisdom from the older generations to the younger ones.

The danger of norms that would hold a society as progressive disappearing is as real today as it must have been in many years ago. There is a lot of talk of modernity though, and it is supposed that the rate of cultural mobility we are experiencing in this

⁵³ Alexander, J.M. (2005). “The Evolutionary Foundations of Human Altruism”. *Analyse & Kritik*, 27: 106-113.

day and age is unprecedented. Such is the threat that has encapsulated the Maasai community especially in the last few decades as they have grappled with rapid urbanization and capitalization of the economy, a trend they have been told by everybody they can listen to that will be irreversible and they therefore must change to culture whose norms are in conflict with the norms they have calculated for generations. Efficient norms, unfortunately so, are disappearing faster than the inefficient norm. One of the intentions of this study was to find out if there are norms within the Maasai community that have been efficient and may need to be sustained, and perhaps find a way to reinforce them even as we seek to embolden them by sharing them within the broader perspective of International Conflict management. The efficiency of norms is argued from the point of their capacity to achieve social welfare.⁵⁴ They are also seen to prevent market failures or cut social costs.⁵⁵

Ackerson's analysis of the norms that regulate land systems is particularly interesting to our current study, since one of the major conflicts that the Maasai have faced have to do with land, as indeed it has been with many other communities in Africa. This is also a good background to the argument that norms are a good and efficient means to achieve social order.

Ullman uses game theory to show that norms solve collective action problems. Coleman believes that norms emerge in situations where there are externalities, which means all the cases where a activity produces positive or negative effects on other people that are typically without any legal means to enforce either the continuation or the cessation of the activity. A norm solves the problem by prescribing or proscribing the externality producing action. In the prisoner's dilemma, the cooperative action of

⁵⁴ Akerlof, George A. (1976). "The Economics of Caste and of the Rat Race and Other Woeful Tales," *The quarterly Journal of Economics*, 90 (4): 599-617.

⁵⁵ Homans. G.C (1950). *The Human Group*, New York: Harcourt, Brace and Company.

one player leads to a positive externality for the other. Therefore, each has an incentive to induce cooperation in the other player by establishing a cooperative norm. This punishes non-cooperation and rewards cooperation. The theory here is mostly on functionalism. It is worth noting once again that some social norms are very inefficient, yet they thrive, for example in race or tribe discrimination, while others are so rigid that they cannot be adjusted to fit the society better. One of the norms that has been very hard to break has been the one involving female circumcision in the community under study, and this is widespread particularly in Africa. Since again the norms guarantee the welfare, safety and propagation of one community, they are therefore very likely to damage outsiders to the group, for example rebel movements that are prevalent in Central Africa.

Even though norms are mostly to achieve a social end, such as cooperation, retribution or fairness, usually it is not the sole means. Many social norms cannot stand up to the collective objectives that they serve. Neither can they be classified in a degree or fashion of how efficient they can be in achieving desired goals. Such would only be possible if it is in a way possible to show that a particular norm is the best among several others to achieve a certain goal. This in a way makes it very difficult to achieve a particular level of social order for example on conflict management since there is no absolute prescription. It is therefore important not to confuse functions and cause when it comes to norms. If an institution has been put in place to achieve a desired objective, then that institution is functional. Social norms, as posted earlier, are however unintentional and unplanned outcomes of social interaction and this makes it difficult to say what function they were born to perform.

2.3.1 Theories of Norms

There is a strong correlation between people's normative beliefs and their behavior, and this is why it is easy for many stereotypes to be formed on particular people groups. You will many times hear some communities being branded as inherently violent, or prolific, or being engaged in such a manner of business or social work than others. Normative beliefs are such that it is expected that people will follow a particular prescribed pattern and abhor from the one that is proscribed. Yet, it is not very obvious that having normative beliefs will induce people to behave in a particular manner in various circumstances. Whether there could exist normative beliefs at variance with behavior, and if so, why, is a question that this study will seek to answer in order to qualify the purpose of the study.

Having normative beliefs and expecting others to behave according to a given norm does not always result in norm-abiding behavior. Simply focusing on norms as clusters of expectations might thus be misleading.⁵⁶ Taking the example of the norm of self-interest⁵⁷, people will always expect others to act selfishly, even when they themselves are prepared to act selflessly. It has been observed for example that people will expect to give benevolently towards a particular course, but they will be expecting others to find it difficult to do it without some form of reward. Another example is how if one were asked whether they would employ someone of another tribe, you would expect 100 percent of people to say that yes they would, but in actual fact, only about 50 percent would do so. This is the case of preaching water and drinking wine.

⁵⁶ Turnbull, C.M. (1972). *The Mountain People*, New York: Touchstone.

⁵⁷ Miller, D.T and R.K Ratner (1996). "The Power of the Myth of Self-Interest," in L. Montada and M. Lerner (eds.), *Current Societal Concerns about Justice*, New York: Plenum Press, pp. 25-48.

Norms refer to behavior, to actions over which people have control, and are supported by shared expectations about what should and should not be done in different types of social situations. Norms however cannot be identified with observable behavior, nor can they be equated with normative beliefs, as normative beliefs may or may not result in appropriate action.

In the theory of socialized actor, an individual action is equated with a choice among several alternatives. Human action is understood within a utilitarian framework as instrumentally oriented and utility maximizing.⁵⁸ Parson says that a norm is a verbal description of a concrete course of action regarded as desirable, combined with an injunction to make certain future actions conform to this course. Norms therefore play a crucial role in individual choices made by shaping individual choices and preferences, hence serving as criteria for selecting among alternatives. Such criterion is then shared among a given community, and ends up emboldening and embodying a common value system.

Norms influence behavior because, through a process of socialization that starts in infancy, they become part of one's motives for action. According to Parsons, the end of individual action is to reach maximum satisfaction, which is defined in terms of seeking approval and avoiding disapproval. Making the common value system prior to and constraining the social actor decimate the potential conflict between individual desires and collective goals.

According to Parsons, once a norm is internalized, people are motivated to conform by an internal sanctioning system, irrespective of the external consequences that the conforming behavior may bring out. We can observe a correlation between people choices and (a) what they think other people believe ought to be done

⁵⁸ Parsons T. (1951). *The Social Systems*, New York: Routledge.

(normative expectations) and (b) what they expect others in the same situation to do (empirical expectations). Only when personal normative beliefs coincide with what one thinks others will do and believe should be done we have a strong correlation with actual choices. This posits an interesting angle of study, since there are instances when conflicts affecting whole communities have been started as a result of an action or lack of action of an individual, including World War II.

The rational choice of theory posits that since norms are mostly upheld by sanctions, compliance then becomes kind of a utility-maximizing strategy. If the conformity to the norms gains approval and non-conformity yields the opposite of approval (which could range from punishment or exclusion), then conforming is the most rational and natural thing to do.⁵⁹ The fact that approval and disapproval acts as external sanctions to the norms, then this is a cost-benefit model of compliance. Axelrod says that in such a framework, then we can not say that norms motivate behavior. The rational choice therefore attributes norms to behavior modification as opposed to expectations or values. Coleman argues too that a norm coincides with a set of sanctions that act to direct given behavior. It is worth nothing that not all norms involve sanctions, and if they were, sanctioning works only in small groups, and as the population grows, it could actually lead to mass defiance and in itself lead to conflict as has been witnessed recently in global uprising movements. The argument that norms are therefore best upheld by sanctions has been weakened by experiments and scenarios generated by scholars like Diamond and Scott. Scott particularly argues that people often develop spontaneous compliance to norm as a result of internalization. People who have developed an internal compliance mechanism will be faced with guilt and shame at the thought of defiance to the norm. This is in cases

⁵⁹ Rommetvei, R. (1955), *Social Norms and Roles*, Oslo: Akedemisk Forlag.

where the probability of being apprehended is almost, if not zero. Norm abiding behavior is not a matter of cost/benefit calculation, even though there is a place this comes into place. There are many ways to argue on the theories of norms and what sustains them. On how the norms will succeed, one interesting and relevant concept is the evolutionary stable strategy.⁶⁰ This is where a population adopts such a strategy in their norms that it becomes impossible to infiltrate. The strategy remains resistant to mutant invasions. Could this be what has helped sustain the Maasai culture?

The study of social norms can help us understand a wide variety of human behavior that would otherwise look complicated to the naked eye. According to Bicchieri, norm existence is best understood in terms of conditional preferences for following behavioral rules that apply to social interaction clusters. Preferences are conditional on two different kinds of expectations: The empirical expectation that a sufficient number of people adhere to the behavioral rule, and the normative expectation that other people expect one to follow the behavioral rule as well, and possibly enact positive or negative sanctions for conformity or transgression. The bigger expectation is that norms will always serve to regulate the society for peaceful co-existence. However, since the planet is full of thousands if not millions of people groups with their different norms, then chances of norm conflict occurring are now even more prevalent as we have moved into a more connected planet.

2.4 Cultures, Conflict and Conflict Management

Ethics, values and norms that we have discussed in the previous pages all form a way of life of a people, and can be collectively termed as culture. Cultures shape the way we do things, perceive, interact, respond, perceive, attribute and judge. Cultures are therefore more than just the food that we eat, the language that we speak or the kinds

⁶⁰ Maynard Smith, J. and GR Price (1973). "The Logic of Animal Conflict," *American Sociological Review*, 61: 999-1017.

of homes that we dwell in. Cultural groups may be sharing a race, religion, ethnicity or nationality. Recently, we have seen evidence of cultures emerging from generations, political affiliations, and social class. Cultures are dynamic. They help us to keep up with the times and extract meaning and identity to our existence. They tell us what is important to us. In this study, as we are going to be zeroing in on a particular community, it will be every important to understand culture and how it relates to conflict. In shaping our values, cultures have starting points and currencies. Starting points are those junctures that it is natural to begin, whether within and individual or a group, and currencies are those things that we care about, our values, norms and ethics, that shape our interactions with others.⁶¹

The reason why culture is embedded in conflict is because conflicts arise in human relationships. According to LeBaron, cultures affect the way we name, frame, and blame and attempt to tame conflicts. As a matter of fact, the question whether a conflict exists or not is a cultural question. Cultures will either play a central role in a conflict, or it will influence it subtly, yet very strongly. Any conflict that affects us and touches on our identities, our beliefs, our norms and values is therefore considered to have a cultural component. If cultures are not well recognized and considered in a conflict, then there is a high chance that those conflicts will not ease off easily. The Israeli-Palestinian conflict has become intractable because is really not just a question of territory, boundary and sovereignty. It is beyond that. If all those issues were to be addressed today, there would still be a lot of conflict. The main issue has to do with acknowledgement, representation and legitimatization of the identities that the two people groups represent, together with their ways of life, religion and how they derive their meaning. Even though culture does not cause

⁶¹ LeBaron Michelle, (2003). Culture and Conflict – *Beyond Intractability*.

conflict, it is inextricable from it. When conflict emerges between people and communities, culture is always present, shaping perceptions, attitudes, behaviors and outcomes. This is why it is very important to study what cultural parameters community in conflict may be basing the conflict on. Acknowledging culture, even when they look hidden from a conflict can help communities and individuals make more intentional and adaptive choices. We therefore have to develop comfort with culture as an integral part of conflict.

Cultural fluency is one of the keys to disentangling and managing multi-layered cultural conflicts. This means familiarity with the cultures, how they work and how they function during times of conflict and harmony. Cultural fluency therefore means that we become aware of (a) communication strategies within the culture, (b) decision making approaches (c) identities and roles inside the culture and (d) ways of naming, framing and taming conflict within the culture.

Communication is the medium by which people relate with each other⁶². There are many levels of communication, some considered high level, others low level, non verbal and verbal, which are all key to the understanding of the cultural communication norms to either propagate or quell conflict. There is no consensus across cultures or situations on what constitutes a conflict or how the events in the interaction can be framed. The question of how and who to communicate to quell the conflict is very key to the resolution or management. Do the people come to the table, or do they work through a mediator through shuttle diplomacy? In modern conflicts, particularly in the western world, they have a new role of that of a mediator, like what Koffi Annan was to Kenya during the Post Election violence of 2008. What is

⁶² Hall, Edward T. (1976). *Beyond Culture*. Garden City, NY: Doubleday.

normally known as a mediator in the west, who is basically an aid to the communication process, is mostly known as an elder in an Africa context.⁶³

In cultures, the distinction between individual and communal ways of resolving conflicts is key. There are communities where the expectation is that there is general consensus almost by way of referendum on how to go about things. But there are other communities where they expect their leaders to make the decisions and communicate. This means that there are times in a conflict management process where leaders will say that they would like to take the decision back to the people, and this can sometimes be perceived by cultures that are individualist as stalling, and there could escalate the conflict, hence the need to have gained understanding prior. There are cultures that are also very direct when it comes to dealing with conflict, very confrontational. They believe that the best way to handle it is to point it out directly. Other cultures want to go around it politely, using metaphors, proverbs etc. One may lose patience with the other one because they did not understand in the beginning the way the person or people group they are dealing with constructs their approach to conflict culturally.

2.5 The Maasai as an Ethnic Group

For purposes of this study, we are going to look at the Maasai as an ethnic community. For this purpose, we will define ethnicity as coming from the Greek word “ethos” which is a situation where collectivity of humans lived and acted together.⁶⁴ Other scholars have also defined it differently, notably Eriksen, defining it as the aspect of relationship between people or groups whose members believe that it is culturally distinctive. He indicates that ethnicity is situational in that people can

⁶³ Lederach, J.P. 1995. *Preparing for Peace. Conflict Transformation Across Cultures*. Syracuse, NY: Syracuse University Press, pp. 94.

⁶⁴ Jenkins, R. (19) *Rethinking Ethnicity: Arguments and Explorations* London: SAGE Publications

behave differently according to situations. It is possible to make distinction between ethnic groups that have culture and cultural groups.⁶⁵ Jenkins defines an ethnic group as a group of people who believe that they are of a common descent but not unilateral.

The Maasai people have been said to inhabit mostly parts of Kenya and Tanzania that border each other. This constitutes what would be considered as an ethnic boundary. An ethnic boundary is an area within which people observe, learn and internalize the rituals and habits of speech, dispositions and dress of their bodies and modes of thought to an extent that they become entirely automatic. These boundaries are created during social interaction.⁶⁶ The Maasai have inhabited these areas for a long period of time, and it is evident not even the drawing of state boundaries that separated Kenya and Tanzania has led to any of them losing the identity as a distinctive community known as the Maasai. For purposes of this study, we will be concentrating on the Maasai of Kenya. It is however possible that since the ethics, norms and values that form the culture of the Maasai people in Kenya is the same as that of the ones in Tanzania, and then we can generalize the findings of the study to suit both.

2.6 The Maasai Conflict and a Comparison to the Rwanda conflict of 1994

The Maasai have mainly been pastoralists, and their conflicts hinge on issues that have threatened their sustainability as a pastoralist community. Due to this fact alone, they actually then ended up living side by side with wildlife. A people who have always been sustained by land, their lives were threatened first when the Europeans came knocking on their doors. Other than taking some of the prime land for their own large scale farming, the settlers also started promoting wildlife conservation, as they

⁶⁵ Eriksen, T.H 1995. *Small Places, Large Issues: An introduction to Social and cultural anthropology*, London: Pluto Press

⁶⁶ Boonzaier, E. and J. Sharp (eds) 1988 *South African Keywords: The Use and Abuses of Political Concepts*. Capetown: David Philip

realized that with increased population and proliferation of guns, the wildlife could be wiped out.

The Europeans wanted to construct an agricultural economy, and much of the land they wanted to appropriate for this purpose was in the hands of the people, even though it was sparsely populated. They saw the indigenous people as a barrier to their intentions, and they enticed them with religion, education and fascinating things like cars and clothes, trying to prove to them that the new way of life was better. The Maasai were particularly viewed as strong and militant, and therefore the Europeans were very keen to conquer them. However, in the 1890's a severe drought had weakened the Maasai enough for them to be easily coerced into making treaties. The Maasai rangelands were henceforth appropriated to create national parks and game reserves.⁶⁷ It did not help matters that just like many other cultures, the Maasai way of living was considered to be primitive, and there was a drive to make them or drive them to change their way of living.⁶⁸ The sad thing was that even with the coming of the independence in the early 60s for both Kenya and Tanzania, the new governments that were supposed to be empathetic to the plight of the Maasai, like many other communities that had been oppressed, actually continued to perpetuate the colonial mentality. Nairobi City was one of the graze lands of the Maasai people, and hence the incidences of encountering Maasai cattle roaming the streets of the City every now and then. The politicians, the rich and the settlers chopped and continue to chop off large chunks of what used to be Maasai territory.⁶⁹

Interestingly, the story of the Maasai continues to be propagated as a primitive culture, as it has been told and written by the ones who really do not represent their

⁶⁷ Parkipuny, M.S. (1991). *Pastoralists, Conservation and Development in the greater Serengeti region*, London: IIEE

⁶⁸ Keiwua, M. (2002). "Maasai Land: Part 1- A History" *Wholesand*, October.

⁶⁹ Rutten, M. (2002). *Parks Beyond Parks: Genuine Community Based Wildlife Eco-Tourism or Just another Loss of Land for Maasai Pastoralists in Kenya?* London: IIED

interests at heart. In the study, we will seek to set some of the records straight. They are not just a savage people of strong men going around carrying weapons and dressed in funny pieces of clothes, performing ancient war dances. They are a unique culture that thrived, survived and propagated themselves way before everybody else came to tell them how primitive their ways are.

Most of the literature available on the Maasai is more of romantically inclined, instead of being clearly and thoroughly researched academic insights.⁷⁰ One of the most interesting definitions of the Maasai came from one of the explorers sent by the British Royal Geographic Society. He describes his first encounter with the Maasai: ‘We soon set our eyes upon the dreaded warriors that had so long been the subject of my waking dreams, and I could not but involuntary exclaim, “What Splendid fellows” as I surveyed a band of the most peculiar race of men to be found in Africa.’⁷¹ Yet, even with all the romanticism, the Maasai have continued to lose their land.

On 15th August 1904, the so-called “Anglo-Maasai Agreement” was signed between the then colonial governor, Sir Donald Stewart, and the Maasai medicine man, Olonana Ole Mbatiany. It was a fraud. The British had used trickery to entice the Maasai of their heritage, presumably then to try and protect the railway line and the stations⁷². The agreement had no interest at all for the Maasai. Attempts to nullify the agreement and subsequent ones were frustrated by the courts, as you would expect, and this was not corrected during the talks for independence. Such disempowering statements in the treaties that they were made to sign like “ this treaty is to endure so long as the Maasai as a race shall exist...” To a people who could not even read, leave alone understand English, this was very mean. They were signing off

⁷⁰ Adams, J.S. & McShane, T.O (1996). *The Myth of Wild Africa: Conservation Without Illusion*, Berkley, Los Angeles & London: University of California Press (First Published in 1992).

⁷¹ Thomson, J. (1885). *Through Maasai Land*, London: Sampson Low, Marston, Searle & Rivington

⁷² Vambe, L. (1972). *An Ill-Fated People*, London: Heinemann Educational Books Ltd.

their rights and they did not know that.⁷³ All the agreements that had been signed centrally to the will of the community that had rights to the land were subjugated by what the British considered to be their best interests. As it were, Independence ended up being just an africanization of the colonial administration.⁷⁴

Today, the largest concentration of wildlife as well as wildlife conservation area in the world is to be found in East Africa, covering just the areas where the Maasai used to call home. There have been numerous conflicts as a result, as the land is no longer considered theirs and they could lose their lives just by stepping into the land. The Maasai's struggle for their land has therefore persisted over the years. In August of 2004, they demonstrated in Nairobi and in the Rift Valley, demanding back their land.

There is a very interesting relationship between the Maasai conflict and the Rwanda conflict that led to the 1994 genocide. Whereas the Maasai as a community have not experienced anything close to what Rwanda had, it is worth noting the role of colonization in abating both conflicts. Whereas for the Maasai it was mostly the British who came to look for profiteering and hence annexing the Maasai and, for the Hutus and Tutsi's of Rwanda, it is the Belgium who created a division among a people who had become one in their culture, language and had intermarried, for purposes of ensuring that through divide and rule, they can dominate over the people and gain economically. Once equals, the Tutsis and the Hutus became part of a process of "dual colonization" in which the former became powerful by rendering the

⁷³ Rutten, M.M.E.M (1992). *Selling Wealth to buy poverty: The process of the individualization of land ownership among the Maasai pastoralists of the Kajiado district, Kenya 1890-1990*. Verlag breitenbach publishers, Saarbrücken, Germany.

⁷⁴ Fanon, F. (1967). *The wretched of the Earth*, London: Penguin Books

former weaker.⁷⁵ The Belgium government formed an alliance with the Tutsis, creating an ethnic preference based on genetic superiority notions, and in this way making the Hutus feel inferior, rejected and primitive. Just like in the case of the Maasai, colonizers had come and scoffed on a culture, a tradition and even the genetic make up of a people, in order to make them subjects and profiteer from them. It was a divide and rule system, and had nothing to do with scientific evidence. They did not only establish the Hutu and the Tutsi as two separate ethnic groups, but by resting the distinction upon coincidence with social class, they defined them as ranked ethnic groups.⁷⁶

When Habrayimana's regime started preparing for the conflicts in the early 1990s, the call for participation was not fully headed, with a partial support emerging. The norms, values and the ethics of the Hutu were against the mindset that the Tutsi's were a tribe that needed to be massacred to ensure the dominion of the Hutus.⁷⁷ According to Bhavnani, the use of ethnic norms tipped the scale. This was used in the form of rules that were instituted as rewards and punishment to deal with the adherence or lack of adherence to the call to rise in arms against the Tutsis. The creation of threats and incentives, whereby those who complied were awarded with land, and those who did not comply faced death, rape and open ridicule. The norms were manufactured to suit the leadership at the time.

⁷⁵ Gourevitch, P. 1998. We wish to inform you that tomorrow we will be killed with our families: Stories from Rwanda. Chapter 4. New York: Farrar, Straus and Giroux In Rothernberg, P.S. 2006. *Beyond Borders: Thinking Critically About Global Issues*. New York: Worth Publishers

⁷⁶ Horowitz, D.L. 1985. *Ethnic Groups in Conflict*. Los Angeles: University of California Press

⁷⁷ Bhavnani, R. 2006. Ethnic Norms and Interethnic Violence: Accounting for Mass Participation in the Rwandan Genocide. *Journal of Peace Research*. Vol. 43, no. 6, pp.651-669

2.7 Conclusion

A question worth asking for now is, what does the future hold? Will the Maasai survive the onslaught? Due to limitation of land, every time there is a draught, their lives are threatened. The draughts have consistently been there through the years. As such, the Maasai are seen to step out of their land every time they try to look for land for their flock. Conflicts have emerged, including one very recent in 2013 where scores have died trying to protect their land from alienation. So many of able bodied Maasai young men have been forced to move out of their cultures and find petty jobs in as guards. They are no longer the romantic young men described in the books of famed explorers⁷⁸.

The conflict between the Maasai and the neighboring communities, and indeed also the business people who have “taken” their land will continue to escalate. The leaders of the Maasai community have said that they need their land back, without any other option for settlement. Whereas it might be difficult to go back to the boundaries of 100 years ago, those interested with peace in the region must put in place policies that will minimize the tragedies that we have seen unfolding now and then.⁷⁹

The study is an attempt to point towards how we can achieve the goal of peace, working with the norms, values and ethics of the beautiful people of the Maasai.

⁷⁸ Dietz, A.J & Mohamed Salih, M.A (1997) *Pastoral Development in East Africa: policy Review, Options and Alternatives*, Second revised edition Report for I/C Consult, Zeist (for Bilance). Amsterdam & The Hague.

⁷⁹ Ghai, Y.P. (2005), “Preface’ in Makoloo, M.O. *Kenya: Minorities, Indigenous peoples and Ethnic Diversity*, London: Minority Rights Group International.

CHAPTER THREE

ETHICS, VALUES AND NORMS: EXPLAINING CONFLICT MANAGEMENT IN THE MAASAI COMMUNITY

3.0 Introduction

The previous chapter, chapter two, made an attempt to explain the theories of ethics, values and norms. It also looked at cultures and how they affect management of conflicts in communities, and explained the Maasai as an ethnic group. It also made an attempt to make a comparative analysis of the Maasai conflict to the Rwanda conflict.

Chapter three is going to look at the ethics, values and norms of the Maasai community, and how they impact conflict management in the community. It will also look at the historical perspectives of the Maasai community, their ethics, norms and values and alternative dispute resolution (ADR). It will analyze peace pacts, dialogue and indigenous early warning systems set by the community, among other methods of peace building applied by the community.

3.1 Historical perspective of the Maasai community

Conflict among the Maasai, Pokot, Turkana, Somali, Boran, Rendille and Samburu are the trademark of the vast, marginalized and rugged terrain of northern Kenya. Conflict over natural resources such as land, water, and forests is ubiquitous. People everywhere have competed for the natural resources they need or want to ensure or enhance their livelihoods. However, the dimensions, level, and intensity of conflict vary greatly. Conflicts over natural resources can take place at a variety of levels, from within the household to local, regional, societal, and global scales. Furthermore, conflict may cut across these levels through multiple points of contact. The intensity

of conflict may also vary enormously from confusion and frustration among members of a community over poorly communicated development policies to violent clashes between groups over resource ownership rights and responsibilities. With reduced government power in many regions, the resource users, who include pastoralists, marginal farmers and agro-pastoralists, increasingly influence natural resource management decisions.

However, the causes of conflict are diverse, and include: limited access to water and pasture resources, loss of traditional grazing land, cattle raiding, lack of alternative sources of livelihood from pastoralism, diminishing role of traditional institutions in conflict management, political incitement, non-responsive governments policy and intertribal animosity. The complexity of the conflicts is heightened by the presence of international and regional boundaries that have affected nomadic pastoralism through creation of administrative units, which split communities that once lived together. Indigenous conflict management and resolution mechanisms use local actors and traditional community based judicial and legal decision-making mechanisms to manage and resolve conflicts within or between communities. Local mediation typically incorporates consensus building based on open discussions to exchange information and clarify issues. Conflicting parties are more likely to accept guidance from these mediators than from other sources because an elder's decision does not entail any loss of face and is backed by social pressure. The end result is, ideally, a sense of unity, shared involvement and responsibility, and dialogue among groups otherwise in conflict. Community members involved in the conflict participate in the dispute resolution process. These community members can include traditional authorities, for instance elders, chiefs, women's organizations, and local institutions.

The elders in traditional African societies form a dominant component of the customary mechanisms of conflict management. The elders have three sources of authority that make them effective in maintaining peaceful relationships and community way of life. They control access to resources and marital rights; they have access to networks that go beyond the clan boundaries, ethnic identity and generations; and possess supernatural powers reinforced by superstitions and witchcraft. The elders function as a court with broad and flexible powers to interpret evidence, impose judgments, and manage the process of reconciliation. The mediator leads and channels discussion of the problem. Parties typically do not address each other, eliminating direct confrontation. Interruptions are not allowed while parties state their case. Statements are followed by open deliberation which may integrate listening to and cross examining witnesses, the free expression of grievances, caucusing with both groups, reliance on circumstantial evidence, visiting dispute scenes, seeking opinions and views of neighbours, reviewing past cases, holding private consultations, and considering solutions. The elders or other traditional mediators use their judgment and position of moral ascendancy to find an acceptable solution. Decisions may be based on consensus within the elders' or chiefs' council and maybe rendered on the spot.

Resolution may involve forgiveness and mutual formal release of the problem, and, if necessary, the arrangement of restitution. Local mediation typically incorporates consensus building based on open discussions to exchange information and clarify issues. Conflicting parties are more likely to accept guidance from these mediators than from other sources because an elder's decision does not entail any loss of face and is backed by social pressure. The end result is, ideally, a sense of unity, shared involvement and responsibility, and dialogue among groups otherwise in

conflict. Traditional forms of mediation and legal sanctioning often appear in the aftermath of widespread conflict where no other mechanisms for social regulation exist.

The Maasai have been famous for their rich cultural heritage.⁸⁰ Their age old traditions have been embedded into every aspect of their lives. From their housing, their mode of dressing to their diet, the Maasai people have made every effort to ensure that the values and traditions held by their forefathers are retained in their day to day lives. From the time a Maasai child is born, they are introduced to their culture and tradition. This ensures that when they grow up, they will pass on what they have learned to their children.⁸¹

The words that best describe the Maasai culture are "beautiful" and "colorful". From the beadwork and jewelry adorned by Maasai women, to the red ochre that decorates the braids of Maasai warriors (morans), it's easy to understand why the Maasai communities are hailed as one of the most popular tribes of Africa⁸².

Competition over the rapidly diminishing pasture and grazing resource base triggered by climatic vagaries, environmental degradation, encroaching state lands (game parks) and farmlands are perhaps conspicuous causes of inter-ethnic cattle raids in Maasai district and beyond.⁸³ Maasai community keeps large number of cattle

⁸⁰ K. Biss, *Some Unique Biological Characteristics of the Maasai of East Africa*, NEW ENG. J. MED. 694 (1971).

⁸¹ As soon as a baby is born, the first thing that is done is to get blood from a live heifer or ox. The gender of the newborn determines the gender of the source of the blood. For a girl, it comes from a heifer; for a boy, it comes from an ox. The blood is the first food for the woman after childbirth to replace what she has lost in labor.

⁸² Founded in 1992, Rare Watts is a fashionable group in the city donning Maasai attire and dancing more like Warriors do to regular music.

⁸³ Minority Groups Right International, 1998, *Pastoralists in the Horn of Africa*, Report of a workshop on Social and Economic Marginalization, 8-10 December, Nairobi, Kenya.

and the shrinking resource base can no longer support the large herds. The encroachment of crop farming and sedentary life in Maasai has further worsened the situation. Maasai land has good pastures and water points thus attracting neighbouring pastoralist communities like the Turkana, Borana, and Pokot.⁸⁴ This is common during dry season as all pastoralists move their cattle towards Maasai grazing lands. During severe droughts, Maasai community migrates with their cattle towards neighbouring Laikipia district leading to conflicts with the settled farmers especially the Kikuyu⁸⁵. Competition over the use, control and access of pasture resources is thus the leading cause of interethnic conflicts in Maasai district and beyond Maasai community are in record of embracing the belief and claim that they own all the cattle in the world.⁸⁶

They believe that other communities should not own cattle and those that own probably stole from them. To reclaim their ‘stolen’ cattle, the morans are encouraged to recover them. However, times have changed and the community is now acknowledging that indeed other communities own cattle just like them. They do not mind other pastoralists’ communities owning livestock, but they can’t figure out how a farming community can keep cattle. They are incensed when they see tethered or restrained cows (zero grazing) and to spare such cattle ‘the agony’ they steal them. Mostly, the community raids to restock their herds especially after severe droughts or animal diseases that might have wiped out their cattle. The community also prides

⁸⁴ Ibid p51

⁸⁵ Among the Maasai it is common to hear “my Kikuyu,” or “my farmhand” as a form of assimilation, protection of the non-Maasai in exchange for errands and manual labor.

⁸⁶ K. Holland , *New Maasai Adaptive Strategies* (1989) (unpublished paper, McGill University) (on file with author).

herself of military superiority. They raid other communities at will in a bid to stamp their authority.⁸⁷

The Maasai community is by nature an expansionist egalitarian society. To keep more cattle, they need more land, grazing resources and water. They will move to wherever there are grazing resources and this justifies their nomadic lifestyle.⁸⁸ On the other hand, the community claims that part of Laikipia and Isiolo districts that border them are their ancestral dry season grazing area.⁸⁹ They thus come into conflicts with settled communities in those districts. Like their fellow Maa speakers, the Maasai peoples have lived and fought from Mt. Elgon to Malindi and down the Rift Valley into Tanzania and they harbor claims to all these areas.

The proliferation of small arms and light weapons (SALW) into the hands of Maasai warriors and fellow tribesmen has compounded cattle rustling and conflicts in the entire north rift. Arms traffickers from as far as Somalia, Sudan, Ethiopia and Uganda have found a ready market for their products in Maasai land. It is estimated that 16,478⁹⁰ illicit arms are in the hands of the community. Analysed further, half of the males aged 15 years and above in Maasai community possess guns. Some have more than one gun.⁹¹ The desire to acquire and own guns (gun culture) in the community has precipitated the desire to engage in cattle rustling in the region. Since

⁸⁷ Ibid p52

⁸⁸ Conroy, A. (2001). Maasai agriculture and land use change. (Online). Retrieved on 13 February 2007 from <http://www.virtualcentre.org/en/enl/vol2nl/maasai.htm>

⁸⁹ Ibid p52

⁹⁰ Government of Kenya, 1999 Census (Provisional Rep.).

⁹¹ Halakhe D., Waqo, 2003; Peace Building and Small Arms: Experiences from Northern Kenya, a paper presented to UN Biannual Conference of States on Small Arms programme of action on 7th-11th July 2003 at UN centre, New York, USA.

guns found their way into the hands of the community, inter-ethnic cattle raids and conflicts have taken toll resulting to loss of lives.

Apart from the above causes, political incitement is seen as a manifestation of conflicts between Maasai and other communities. Political leaders have been quoted as inciting the Maasai against other communities. This is prevalent during electioneering periods and community security meetings.⁹²

3.1.1 Ethics, norms and values of Maasai community

The Maasai people are generally polygamists.⁹³ A man could have as many as 10 wives and a commensurate number of children. This tradition has been upheld particularly as a means of community and cultural preservation, hence it's depth of meaning. In a typical Maasai family, the old man (the husband) is in control of his family and animals. He is the unchallenged head of the family institution and all family issues and disputes are under his jurisdiction.

The family can also be extended to include the man's in-laws, unmarried siblings and his aging parents. This is the extended family. The family institution among the Maasai community is the basic institution of governance and conflict management⁹⁴.

A manyatta comprises between five and ten families. This is a settlement that lasts as long as the pastures. It is a transition dwelling before families move on to new pastures. The manyatta is under the leadership and jurisdiction of a senior elder. Neighborhood courts (nabo) reign supreme in the manyattas. The senior elders

⁹² Kenya Human Rights Commission, 2001, *Raiding Democracy: The Slaughter of the Marakwet in the Kerio Valley*, KHRC, Nairobi.

⁹³ Alan Jacobs, *The Traditional Political Organization of the Maasai* (1965) (unpublished Ph.D. dissertation, Oxford University) (on file with author).

⁹⁴ Ibid p54

manage the courts. In the manyattas, men graze cattle while women are in charge of maintaining the portable huts, milking cows, obtaining water and gathering firewood. A fence of thorns surrounds each family's cattle yard and huts. The manyatta is fortified with a live fence (closely-knit poles) that is hard to penetrate. The manyatta has one entrance.⁹⁵

In Maasai, initiation is done in age brackets of about five years⁹⁶, with the new class of boys becoming warriors, or morans (il-murran). The moran status involves two stages, junior and senior. After serving five years as junior morans, the group goes through a naming ceremony, becoming senior morans for six years. After these eleven years, the senior morans are free to marry and join the junior elders.⁹⁷ This ritual of passage doubles as a form of socio-political organization of the Maasai community. People in a given age set regard themselves as brothers and sisters respectively and are expected to behave in a certain way in the community. The age set is supposed to regulate its members and where necessary punish troublemakers.

The council of elders is perhaps the highest socio-political organization and institution of managing conflicts amongst the Maasai.⁹⁸ This institution is the equivalent to the tree of men and the Kokwo among the Turkana and Pokot respectively. The council of elders is composed of respected elders in the community, respective heads of the nabos and representation from age sets and to a lesser extent, elderly women. In Maasai community, men (il-moranis excluded) make decisions often under a tree designated as a 'council'. Women may sit in an outer circle and

⁹⁵ Friedman, J. (1994). *Cultural Identity and Global Process*. London: SAGE

⁹⁶ *Ibid* p54

⁹⁷ J. Thomson (1885). *Journey through Maasai land*

⁹⁸ John P. Lederach, 1994, *Building Peace: Sustainable Reconciliation in Divided Societies*, United Nations University, Tokyo.

may speak only while seated and grasping green grass.⁹⁹ Alternatively, a woman may convey a comment or concern through a male relative. However, women may have their own ‘council’ discussions and then relay the results to men for consideration.

Conflict management isn’t a recent phenomenon among the Maasai community. Elaborate customary mechanisms of conflict management still exist in Maasai district.¹⁰⁰ To a larger extent, conflict prevention and management is the responsibility of the individual families, neighborhood (nabo) and the community as a whole. Heads of such institutions are charged with maintaining law and order within their jurisdiction.¹⁰¹ Socialization and education among the Maasai people is an effective method of conflict prevention both within and without the community. Children are taught the Do’s and Don’ts of the community at an early age. They are told to respect all grownups as fathers and mothers for they belong to the society. Societal norms, taboos and lifestyle are inculcated into the minds of the young Maasai boys and girls.¹⁰² Gender roles are clearly defined at this stage, as boys are encouraged to look after the young animals as girls assist their mothers in household chores. Boys are taught fighting skills at that early age. They know that they are the community soldiers. Among other things, they are reminded that they should uphold brotherhood in society, live harmoniously and that no family needs war.

Social education and ethics become more rigorous during the initiation period.¹⁰³ The initiates are taught how to be caring and responsible husbands and

⁹⁹ Ibid p54

¹⁰⁰ Kevin A., Peter W. B. and Joseph A. S., 1991, *Conflict Resolution: Cross-Cultural Perspectives*. Greenwood Press, New York.

¹⁰¹ Ibid p55

¹⁰² Kenya Human Rights Commission, 2001, *Raiding Democracy: The Slaughter of the Marakwet in the Kerio Valley*, KHRC, Nairobi.

¹⁰³ Burford, G., Ngila, L.O. and Rafiki, Y. (2003). Education, indigenous knowledge and globalisation. *Science in Africa* 21. (Online). Retrieved on 6 February 2007 from <http://www.scienceinAfrica.co.za./2003/march/ik.htm>

wives. The boys are now prepared to join moranism. A group of morans will be selected to monitor troublemakers in the society and are given powers to punish through beating or slaughtering the culprit's favourite bull. Ibbu, mob justice, can also be meted on any age set member who violates societal norms. Lbbu is a person killed by mob. In the Maasai community, mob justice is not a crime but is seen as a way of curbing conflicts. Ibbu can also be prescribed for any other crime in the society, for instance theft or adultery. Conflict prevention and management is emphasized at the initiation stage.¹⁰⁴ At the basic level of governance, the head of the family, the husband, is held responsible for preventing and sorting out domestic disputes that may arise in the family unit. He calls the parties in dispute to his hut (in Maasai community, the husband has a separate house from the wives) and arbitrates accordingly. If he is part of the conflict, he will request the nabo or his age set to arbitrate.¹⁰⁵

The elders decide on punishment to administer and or amount of fine to be paid. Murder cases are brought before the council of elders for arbitration. There are striking similarities between the formal judicial system and the Maasai customary methods of conflict management. This is in the sense that natural justice or the rule of law reigns supreme. In the Maasai council of elders (customary court), elders are the judges and advocates in conflict situations.¹⁰⁶ The council handles all types of cases ranging from murder, adultery to theft cases. Both the plaintiff and the defense are allowed to cross-examine each other and other witnesses that might be called. After listening to the conflicting parties, the elders convene a mini meeting, consult, and

¹⁰⁴ Mkangi, K. 1997; *Indigenous Social Mechanisms of Conflict Resolution in Kenya: A contextualized paradigm for Examining Conflict in Africa*, University of Nairobi.

¹⁰⁵ *Ibid* p56

¹⁰⁶ Kristina G. et al, 2001, *Identifying Wars: Systematic Conflict Research and its Utility in Conflict Resolution and Prevention*, Uppsala University, Uppsala.

agree on the verdict. The decision is announced and blessed and the elders leave the venue immediately. No appeal is tolerated after the sitting. If the offender disregards the court's decision, the elders may curse him or her. Laisi clan is renowned for producing the experts in cursing, for instance the snake, lion, and elephant totemic clans. In the Maasai community, the court will compel the murderer to pay 49 heads of cattle to the family of the slain man. There is no provision for the compensation of a woman since traditionally women were not to be killed. It is a curse to kill a woman, child or the elderly person. In theft cases, the court orders the thief to pay back three times the number of animals stolen. If an animal is stolen, slaughtered and eaten, all those who taste the meat, even if they were not aware that it was a stolen animal, will be regarded as thieves and forced to pay back three times.¹⁰⁷

Throughout their history, the Maasai community has been in a defensive position with all their neighbours. They have had clashes with most of the migrating or nomadic people. Their main concern is cattle. Cattle raids are the major inter-ethnic pre-occupation or manifestation of conflicts with the neighbouring communities. The community is in conflict with the Turkana, Borana, Meru, Kikuyu, and to a lesser extent the Pokot. Maasai and Pokot have a common peace pact. They have maintained a military and cultural alliance with the Rendille, largely in response to pressures from the expanding Oromo (Borana) since the 16th century.

3.1.3 Alternative Dispute Resolution (ADR) in the Maasai community

Traditional legal disputes occur in a fairly straightforward manner. Two parties start with a dispute where one party harms another. At this point, the harmed party (plaintiff) can either take no action (which ends the dispute) or make a claim about the

¹⁰⁷ Ibid p57

injury experience. The parties may or may not try informal methods of coming to an agreement. If this step fails, then the plaintiff can choose to file a suit. Alternative dispute resolution provides a way for disputing parties to settle out of court. ADR offers parties a way of reaching an agreement without going through the all strict regulations of a real trial. It also serves as a way for courts to reduce the number of cases while still settling legal disputes. It is important to note that ADR has “not displaced traditional litigation; Rather than a substitute, ADR functions for as a complement to litigation. In addition, ADR may serve as a way for unclaimed injury experiences to actually be reported. A plaintiff may see the potential time and monetary costs associated with the legal process and decide not to even make a claim, but if the plaintiff knew of ADR, then the likelihood of making a claim could increase.”¹⁰⁸

Based on this ideology, many communities began establishing community or neighborhood justice centers. These centers were funded by a variety of sources and run by volunteers to settle local neighbor and family disputes. But how did these centers “apply community based norms to disputes” and did they really have community member’s work out disputes themselves? As it turns out, the community justice centers embraced “mediation and other conciliatory approaches, rather than adjudication.”¹⁰⁹ The formal legal institution relied on a combative method to solving disputes, but mediation put the power of resolutions into the hands of the disputing parties and their willingness to come to an agreement. This fits the community movement ideology perfectly because it would allow for disputes to be settled in a way that stood in contrast to what the formal legal institution promoted.

¹⁰⁸ Black, D. “The Elementary Forms of Conflict Management.” *New Directions in the Study of Justice, Law and Social Control*(1990): 43-69.

¹⁰⁹ Hensler, Debora R. “Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System.” *108 Penn St. L. Rev.* 165 (2003-2004)

A traditional/communal approach to peace building is based on the premise that sustained peace and order in society results from the moral authority exerted by the communal group over its members. In Maasai pastoral community peace-building takes the form of elders from two neighboring clans playing an important part in defusing tensions and conflicts, which usually revolve around the control of grazing land or water. The wisdom and experience of the elders is manifested in clear and well-articulated procedures for conflict resolution in which all the parties to the conflict are given the chance to express their views. On the other hand, the elders were vested with cultural authority to act as arbiters and even give judgment on the rights and wrongs of a dispute submitted to them for resolution and then suggest a settlement, although they may have no power of physical coercion by which to enforce them. But often the pressures of culture guarantee obedience.

The peace-building/reconciliation process in a communal/traditional post-conflict setting is often viewed as an opportunity to re-affirm and re-establish relationships not just between former protagonists but between all the people as well as with their God and spirits. According to Kiplagat: “There is a holistic approach to the process, working with the community as a whole, invoking spiritual forces to be present and accompany the community towards peace.”¹¹⁰ Consensus is a key objective in negotiations, and the responsibility of the elders is to steer the negotiations towards that end. Reconciliation becomes the major preoccupation. Treaties or agreements concluded during negotiations are considered binding and sacred and are therefore entered into with solemnity. Members of the community believed that any violation of the oaths would incur the wrath of the supernatural against the culprit.

¹¹⁰ B. Kiplagat, “Is Mediation Alien to Africa?” *Track Tow*, vol. 7, no. 1. (Cape Town: Centre for Conflict Resolution, 1998).

Subjects dealt with at elders' meetings range from goat theft to questions of inheritance to murder. The procedure begins when an individual has a problem and takes it to a well-known and influential elder. If the elder thinks the problem requires a meeting, he will gather the other elders. They began the meeting with a blessing to "resolve the issue", and then each party may present his/her case. Subsequently, each elder, one by one, stands and presents his view. There is no vote, due to their belief that this practice will lead to an obvious consensus. The chief of elders then summarizes the conclusions and states the fine that must be paid, if any.¹¹¹

In Maasai society there are no jails, nor physical punishment. Most crimes have fixed fines, usually payable with livestock. For example, stealing a goat holds a fine of a 2-½ year old calf or breaking a bone requires payment of a ewe. In the rare cases of murder (Maasai do not often intentionally kill one another), the procedure is a little more complex. Elders are central to resolving conflicts within Maasai society. They are the "guardians of laws" and the "conscience of society". "The elders constitute an impartial body which runs Maasai governmental affairs, maintains justice, and deals with the important issues that enable a society to exist and flourish". Elder men trying to hold onto their positions while the younger men pressure them to give it up characterize the age-grade system. Although most senior age sets receive great respect, economic and political power is always slipping from them.¹¹²

First, the guilty party hides until the victim's relatives no longer wish to take revenge. When the guilty party and the victim's family meet, the offender must give the family forty-nine cattle of their choosing as blood-money, which shows the close association between property rights and patrilineal clan organization. Murder, along

¹¹¹ Saitoti, T. O. (1980). *Maasai*. New York: Harry N. Adams, Inc.

¹¹² Ndagala, D. K. (2002). *Territory, pastoralists, and livestock: Resource control among the Kisongo Maasai*. Uppsala, Sweden: Almqvist & Wiksell International.

with most other crimes, are rarely reported to the government because the Maasai do not believe that the government sees the “human elements” involved, but only pays attention to the legal aspect. The Maasai believe that since one person is already dead, why punish the society more by allowing another death (that of the offender’s). Finally, contrary to the outsider’s belief that the *moran* are aggressive warriors who spend their days in warfare, the Maasai also have strict regulations on fighting. Individual Maasai must first use sticks and clubs, and only when those break are they allowed to use spears and swords. Even when using swords, they are not allowed to slash with the intent to kill, but only nick the enemy’s skin so as to cause pain. However, when the Maasai fight non-Maasai, they do fight to kill in order to not be eliminated themselves.¹¹³

But this community justice centers faced one big unseen problem: much fewer disputing parties turned to these centers than anticipated. Hensler attributes this problem to “barriers to dissemination of information about the centers’ existence and what they offered” and to the fact that disputing parties “value public vindication of their rights or positions.” Centers frequently turned to courts for referrals, and this set a precedent for the relationship between courts and these centers. Courts would refer “minor” cases to the community centers, and over time adopted this practice as an alternative to trial. After filing a suit, cases could be referred to court arbitration. Parties and their lawyers would present their respective claims in front of arbitrators who made a decision. If the parties agreed, they would settle with the decision. If the parties did not agree, they would request a trial and the suit would continue through the formal process, but the parties would pay a small fee for the arbitrators. This system began to spread, and “judges and lawyers began referring to these arbitration

¹¹³ Ibid

programs and judicial settlement conferences as ‘alternative dispute resolution’ or ‘ADR’.¹¹⁴

3.2 Cultural practices as peace building mechanism

Due to their nomadic lifestyle and cultural attachment to large herds of cattle, the community has come into constant conflict with other communities. In response to the security threat, the community has operational sedan elaborate customary mechanism for inter-ethnic conflicts peace building mechanism.¹¹⁵

3.2.1 Indigenous Early Warning

Use of indigenous intelligence information among the Maasai community is not a new phenomenon. Throughout their history, the community has sought the services of indigenous intelligence information experts to prevent and manage conflicts. Like their counterparts’ the Turkana and Pokot, the Maasai people are regarded as experts in reading and encoding intelligence information in goat intestines¹¹⁶. Experienced elders can foretell danger by looking at the intestines of a goat. The Lepese family is endowed with indigenous skills of studying stars in the sky and foretelling any impeding interethnic conflicts, natural or even manmade disasters. After studying, analysing and verifying such sensitive information, the elders from the Lepese family advice the community to take necessary pre-emptive or preventive actions including initiating inter-community dialogues. Apart from the Lepese family, soothsayers (Laibons) prophesy and advice the community accordingly. Maasai community sends their warriors to spy especially along the borders and grazing lands for any suspicious movements. The spies (laikijalak) are skillful in differentiating a Maasai footprint

¹¹⁴ Ibid

¹¹⁵ Mkutu Kennedy, 2001, Pastoralism and Conflict in the Horn of Africa, Africa Peace Forum, Saverworld, University of Bradford.

¹¹⁶ Kenya: The Case of the Turkana, Borana and Somali Communities, Oxfarm GB, Nairobi.

from that of any enemy community. Such information will be traditionally analyzed and if necessary, disseminated to the community for pre-emptive or preventive action. The community uses specific screams and or horn sounds to relay any alarm or danger.¹¹⁷

3.2.2 Lmumai (Peace Pacts)

As a means of preventing inter-ethnic conflicts, the Maasai community has entered into binding peace arrangements (lmumai) and military alliance with their strategic neighbours. Hundreds of years ago, the Maasai and Pokot communities signed lmumai at around Mt. Elgon and since that time, the two communities have maintained a close military alliance and have generally lived harmoniously¹¹⁸. Just like miss and ekisil among the Pokot and Turkana communities respectively, weapons (spears, arrows, swords) are collected from the participating communities, broken, destroyed, burned and then honey, traditional brew, and milk are poured into the pit before its covered. Bulls (preferably white in colour) are slaughtered and the blood is mixed with milk and honey. All the present elders and warriors drink it. They smear their bodies with cattle oil and milk. This ritual was carried out between the ancestors of the Pokot, Maasai and the Rendille. It is the basis and framework of the current military alliance between the three communities.¹¹⁹

¹¹⁷ Wanyama, J. and Wanjigi, S. 2002, Strengthening Pastoralists Institutions in Kenya. A Paper presented to OXFAM GB Stakeholders Workshop, Sunday, 24 March 2002 at KCB Training College, Nairobi.

¹¹⁸ Ibid p63

¹¹⁹ Eberlee, J., 1999. Alternative Approaches to Managing Conflict over Natural Resources. IDRC Reports, 278, 1–5.

3.2.3 Dialogue

Since time immemorial, Maasai community has engaged in dialogue with her neighbours either to prevent or manage real or imagined conflicts. In response to early warning and intelligence information gathered in the community, respected elders and laibons are mobilized to initiate inter-ethnic negotiations to prevent the conflicts.¹²⁰

Elders from the two warring communities come together and negotiate for an amicable solution to the existing conflict. Such high-level negotiations are cushioned on customary methods of conflict resolution as may be practiced by the negotiating communities. In addition to cease-fire, such negotiations could also lead to brokering of Imumai.

3.2.4 Other Methods of Peace building

In addition to the above methods and mechanisms of peace building, the Maasai community also intimidates neighbouring communities using charms, sorcery or witchcraft (laisu), which are thought to be effective in disabling potential aggressors or enemy soldiers.¹²¹ It is also believed in the community that some specific individuals (laisi) are endowed with supernatural powers to curse aggressors or enemy soldiers. Laisi can spit on the enemy making him blind or disabled. Such superstitious beliefs have aided in preventing not only inter-ethnic conflicts but to larger extent Maasai intra-ethnic conflicts.

¹²⁰ Kristina G. et al, 2001, *Identifying Wars: Systematic Conflict Research and its Utility in Conflict Resolution and Prevention*, Uppsala University, Uppsala.

¹²¹ Mburugu, K. & Hussein, M., 2001, *Customary Institutions of Conflict Management among Pastoralist Communities Selected Bibliography 100in Kenya: The Case of the Turkana, Borana and Somali Communities*, Oxfarm GB, Nairobi.

3.3 Conclusion

Curses, taboos and superstitions have proved to be very effective methods of conflict management and peace building both within and without the Maasai community. This institutionalized fear and awe of traditional conflict management processes has deterred potential troublemakers in society and forced them to embrace peace. The effects of the supernatural powers are beyond individuals and could affect a whole clan if cleansing isn't done in time. Unlike the formal court system, Maasai people trust customary institutions of conflict management since they understand and appreciate the mechanisms and framework under which it operates. Since the system is based on the customary law and order, definitely nothing but the truth will prevail. Customary court's rulings are objective, just and culturally acceptable unlike the police and formal court systems that are riddled with corruption and graft cases. Customary law in Maasai community has ensured that the social fabric and cultural heritage has been kept intact.

The law has kept the society closely knit both in times of war and peace and is seen as a unifying factor and community's identity. Perhaps the customary law and norms in society under which traditional conflict resolution mechanisms are modeled have preserved the Maasai culture. Maasai community conflict resolution mechanisms are their cultural heritage and unique identity in the modern cosmopolitan society. Customary methods of arbitration and conflict management among the Maasai people have been bogged down by lack of a framework or approach to enforce its rulings. After the traditional court has made its ruling, it is socially and culturally assumed that the concerned will just abide by it. However lack of a community police to enforce the rulings has weathered down the role and efficacy of the customary methods of arbitration.

The whole system is prone to bias and favouritism. Some individuals, especially deadly warriors are accorded undue attention in such informal court proceedings because it is presumed that the society needs their braveness and stamina in killing enemy soldiers. Some families who are thought to have superstitious powers are also feared and if they are involved in disputes with other members of the society, justice might not be administered fairly. Nobody would for instance talk against a soothsayer or somebody from the lepese family because the consequences might not be pleasant. In addition to curses, the traditional system of arbitration mostly relies on the fear of laisi (witchcraft), which is not objective. Laisi has been greatly challenged by modern thinking, as it is scientifically unverifiable. The advent of Christianity and Islam has also discredited witchcraft as ungodly thus nobody would like to be associated with or enjoined in it.

The emergence and appreciation of modern civilization has greatly diminished the role and credibility of customary law. More and more people are turning to modern formal courts in solving their problems. The educated elite's, Christians, Muslims and town dwellers regard customary law as archaic and barb baric and argue that it should be discarded. Such kind of thinking has greatly diminished the credibility and relevance of traditional conflict resolution mechanisms in the present-day Maasai community.

On the other hand, proliferation of automatic weapons in the region has increased the severity of cattle rustling and this new phenomenon has overwhelmed the capacity of traditional systems of peace building. The entrance of arms into the then traditional culture of cattle raiding has brought in unprecedented issues such as commercialization of cattle raids, mass rape and killings that have pushed traditional courts to the periphery of inter-ethnic conflicts resolution.

CHAPTER FOUR

CONFLICT MANAGEMENT AMONG THE MAASAI COMMUNITY: A CRITICAL ANALYSIS

4.0 Introduction

The previous chapter three provided the case study of the norms, values and ethics of the Maasai. It investigated the various norms and how the Maasai have dealt with matters culturally over the years, dating back to the 16th century that would be the furthest known time. It looked at the cause and effects of the conflict, examining the people and their dynamics of ensuring peaceful co-existence amongst themselves and their neighbours.

The current chapter is going to give a critical analysis of the findings, look at the emerging issues, the non-applicability of the western theories of conflict management to the Maasai community conflicts and expound on alternative dispute resolution.

4.1 Emerging Issues

4.1.2 The Social Organization of the Maasai Community

Although the Maasai are one of the most well researched ethnic groups in the Kenya by academicians, anthropologists and planners and visited by tourists and collectors, they still remain among the misunderstood and misinterpreted communities by government, development agencies and other agencies working in the areas of conflict management. Some research studies have only managed to strengthen and deepen stereotypes and misunderstandings about the Maasai as a people and their pastoralists' way of life.

The social organization of the Maasai is based on clan system and age-set system and this is what informs and forms their social and traditional decision making and governance institutions and systems. Their continued interaction with nature/environment also has enabled them to establish skills and customary laws that ensure that natural resources are utilized in a sustainable manner. The Maasai community in conflict resolution has managed to overcome the strong currents of the Western cultural influence although now it is being faced by a lot of cultural erosion threats, cultural dispossessions, cultural and natural resources piracy¹²².

The culture and traditional occupations and economies of the Maasai community is at requires policies and National practices that take their needs and knowledge into accounts, in such regards where people are part of National Development Planning, they can become enhance progress that ends up benefiting the wealth of skills, heritage, livelihood practices and cultures that has been built over years.

This late-Westphalia /accelerated globalization era is characterized by two simultaneous trends: global political and economic integration processes and national/local disintegration with serious ontological and existential insecurity implications thus the need for strategies to enhance conflict management. Accordingly, the international relations of the new millennium is impelling many analysts to broaden their conception of security to include issues of human security broadly defined¹²³.

¹²² Saitoti, T. O. (1980). Maasai. New York: Harry N. Adams, Inc.

¹²³ Phillips, J., & Bhavnagri, N. (2002, Spring). The Maasai's education and empowerment: Challenges of a migrant lifestyle. *Childhood Education*, 78 (3), 140-146.

Societal disruptions in the form of wars produce dissatisfaction and multilevel (individual, group, communal, and national) insecurity that have profound implications for conflict management/peace building efforts in war-torn regions. The many conflict management/peace building operation and democracy promotion efforts since the end of the Cold War have spawned many academic works on the subject¹²⁴. While these studies have underscored the strengths and weaknesses of particular efforts, relatively little attention has been devoted to the implications of the interactive relationship between peace building and human security. In other words, what are the prospects for effective conflict management in post-war societies beset by (in) security problems? What paradigmatic shifts in the theory and practice of international relations, for example, underlie the relationship between peace building activities and human security? In what ways do these paradigm shifts/interactions shape the conduct of conflict management and affect dominant attitudes towards human security concerns?

A language of power, exclusion, or defense of an international order that does not adequately address issues of emancipation and inappropriate impositions largely characterizes current conflict management efforts among communities. In most cases of conflict management (reconstruction efforts after conflict termination) it is the integrity of the state that is often given security. Insecurity is, in other words, synonymous with an attack on the integrity of the state. As a result of this unidimensional, state-centric view of security, many states confronted with civil strife have been unable to resolve their difficulties. Besides, many conflict management efforts undermine the emphasis on human security because people are viewed as the "means" to political stability as opposed to being the "end" of all conflict management

¹²⁴ Ibid

efforts. People are also viewed as the means to a stable state conducive to the infiltration of globalization trends¹²⁵.

4.1.3 The Non-Applicability of Western Conflict Management Theories in the Maasai conflict

The rapid pace of globalization and/or westernization is seriously eroding the respect by the youth for the elders and traditional hierarchy of authority that are necessary for maintaining the hegemony of indigenous approaches to conflict management. Communalism, and the primacy of elders in maintaining, traditional ceremonies, is rapidly giving way to individualism and private accumulation. The Maasai pastoral community and many traditional societies are in a state of transition, as a result of their incorporation into the market economy and commercialization¹²⁶. The consequences are that communal societies are experiencing a serious challenge to their societal structure, security, survival as well as traditional moral foundations. Because traditional moral foundations are disintegrating, warfare has become more vicious and waged with more sophisticated firearms, with little or no regard for women, children, or the elderly. In sum, in indigenous approaches to conflict management there is an emphasis on both individuals and groups in the process of reconciliation. The elders defuse conflicts within and between societies. Conflict is viewed as a communal concern; reconciliation is therefore embedded in the norms and customs of the community affected. The reconciliation process, in particular, emphasizes "healing of emotional wounds created by conflict and restoration of social relationships¹²⁷.

¹²⁵ Jimbo, P. (2002). 30 under-age girls married off in Kajiado. Africa News. from LexisNexis database

¹²⁶ Hodgson, D. (2006). "My daughter...belongs to the government now": Marriage, Maasai and the Tanzanian State. *Canadian Journal of African Studies*, 30 (1), 106-123.

¹²⁷ Hardin, G. (2009). The tragedy of the commons. *Science* 162, 1243-1248.

Public or open acts of reconciliation served to remind community members of their shared unity. The African philosopher, Mbiti¹²⁸ summarized the communal spirit when he stated that African philosophy is based on the "I am because we are ... because we are therefore I am" principle. (Thus, much of conflict management could be enhanced, facilitated, and improved by the incorporation of indigenous approaches and cultural values in post conflict societies. In sum, a quick solution to the conflict management and human security activities regarding rehabilitation, reintegration/ethnic reconciliation, or democracy enhancement, is for peace builders to turn to indigenous sources for sanctioning authority, power, and legitimacy.

Another alternative for Maasai community is to find an appropriate and effective blend of traditional institutional norms and external-type institutions that guarantee stable and effective leadership while at the same time enhancing democratic norms within the context of the variable economy. Westernized conflict managers fail because of a discrepancy between the policies of the postwar incumbent regime and the values adhered to by the society at large. Threats or challenges against the political establishment have ranged from protests, demonstrations, riots and civil wars. Moreover, the diffusionist effects of external cultural and other influences tend to encourage the growth of formal practices and the gradual shift toward participatory democracy. The result is the exposure of the incumbent postwar regime to new forms of competition for which it is not prepared. Groups that are still at the political periphery begin clamoring for more prominence in the struggle for political control. The usual intransigence of the political establishment, coupled with the underdeveloped postwar political institutions could result in a political conflict¹²⁹.

¹²⁸ John Mbiti (1999) *African Traditional Religion and Philosophy* London: Longman.

¹²⁹ Phillips, J., & Bhavnagri, N. (2002, Spring). The Maasai's education and empowerment: Challenges of a migrant lifestyle. *Childhood Education*, 78 (3), 140-146.

Since human security is a tri-level (individual, institutional, and structural/cultural) phenomenon, what is needed is to base conflict management /human security efforts in the lives of "marginalized people," often women, frustrated youth, or simply "common people." These are the people from whom the state has been relatively removed because they are not empowered and therefore suffer the worst forms of human insecurity. Conflict management needs another discourse, other voices, in particular the voices of the non-state informal sectors of society. In order to arrive at a conflict managements strategy that enhances human security, based on integrate the views, activities and experiences of the marginalized/common folk in processes of reconciliation, political will-formation, and in the rebuilding of reflexive structures of governance.

The focus on the articulation of ideational, cultural, and non-state factors in conflict management is in itself a critique of the dominance of state-centric conflict management which contributes to the process of giving voice and legitimacy to the bedrock of sustainable peace and human security: ideas, norms, knowledge, culture, inter-subjective ideas and understandings of social life, and non-state actors. The task of a human security perspective in conflict management is to make the lived experiences, activities, and perspectives of specific groups (the marginalized, women, unemployed youth, or ordinary folk) the agenda of reintegration, rehabilitation, democracy-building, and inter-ethnic reconciliation¹³⁰.

A post-war reconstruction effort that emphasizes security at the subnational level and deliberately cultivates/fosters mutuality, caring, empathy, and compassion among intersecting identity components of cultural, sexual, class, race, regional,

¹³⁰ Saibull, S. O., & Carr, R. (2003). *Herd and spear: The Maasai of East Africa*. London: Collins and Harvill Press

gender and other identities is more desirable than the mere attainment of a "strong" national security state. So rather than the goal of a good politics being the creation of a neutral state which presides over perpetual conflict, the aim is unashamedly to give a particular content and meaning to the good life that is being proposed, unashamedly to avow a politics of mutual compassion rather than narrow self-interest. It is true that the virtues in question have at some points been associated with the "feminine," while competition, aggression and violence have historically been associated with the "masculine," but the idea here is to recognize that these are human virtues and human ills; they do not adhere timelessly, biologically or necessarily to any particular gender or to any particular type of man or woman. Rather, these are virtues which are always precarious, vulnerable to corruption and in need of our ongoing and dutiful attention so that they may be privileged in public life¹³¹.

Similarly, in conflict management to enhance human security, what is even more important is the values that are affirmed and not necessarily a particular type of identity or person. Human security is only possible where all the different identities forge/foster a community of solidarity that sustains the individual identities through mutual support and recognition. This translates into what has been referred to as the creation of "an enlarged mentality" as the primary voice in politics. In such a situation the nations of a common good, shared vision are reactivated.

4.1.4 The Role of Ethics, Norms and Values in the Maasai culture

Due to their unique and distinct culture, the Maasai people of east Africa are among the most well known to outsiders of all of the ethnic groups in Kenya and Tanzania. Many travelers of the late 19th century, the so-called "explorers," told tales of the

¹³¹ Talbot, L. M. (1998). Demographic factors in resource depletion and environmental degradation in East Africa rangeland. *Population and Development Review* 12 (3), 441-451

courage and bravery of the Maasai people. The Maasai share their present expansive semi-arid lands with wild animals. Extensive and biologically diverse ecosystems form part and parcel of the pastoral lands of east Africa.

When young, Maasai boys and girls live with their mothers in a house built of cow dung and wattle, in a large enclosure. Their father, his other wives, and young children live nearby in almost identical houses of their own. There is a small house called *orripie* where the father of the family lives. Around all these houses is a thorn fence for protection. This type of homestead is called an *enkang*, and may have twenty, or even thirty, houses within it, arranged in a circle. The livestock are usually penned-up in the middle of the enclosure at night¹³².

To build a house, the women mark out an oblong space approximately two by three meters. They then scoop out small holes around this oblong and put cow-dung into them to soften the soil. These holes are made at about twelve centimeter intervals, leaving a space for a door, which will later be made of bamboo or other strong poles. They then collect a number of long stakes, which they drive into the holes. When the pole is deep enough, they pack it in with earth so that it stands firmly. These poles, which are about two meters high, are the beginning of the walls of the house. The women then collect whippy branches, peel the bark off, and tie them to the uprights near the top, at right angles, so that they are joined together all around. Saplings are pushed between the horizontal ties and the uprights and fastened together across the top of the hut, making a curved roof. This is the first stage in hut building¹³³.

¹³² Ibid

¹³³ Talle, A. (2005). *Women at a loss: Changes in Maasai pastoralism and their effects on gender relations*. Stockholm: Stockholm Studies in Social Anthropology

Knowledge comes in diverse forms; from the wisdom of an elder who understands the cycle of life and when rain will fall, to the logic of medicine men who have dispensed their herbal medicine from time immemorial. The almost mandatory use of herbs while consuming soup made of cow's meat during recuperation or after childbirth is an example of the benefit to be derived from the use of certain medicine and herbs.

Knowledge also comes from the pastoral nomad who is capable of recovering his lost animals by reading subtle animal tracks brushed into the dust or from the traditional midwife who is able to remedy a traverse fetus without having seen the door of a classroom. The ability to fix broken bones of both humans and livestock is yet another remarkable form of rich traditional indigenous knowledge. With this outstanding common knowledge, it is perhaps surprising that Western knowledge has ascended to a global ideology at the expense of all other traditional expertise.

The Maasai have medicine in herbal form that is capable of curing nearly all of the diseases that affect them. For instance, they believe that a constant headache is brought about by two conditions: enlarged bile, which is cured by the administration of an herb known as *Esumeita* that has been proven to have unparalleled medicinal value; and contaminated and unwanted food and impurities in the stomach. This is cured by the oral administration of *Iseketet*, small round seed-like berries. *Iseketet* are located and harvested hanging from trees in tropical forests in the mainly highland areas. They are then dried and pounded into a powder form that can be administered with boiled water or milk, depending on the age and severity of the patient's problem. This treatment has had effective positive results for all of its users¹³⁴.

¹³⁴ Homewood, K., & Rodgers, W. A. (2001). *Maasailand ecology: Pastoralist development and wildlife conservation in Ngorongoro, Tanzania*. Cambridge: Cambridge University Press

Both drugs can be administered to a patient separately or concurrently and, to date, no side effects have been attributed to their use even though they have been in use for as long as the Maasai have been in existence. This type of knowledge is powerful in that it allows indigenous people to instantly recognize what herbal medicine will cure a particular disease and good health has been preserved through such medication.

4.1.5 Alternative Dispute Resolution in Conflict management

Conflicts are common features in the traditions of most pastoralist communities in Kenya – cattle raids, pasture skirmishes, and water disputes. But as importantly the traditional life-way also provided mechanisms for addressing and resolving conflict. The modern-day legal system has weakened these traditional mechanisms, but the new administration polices and laws are themselves so weak and the areas involved so remote that conflict continues. The Ilkerin Loita Integral Development Programme (ILIDP) has encouraged traditional conflict management mechanisms to resolve a number of localized conflicts¹³⁵.

Land issues are emotive and always have potential for generating conflict. The Purko and Loita Maasai have a long-running conflict relating to the actual boundary separating the two communities. It has subsided for the moment, but during severe droughts open conflict cannot be ruled out. Natural resource use is another major sore point. Like most pastoralists, the Loita Maasai depend on natural resources like water, salt licks and pasture that are based on collective use, ownership and management. During times of severe drought competition for these resources leads to competition at varying levels of scale and scope, with different clans sometimes coming into direct conflict with one another as they compete for pasture and other resources.

¹³⁵ Fratkin, E. (1997). Pastoralism: Governance and development issues. *Annual Review of Anthropology*, 26, 235-261

Mobility is essential to cope with and manage drought. During drought the livestock are moved to the highlands and this has brought the Loita of Kenya and Tanzania into direct conflict with the Sonjo of Tanzania, sometimes resulting in the deaths of people on both sides. Another result has been the proliferation of illicit firearms. Owing to the remoteness of the conflict area and the lack of infrastructure, neither the Kenyan authorities nor their Tanzanian counterparts have been adequately informed of the conflict or inclined to deal with it, and so it goes on and affects development gains¹³⁶.

At an individual level, conflicts of interest also raise difficulties. Ilkerin Loita Integral Development Programme (ILIDP) has grown from being a small, missionary-led project to an autonomous organization with a broad mandate backed by social relevance and legitimacy earned as a result of community trust. This has made ILIDP a strong, relatively powerful institution that controls a considerable amount of resources and commands respect from the Loita community. But there is at least anecdotal evidence that certain individuals would want to get control of the organization in order to use it for their own selfish and ulterior motives. They have always failed to achieve their objective, but their pettiness is a source of annoyance and an attempted distraction from the issues at hand.

Despite their ongoing cultural transformation, the Loita have retained a considerable amount of their traditional and social institutions. The Loita Council of Elders has been very instrumental in conflict resolution, applying traditional mechanisms to address conflict and its effects. Where the conflict involves ILIDP, the elders receive and address all the criticisms directed at the organization. The Board of Governors of ILIDP and the Council of Elders have given individuals who have

¹³⁶ Ibid

issues or complaints against the programme to bring them to the fore at Board meetings and also in public barazas.

4.2 Other Issues

4.2.1 Pastoralism

Arbitrary national boundaries, the interplay of geopolitical tensions and associated civil wars, have exacerbated the situation for many pastoralists. The implications of this spiraling loss of, and exclusion from, land are momentous. The cycle of movement out of and back into pastoralism, formerly dependent on the ability of individuals and families to rebuild their livestock holdings, now depends on access to land as well. There is increasingly a one-way trajectory out of pastoralism into poverty and livelihoods on the margin. Maasailand, split between Kenya and Tanzania, has experienced many of these land pressures, with rangelands taken out of pastoral production for a variety of State and private purposes including conservation through gazettement of protected areas and commercial cultivation, capturing key resources for both large-scale cereal farming and intensive irrigation. Remaining rangelands are themselves increasingly privatised through sub-division (Kenya) and allocation of rights for ranching, farming or wildlife enterprises (Tanzania). High rates of internal population growth and in-migration have added to both real and perceived pressures on key resources. Violent clashes have occurred exacerbated by vested political interests¹³⁷.

In the Pastoralist district HIV and AIDS has been low for years. This however, is now a thing of the past as; this dreaded disease now equally faces them. The Maasai have various cultures that are admirable by many but still have others which are enshrined into their social, cultural and economic lifestyles. Nomadic pastoralism is a

¹³⁷ Hillman, E. (1994, Fall). The pauperization of the Maasai in Kenya. *Africa Today*, 41 (4), 57-65.

way of life as' well as a coping mechanism for the Maasai people. It is a mitigation strategy against climate change and hence this mobility in search of pastures has to continue for these people to survive, however, it may be seen as a 'blessing in disguise' as this study reveals, that the Maasai are prone and susceptible to HIV and AIDS during these migrations.¹³⁸

Increasingly restricted access to key resources of pasture, water and through-passage has increased pastoralist vulnerability to drought herd loss. The large-scale privatization of Maasai land, pursued by many as the best way of ensuring security of tenure, and by some as a way of investing and accumulating capital, is also resulting in individual pastoralists becoming landless. When pastoralist households lose both their livestock and their land, there is no way back unless they are able not only to rebuild their herds, but also to raise the capital required to buy land. The decline of the commons in Maasailand is leading not only to declining numbers of livestock and people they support; it is resulting in increasing numbers ceasing to be pastoralists. These factors are affecting all Maasai, and pastoralists across the wealth spectrum are diversifying in response. The study of pastoralist vulnerability thus becomes the study of diversification of pastoralists into non-livestock based strategies to avoid or alleviate poverty.

4.2.2 Education

Although Maasai are increasingly being educated there is a problem with the lack of education most Maasai receive. Without education, many are unable to take advantage of other opportunities and help their tribe. Hillman writes: It is estimated that only a few thousand Kenya Maasai have managed to find some livelihood outside the two Maasai districts, while impoverished herders, equipped with little or no

¹³⁸ Bentsen, C. (2009). *Maasai days*. New York: Summit Books.

schooling, continuously go out from these districts into the towns of Kenya in search of wage employment.¹³⁹

Illiteracy in this context, has gone hand in hand with resistance to cultural transformation with blind insistence that the tribe subsists in livestock proclivity onto livestock blocks children from going to school and on keen interest to prevent school drop-outs and chronic absenteeism. Seen in same light, education does not seem basic concern of most Maasai settlements. This is one of the sources of lower holding power of Maasai rural schools. The reaction of Maasai pastorals to education suggests that school has held little appeal for the population. Investigators agree that this emanates primarily from the fact that formal schooling has all appeared, in the view of all Maasai tribesmen, as being in competition with demand of subsistence pastoral economy and live-style.¹⁴⁰

This has compromised the Maasai peoples' health and their self-worth. In the some areas, 16-22 percent of children are found to be malnourished as are 12 percent of adult males and 15 percent of adult females.¹⁴¹ Although it may be hard for others to imagine, since cattle mean everything in their society, to fail at herding also means to fail in life. Education among Maasai is low due to conflicting ideas about education between the government and the Maasai. The Kenyan government run systems of education that still follow conservative colonial education standards such as rote memorization, formulaic computations, and emphasis on British content and modern technology. In addition, children are expected to wear British-style uniforms, attend school year round, and speak in English. In contrast, the goals of Maasai education are to maintain a cohesive society, ensure survival of the migratory lifestyle, and learn

¹³⁹ Hillman, R. (2002). Should pastoralism continue as a way of life? *Disasters*, 16 (2), 131- 137.

¹⁴⁰ Ole Kwallah, M.Ed., Provincial Education Officer - Western Province on 25th. August, 1999.

¹⁴¹ Ibid

the tasks related to the various roles within the community. Children are socialized with the values of collective ideology, tribal cohesion, respect for elders and conformity to tribal norms and rituals. They also learn about cattle tending, health care, and the defense of the clan. This is accomplished through direct observation and teaching, participation and apprenticeship, and their oral tradition. Furthermore, married woman and boys going through moranhood do not go to school, so most Maasai who do attend do not get past the 8th grade. This situation is unfortunate because only about one in ten Maasai are literate. It puts them at a disadvantage in living in the technological and information age

4.2.3 Poverty

With regard to traditional systems that regulate access to pasture and water, the Maasai make a clear distinction between ownership and control. Control is defined by Baxter as the “power to direct or determine the disposal, allocation, and utilization” of resources. At the level of individual homes, only the head of the household has this right, to determine, for example, whether an animal is slaughtered, sold, or given away. However, all members of the household have ownership over the resources, which are defined as, the “rights of use in the respective resources.”¹⁴²

Although there is disagreement about whether or not Maasai culture is truly egalitarian, some people argue that historically there has been a relatively small gap between the rich and the poor because all have access and ownership to the resources and thus get what they need. In the past Maasai have had poor tools, limited trade, and highly perishable goods, which limit the economic system and make it hard for the wealthy (those with the most cattle) to raise their standard of living (although the wealthy do enjoy more social influence and involvement in the society) . In addition,

¹⁴² Baxter, P. (2004). Pastoralists are people: Why development for pastoralists and not the development of pastoralism? Rural Extension Bulletin, 3-8

knowledge too, has traditionally been unstratified. The types of cattle bred are common herds and knowledge of their care is common to anyone who takes care of them. There is no elitist training, they all know the same types of things, and so education could not lead to inequality.¹⁴³

4.2.4 Leadership

Before the introduction of a unified national leadership system hinged on the organizational structure of western societies, Maasai, like other societies in Africa, had its own system of organisation and leadership. There were no rulers but there were leaders. For every sub-tribe each age group had a leader, *olaigwanani* plural is *ilaigwanak* ‘elected’ by the largest possible assembly of the members of the group. There was also a deputy leader *engopiro* - plural is *ingopir*. Such leaders were ‘elected’ and functioned only in and through the youth age of the group, *murano*. Besides youth leaders there were also sub-tribal leaders. Again not rulers, but spokesmen. Same with their deputies. The leadership functions of these spokesmen transcended the age group segmentation.

Apart from the age group leadership, there is an emerging clan leadership. This, however, does not replace the age-grade leadership system. This is an emerging form of leadership that has been introduced in the last four years, in order to achieve sustainable development. The leaders selected usually deal with community development issues. These leaders are the ones who have the capacity to discuss matters related to community development with government leaders. However according to Ole Sireku¹⁴⁴ Customary laws and regulation, administrative machinery and institutions have broken down and replaced by modern administration and state organs. These are yet to be popularly accepted by the tribal peoples, especially among

¹⁴³ Ibid

¹⁴⁴ Ole Sireku member of Council of Elders Kajiado

the elderly people who recognize and respect their traditional institutional and administrative set up. As a result of the ongoing transformation processes, much of the traditional knowledge and educational system is disappearing.

The Maasai community is increasingly coming under strain as a result of loss of traditional natural resources (land, water, and forestry), break up of traditional governance and institutional set up combined with inappropriate government policies towards the development of a sustainable pastoral development. Pastoralist's interest and needs have been largely ignored, overlooked and at times misinterpreted.

As a result of the breakup of the traditional occupation that form the basis of the pastoralists livelihoods, most of them are now seeking alternative employment opportunities. The emerging forms of employment among the Maasai people include farming, business (selling of traditional medicine, running of restaurants/shops, buying and selling of minerals, selling milk and milk products by women, embroideries), and wage employment (as security guards/ watchmen, waiters, tourist guides), and few others (who are educated) are engaged in the public and private sectors.

4.3 Climate change and Environmental degradation

Is degradation of the land due to pastoralist logic leading to the destruction of Maasai culture? Is it really a “tragedy of the commons”? Perhaps in part, but recently social scientists have entered the debate and have suggested that policies stemming from this thinking are the real tragedy in that they have brought many more problems to the Maasai in conflict management. Scientists today propose that these intervention strategies ignored the full ecological condition of the area and never took into account traditional Maasai cultural practices. Natural scientists today argue that these plans

never fully accounted for the instability present in these arid areas that are frequently prone to drought.¹⁴⁵

After consulting short term studies, plans were made to imitate Western style ranches which receive much more rainfall. The grasslands are unstable and thus livestock and population densities respond to the highly variable climate patterns. When the rains are strong, there is more pasture and an increase in population, but during times of drought grass, and subsequently population, decreases. Therefore, it is almost impossible to accurately measure the “carrying capacity” of this area and predict long term consequences of grazing on these grasslands. Furthermore, savanna grasslands are incredibly resilient to disturbance, which make some question whether there is even cause for concern.¹⁴⁶

Most agree that “Isolated areas of change are due to several causes, and pastoralist impacts are by no means the sole or even the main agents of change”. A case study looking at long-term changes in the buffer zones of the Serengeti-Mara Ecosystem (SME) completed by Homewood and colleagues demonstrates that pastoralism is not destructive to the land and does not pose a threat to wildlife. The Serengeti-Mara ecosystem (the Serengeti is in Tanzania and the Mara is in Kenya) is a wildlife park that has total exclusion of human land use; only tourism is allowed. The decline in wildlife and land can only be seen on the Kenyan side and thus is due to government policies regarding land use.¹⁴⁷ Dr. Mbatia¹⁴⁸ asserts that: ...contrary to widely held views, rapid land-cover change and wildlife decline are restricted to the

¹⁴⁵ Fratkin, E. (2007). Pastoralism: Governance and development issues. *Annual Review of Anthropology*, 26, 235-261.

¹⁴⁶ Ibid

¹⁴⁷ Homewood, K., & Rodgers, W. A. (2003). Pastoralism, conservation and the overgrazing controversy. In D. Anderson & R. Grove (Eds.), *Conservation in Africa, people, policies and practice* (pp. 111-128). Cambridge: Cambridge University Press.

¹⁴⁸ Mbatia Kenyatta University

Kenyan part of the system. Correlation and causal analyses demonstrate that major changes in land cover and primarily markets and national land tenure policies, rather than agro pastoral population growth drive wildebeest numbers. This has diverted efforts by the Maasai in management of conflicts.

Although agriculture or ranching may be able to support more people in the short run, these approaches cannot anticipate and prepare for drought years. While many experts believe strongly that the Maasai are not solely, or maybe not at all, responsible for land degradation, some even argue that pastoralism is the *only effective* way to live in East Africa's semi-arid and arid environments due to the prevalence of droughts and the unpredictable environment. According to Nasieku,¹⁴⁹ The Maasai strategy is viable in the long run because they are able to capitalize on good years and save up cattle for hard times ahead. In addition to the criticisms of intervention policies by natural scientists, social scientists blame the failure of these plans on the lack of knowledge of Maasai cultural traditions in two specific ways. First, traditional pastoralists actually do have systems in places that limit access to pasture. Second, was the failure to recognize the success of pastoralism as a subsistence strategy in the area compared to ranching and how difficult it would be to change the mindset on herding practices from those strategies used in pastoralism to the logic used in ranching.

Talbot explains: Livestock are a central part of the Maasai culture, not simply a product to be raised for sale. And the traditional pastoral practices, including the Maasai's propensity to increase livestock to the maximum limits of the rangeland, are

¹⁴⁹ Nasieku Community resident, Nairekia Engare, Narok

logical responses to the need to ensure survival in a difficult environment, especially under conditions of risk caused by the uncertain and variable rainfall¹⁵⁰.

Many contest that a communal tenure system practiced by the Maasai do control grazing by regulating access to users and sanctioning abusers, have mechanisms in place to conserve resources at certain times of the year to guard against mismanagement, and are more effective than privately owned land strategies. Although land and water resources are not privately “owned” by the Maasai, individuals or groups (especially educated or influential members of society) have “control” over land areas and especially over water points, which help to regulate use of the pastures. Mobility is essential to pastoralism in order to combat the seasonal variation in dry regions. Anything that restricts these mobility rights, such as intervention through ranching or installation of water points, and removes resources from collective use, contributes to or creates conflict management problems,¹⁵¹

4.3.1 Diminishing natural resources

Currently there is debate in Kenya, Tanzania, and the international community on how to utilize sections of East African land: should it be conserved for wildlife or used by citizens in their various subsistence strategies? This debate has been intensified by Kenya and Tanzania’s growth rates, which are both slightly above 2%. As the population increases, so does the competition for resources. This problem is further compounded by the fact that much land is already set-aside with no opportunity for cultivation, grazing, or settlement. Tanzania, for example, sets aside

¹⁵⁰ Talbot, L. M. (1986). Demographic factors in resource depletion and environmental degradation in East Africa rangeland. *Population and Development Review* 12 (3), 441-45

¹⁵¹ Ibid

25% of its land that is under government protection for conservation and excludes human use. For the Maasai this is especially detrimental.¹⁵²

Due to the nomadic element of their existence, Maasai population estimates vary, but most sources suggest the population growth rate is around percent, while one source gives an extremely high rate of 3.9 percent. Naturally as their population increases they will need more cattle to support themselves, which means they will also need more land, not only for the increase in number of cattle, but also to move their herds to when the dry season approaches. As the Maasai are pushed into smaller and smaller areas of land, their herds begin to decrease. Without enough land the cattle will die, and subsequently Maasai culture as well.¹⁵³

For a Maasai without cattle is like an Inuit without snow: it is such a distinctive part of their culture, that the two cannot be separated. While land availability to the Maasai in the future is uncertain, a theme in ecology has emerged which predicts dire times ahead for the Maasai: the tragedy of the commons. Hardin's article, "The Tragedy of the Commons" stresses the need to recognize that the earth and its natural resources are finite and, unless we want to greatly increase human misery, we need to find a way to limit population growth to zero. He believes that we mistakenly allow Adam Smith's "invisible hand" theory to guide our policy on freedom in reproduction. "The rebuttal to the invisible hand in population control is to be found in a scenario...we may well call it "the tragedy of the commons".¹⁵⁴

There is a positive utility of one with the increase of one cow and the negative consequence is less than one to the individual since the pasture is open to all, all share the consequence. Ole Sireku claims: ...the rational herdsman concludes that the only

¹⁵² Ndagala, D. K. (2002). Territory, pastoralists, and livestock: Resource control among the Kisongo Maasai. Uppsala, Sweden: Almqvist & Wiksell International.

¹⁵³ Ibid

¹⁵⁴ Ibid

sensible course for him to pursue is to add another animal to his herd. And another; and another...But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Hardin's theory capitalized on past assertions of the problems in with Maasai in conflict management also led many others to view their effect on land in the same way.

Under the pressures to which they are increasingly subject, pastoralists sometimes behave as if they regarded breeding stock, rather than the land and its vegetation, as their ultimate resource. This leads to an apparent disregard for the ecology of the plant communities on which the stock feed. Comparatively little attention may be paid to the performance of pastures under stress, to the requirements for successful germination or to the impact of selective grazing on the whole plant community.

One colonial rule that hit the Maasai hardest was the implementation of artificial boundaries and “reserves” which forced Maasai to graze within set limits in order to provide land to colonist farmers and ranchers and to preserve land for game parks. This proved disastrous because the Maasai could no longer graze near permanent water sources and ample grass, and they found it difficult to communicate with each other.¹⁵⁵

4.4 Conclusion

The social organization of the Maasai is based on clan system and age-set system and this is what informs and forms their social and traditional decision making and governance institutions and systems. Their continued interaction with nature/environment also has enabled them to establish skills and customary laws that ensure that natural resources are utilized in a sustainable manner.

¹⁵⁵ Ibid

The Maasai community has managed to overcome the strong currents of the Western cultural influence but now it is being faced by a lot of cultural erosion threats, cultural dispossessions, cultural and natural resources piracy. The Maasai community is responding to these threats and challenges through community owned organization, The Maasai Cultural Heritage.

The disintegration, assimilation and erosion of cultures particularly in Africa have transformed communities into spectators rather than rights holders. This position has further accelerated rapid loss of their social and traditional structures and as a consequence continued to disrupt their socio economic, cultural and political rights.

CHAPTER FIVE

CONCLUSIONS

5.0 Summary

Chapter one presented the background to the study, statement of research problem, objectives of the study, including the specific objectives, the justification of the study and the literature review, as well as the chapter outline. Chapter two presented an overview of ethics, norms and values, as well as looking into their theories. It also looked into the culture, conflict and conflict management. Chapter three provided a historical perspective of the Maasai community, looking into the cultural practices that have been applied as mechanisms for building peace, internally and externally, among the Maasai. It looked at the indigenous and ingenious methods applied by the community to manage the conflicts.

Chapter four provided the critical analysis of the Maasai conflict in the East African region. The subsection comprises of: Emerging issues, the non-applicability of western conflict building management theories to the Maasai conflict, the roles of ethics, norms and values in the Maasai culture and alternative dispute resolution (ADR). It also analyzed other issues that continue to impinge on the peaceful coexistence of the Maasai with their culture and the neighbouring communities. This chapter presents the summary of the study findings, conclusion and recommendations. The overall objective of the study was to examine the influence of ethics, values and norms on conflict management in the Maasai community. Specifically, the study identified the indigenous and ingenious ways Maasai deals with conflict management; the contribution of Maasai cultural ethics, norms and values to conflict management in the community; and analyzed and juxtaposed the findings to the international conflict management practices and academic prowess.

5.1 Key Findings

The study established that Maasai community greatly relies on traditional mechanisms of conflict resolution. The use of indigenous conflict management mechanism among the Maasai is founded on cultural ethics, norms and values in the community¹⁵⁶. Conflict among the Maasai has been the duty of spiritual and community elders. The Maasai community relies on their spiritual elder called *Laibon* for guidance on the matters that affect the community especially war against adversaries and natural calamities such as drought and disease outbreaks. Conflicts that arise at clan, village or family levels are addressed by an assembly of elders. The practice of traditional conflict resolution is facilitated by social organization of the Maasai community¹⁵⁷.

The social organization of the Maasai is based on clan system and age-set system. Land ownership, pastoral activities and communal activities are administered at clan levels. Duties and responsibilities in the community are delegated according to gender and age-set. This social organization plays an important role in conflict resolution because the organization informs social and traditional decision-making and governance institutions and systems within the community. Maasai's interaction with nature/environment has enabled them to establish skills and the elders satisfactorily address customary laws that ensure that natural resources are utilized in a sustainable manner and any convict that arises.

The study established that as a pastoralist community, the Maasai encounters conflicts such as cattle raids; pasture skirmishes, and water disputes. The Maasai

¹⁵⁶ Kiplagat B., (1998) "Is Mediation Alien to Africa?" *Track Tow*, vol. 7, no. 1. (Cape Town: Centre for Conflict Resolution).

¹⁵⁷ Saitoti, T. O. (1980). *Maasai*. New York: Harry N. Adams, Inc.

community experiences conflict over land ownership and utilization especially during droughts. Land conflicts often involve demarcation of boundary separating the two communities and the use of natural resource like water, salt licks and pasture that are based on collective use, ownership and management. During times of severe drought competition for these resources leads to competition at varying levels of scale and scope, with different clans sometimes coming into direct conflict with one another as they compete for pasture and other resources. The Maasai community also experience conflicts arising from ease of mobility in when access is denied to nomadic pastoralist looking for pasture, the proliferation of illegal firearms and family feuds¹⁵⁸.

The study found out that elders are the chief arbitrators in resolution of conflict within the Maasai community. Councils of Elders have been very instrumental in conflict resolution, applying traditional mechanisms to address conflict and its effects. The council of Maasai elders' function as a court with broad and flexible powers to interpret evidence, imposes judgments, and manages the process of reconciliation. The mediator leads and channels discussion of the problem. Parties typically do not address each other, eliminating direct confrontation. Interruptions are not allowed while parties state their case. Statements are followed by open deliberation which may integrate listening to and cross-examining witnesses, the free expression of grievances, caucusing with both groups, reliance on circumstantial evidence, visiting dispute scenes, seeking opinions and views of neighbors, reviewing past cases, holding private consultations, and considering solutions.

¹⁵⁸ Mburugu, K. & Hussein, M., 2001, Customary Institutions of Conflict Management among Pastoralist Communities Selected Bibliography 100in Kenya: The Case of the Turkana, Borana and Somali Communities, Oxfarm GB, Nairobi.

The process may be time-consuming and encourage broad discussion of aspects that may seem unrelated to the central problem, as the mediator tries to situate the conflict in the disputants' frame of reference and decide on an appropriate style and format of intervention. The elders or other traditional mediators use their judgment and position of moral ascendancy to find an accepted solution. Decisions may be based on consensus within the elders' council and may be rendered on the spot. Resolution may involve forgiveness and mutual formal release of the problem, and, if necessary, the arrangement of restitution¹⁵⁹.

The cross-clan peace meetings among the Maasai are preceded by a combination of sub-clan deliberations about grievances, issues and representation, and a series of cross-sub clan deliberations and consultations. Through this process perspectives are gathered, procedural steps are negotiated, and the basic parameters are set for moving toward solutions. The conflict resolution forums some time take the form of large, usually public meetings, which involve lengthy speeches and the extensive use of poetry. Throughout the process, elders prepare, moderate, listen, and often arbitrate procedural problems. The elders help formulate an eventual consensus of the clans.

As the elders explore the background of the conflict, the social situation of each individual or party is considered. This forms an impression of the interests and needs, aspirations and motivations of each party and allows the elders to understand more about the inner motives of the parties. As the talking proceeds, there is an openness to feedback or influence from the social surrounding, which may lead to modifications of perceptions or positions of the parties involved. The decision making process is

¹⁵⁹ Mkangi, K. 1997; *Indigenous Social Mechanisms of Conflict Resolution in Kenya: A contextualized paradigm for Examining Conflict in Africa*, University of Nairobi.

characterized by consideration of the social importance of conflict solving as social relations and internal solidarity are crucial.

Consensus seeking is the next important approach in a conflict management process among the Maasai. Every consensual outcome confirms the validity and value of the time-proven tradition of conflict management process among the Maasai. Consensus seeking creates confidence that such a jointly developed decision will prove to be effective and long lasting. Some of the agreements reached are then affirmed as a social contract in a ritual way. The affirmation can range from a handshake in public to an elaborate ceremony as required by tradition. The purpose of this is to spread the news about the satisfactory conclusion of the conflict resolution process. This also places an additional obligation on the parties to observe the agreement. The Maasai society plays an important role by assisting with implementing the agreement. From this stage, all the parties and the entire community can check whether the parties are really keeping to their commitment¹⁶⁰.

The indigenous approaches to conflict management by Maasai elders lay emphasis on both individuals and groups in the process of reconciliation. The elders defuse conflicts within and between societies. The elders perceive conflict as a communal concern and base the process of reconciliation on communal norms and customs. During reconciliation, the Maasai elders emphasize healing of emotional wounds created by conflict and rebuilding of social relationship.

¹⁶⁰ Mkutu K.(2001) Pastoralism and Conflict in the Horn of Africa, Africa Peace Forum, Saverworld, University of Bradford.

5.3 Recommendations

The study recommends the government should make it easy for the indigenous system to be incorporated into the contemporary conflict resolution system. People are familiar with what their culture dictates and therefore it is easier to come to grips with responsibilities that emanate from them. It is in this context that the customary courts with allowance for arbitration and substantially informal procedures that are less intimidating, and understood by the local people, work extremely well.

The study recommends that conflict resolution and peace building mechanisms should be based on principles cherished and internalized by a community, and should be contextualized to capture their collective knowledge and experiences. It is in this context that the principles of social cohesion, harmony, openness/transparency, participation, peaceful co-existence, respect, tolerance and humility, among others, are emphasized as core issues in indigenous conflict resolution.

The study recommends that a national Indigenous dispute resolution and conflict management network should be established in order to support local dispute resolution initiatives. Such a network could study and distribute information on best practice case studies, promote information sharing among Indigenous practitioners and provide links to services and practitioners with knowledge of local Indigenous needs.

The traditional indigenous dispute resolution processes should be recognized and supported subject to any constraints arising out of civil, criminal, human rights and equal opportunity laws and professional conduct requirements and other legal obligations. In the course of recognizing traditional processes there needs to be acknowledgement of the importance of local differences.

Government agencies and policy makers need to respect and allow the development by Indigenous people of new Indigenous-specific dispute resolution and conflict management services. The role of mainstream agencies and policy makers should also extend to providing encouragement and support.

Mainstream dispute resolution agencies should also address the barriers that affect the effectiveness of their services for Indigenous people and modify their practices to take account of Indigenous needs.

This study established that conflict among the Maasai has been the duty of spiritual and community elders. Councils of Elders have been very instrumental in conflict resolution, applying traditional mechanisms to address conflict and its effects. The council of Maasai elders' function as a court with broad and flexible powers to interpret evidence, imposes judgments, and manages the process of reconciliation. However, there no clear defined roles for women in the council of elders in conflict management within the Maasai community, thus, the need for further study on the role of women in dispute resolution and conflict management in Maasai Community. Further research is recommended in other communities whose cultural values, ethics and norms are different from those of the Maasai community. This will seek to establish if the different ethnic communities applies similar or different dispute resolution approaches.

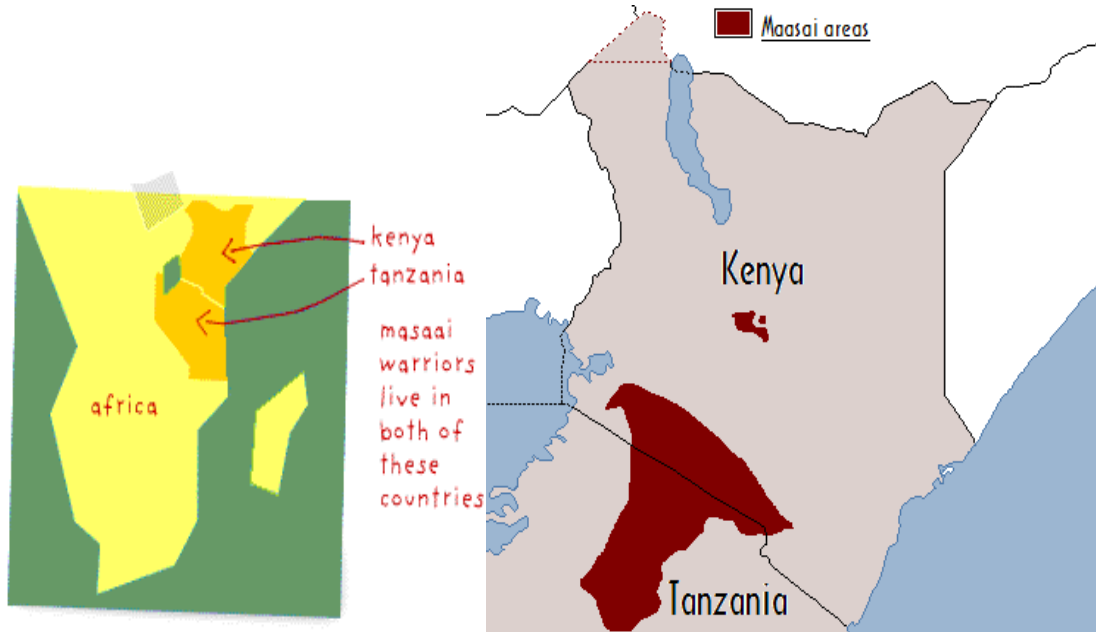
The study recommends development of a hand book on traditional dispute resolution mechanisms that will be useful for teaching, research and practical application of international conflict management. The Maasai land should be left intact, and community trust lands. Where their land has been taken over by tourism and cities, there should be special tax reprieves or community funds established.

Appendix I: Glossary of Terms

- *Boma* – the homestead that consists of huts constructed from wood and grass and situated within an area that is fenced with thorny branches for protection from predators. The male head of the family occupies one of the dwellings and each wife with her children occupies separate huts. The huts have mud floors and a central fire for cooking and warmth. There is no ventilation except for the entrance. Goatskins and cowhide are used for lying on and for covering. There are further enclosures within the ‘boma’ for livestock that are herded back at dusk from the day’s grazing.
- *Engop* – a generic word to portray the world of Maasai that includes the socioeconomic structure of the tribe, the belief system, rituals, dress and eating habits.
- *Illkarash* –the style of dress and traditional garments worn by the Maasai
- *Maa* -the indigenous language of the Maasai that is taught through the spoken and not the written word.
- *Morani* – the young warriors who have made the transition from boyhood into young adulthood through the practice of circumcision. Traditionally the morani have been associated with fighting abilities to ward off attacks from rival tribes or dangers from wildlife. Many morani still wear the knife in a beaded leather sheath as a symbol of strength of ‘the warrior’.
- *Oliboini*- the most revered male in the Maasai community who is sought for advice. He is thought of more as a prophet than a healer.

Appendix II: Maps of the Maasai region of East Africa

Courtesy of Google Inc.



SEATTLE P-1

Appendix III : Interview Guide for the Key informants

This interview guide assess the ethics, values and norms in explaining conflict management in the maasai community, 2009-2012

1. What are some of the ethics that govern the Maasai community?, How do they influence in conflict management within the community?
2. Which are some of the cultural values that define the social structure among the Maasai Community? How do these values affect the process of conflict management within the Maasai community
3. Norms are obligations, permissions and prohibitions associated with a particular society or members of a society. Explain some of the norms associated with the Maasai community?. What role do these norms play in the process of conflict management within the Maasai community
4. What role do the Maasai community leaders and elders play in conflict management
5. Explain the process of Dispute Resolution in Conflict management among the Maasai community
6. Explain the modern process of Conflict management
7. How is the modern process of Conflict management different from the one adopted by the Maasai community
8. Is the Dispute Resolution in Conflict management among the Maasai community effective? Explain
9. What are some of the challenges encountered during dipute resolution among the Maasai community? Cite some of the solutions to the challenges

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