THE IMPACT OF COLONIALISM ON THE INDIGENOUS CONFLICT RESOLUTION STRATEGIES AMONG THE KIPSIGIS AND THE ABAGUSII OF KENYA 1905- 1963

OGERO WILFRED JOSECK

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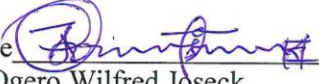
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DECLARATION AND RECOMMENDATIONS

Declaration

This research thesis is my original work and has not been previously submitted to award of a diploma or a degree in this university or any other learning institution.

Signature_____   Date 12/09/2022

Ogero Wilfred Joseck
AM14/14075/2013

Recommendations

This research thesis has been examined, passed and submitted with our approval as University supervisors.

Signature_____   Date 12/09/2022

Dr. Martha W. Muraya, PhD
Chuka University.

Signature_____   Date 20/09/2022

Dr. Dynesius Nyangau, PhD
Chuka University.

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DEDICATION

I dedicate this valuable work to my parents, my wife and my sons: Collins, Alvin and Liam for their understanding, support and love in the course of this journey.

ACKNOWLEDGEMENT.

ABSTRACT

The colonial-led strategies greatly impacted the Indigenous Conflict Resolution strategies by undermining the crucial role of the informal conflict resolution strategies among the Kipsigis and the Abagusii communities. Thus, the purpose of the study was to examine how colonial-led conflict resolution strategies changed and impacted on the traditional conflict resolution strategies among the Kipsigis and the Abagusii from 1905- 1963. The research was guided by the following objectives: To analyze the Kipsigis and the Abagusii indigenous conflict resolution strategies. To examine the conflict resolution changes that were introduced by the European colonialists and their impact on the existing indigenous conflict resolution among the Kipsigis and the Abagusii. To evaluate the success of the resultant hybrid conflict resolution strategy among the Kipsigis and the Abagusii by 1963. The study employed the Structural Functionalism theory and Articulation of Modes of Production theories. The study used a descriptive research design. The study was conducted in the former North Mugirango and Sotik colonial border. The sample size for the study was based on the concept of data saturation which was achieved through the use of interviews. The main source of information was primary data; Oral and archival data. The information from oral interview was analyzed thematically and then presented using simple tables, frequencies and percentages. The study established that the pre-colonial communities of the Abagusii and the Kipsigis had their elaborate Indigenous Conflict Resolution strategies that were used in resolving inter-ethnic conflicts. In addition, the colonial-led strategies undermined the use of indigenous conflict resolution strategies due to the introduction of new strategies like courts, police, colonial chiefs and headmen, the use of the bible in place of African oaths, and the elimination of some indigenous social institutions like *Laibonism* and e*bisarate*. Majority of the respondents argued that the introduction of colonial-led strategies ended up creating two centres of conflict resolution which in long run greatly reduced the influence of the existing indigenous conflict resolution mechanisms. The colonial need for forced labor led them to introduce economic policies like the hut tax that ended up in the demolition of Abagusii *ebisarate* a situation that impacted their social life negatively as such increased conflicts. Finally, the colonial-led strategies marginalized the Indigenous conflict resolution strategies. The study recommends that a well-structured the hybrid conflict resolution would have served to settle the Kipsigis and Abagusii conflict. As well the government should work closely with the Indigenous conflict resolution institutions so as to maximize their support in conflict resolution cycles. The government should develop a framework that will support and creation of working elders' courts in each ethnic community. This endeavour will help to utilise this important institution for conflict resolution so as to reduce backlog of cases in courts that will be otherwise be resolved by elders.

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LIST OF ABBREVIATIONS

AU -	African Union
CEWARN-	Conflict Early Warning and Response Mechanism Unit
CoE-	Council of Elders
DC-	District Commissioner.
EABL-	East African Bureau of Literature
FA-	Field Assistance
ICR-	Indigenous Conflict Resolution
ICRM-	Indigenous Conflict Resolution Mechanisms
ICRs-	Indigenous Conflict Resolution strategies
ITDGEEA-	Intermediate Technology Development Group- East Africa
KER-	Kericho
KNA-	Kenya National Archive
KNBS-	Kenya National Bureau of Statistics
KSI-	Kisii
O.I –	Oral Interview MS-Microsoft
UN-	United Nations
WCRP-	Western Conflict Resolution Perspective

GLOSSARY

GLOSSARY	
Abamura	Young energetic initiated men
Abanyamato abaibi	Kipsigis people who were thieves
Abakumi	Senior traditional elders
Abagaka be gesaku	Clan elders
Amasagisa oath	Sharing oath
Amaumutia	Month of May
Alamalyet	An angel
Amarimu	Being in a state of confusion
Ebisarate	Abagusii cattle villages
Ebiranya	Traditional medicine
Boisek ab Kokwet	Village elders
Chinsaga	Spider flower
Chinsoni	Abagusii code of conduct
Egetamo	Month of March
Ekiage	Traditional granary
Emuma	An oath
Enguba	Traditional shield
Entago	White clay
Embiro	Soot
Etureti	Sub-clan elders
Guurti	Council of elders
Gosobindet	A name Kipsigis used to refer to Abagusii people
Kabianga	When things don't work
Kiptamo	Month of March
Kobakundeka	To bind somebody using traditional ways
Kotigonet	Advices
Kiruogik	Chiefs
Kwoket	Kipsigis council of elders
Mamut	Month of May
Maotik	Prophets
Mastamet	Elderly man
Murenik	Kipsigis warriors
Mumek	An oath
Omorominta	Murder
Omotembe	Erythrina Abissica
Orwaki	Abagusii traditional forts
Rumindet	Murder

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Conflicts have been part and parcel of human history. Fisher (2000) points out that everyday interaction can be a source of conflicts ranging from family, ethnic, interpersonal, international, regional, national, and intrastate. In most cases, conflicts occur because of the pursuance of incompatible goals and interests. Contrary to common thinking the occurrence of a conflict does not always result in an adverse impact. The development of a conflict can be positive, with social benefits in the long run. Car-Hall and Peart (2005) have revealed that the development of a conflict can lead to a better reorganization of society peculiarly. This solemnly depends on the power of violence to change peoples' behavior to suit the resultant re-organized society through preceding their immediate goals. De wall and Waal (1996) observed that the conflicts between the Garre and Murulle in 1980 and 2005 in Mandera were transformed into cooperation. After the conflict, these two communities started grazing together and sharing water boreholes, which was previously impossible. This cooperation was later manifested in politics and trade.

Thomas (2010) opines that the outbreak of conflict can result in economic, social, political, and cultural effects. Conflicts can negatively affect economic productivity, render the provision of otherwise essential services inaccessible, lead to the destruction of resources, and scare the investors leading to capital flight. In the light of the above adverse effects associated with the outbreak of ethnic conflicts, various conflict resolution actors have directed their energies in developing strategies to see these conflicts prevented, mediated, or resolved. The need for peace for every human being is paramount because this will go a long way to counter the adverse effects of the conflict (Corps, 2013). In the same breath, Bukari (2013) avers that the heavy task facing human beings is not the development of disputes as per se but the peaceful settlement of these conflicts. Any effort directed towards conflict resolution is crucial in creating a conducive environment that favors both the survival of humanity and the economic development of a given locality.

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Conflict prevention and resolution have been and are still the primary concern of humanity. This is guided by the principle that peaceful co-existence among the communities is not a choice but a necessity. This then calls for the proper resolution of conflicts from local levels to international realms to save the world from insecurity and necessitate conditions complimentary for development. Faced with this fact, various stakeholders ranging from global, regional, state, and non-state organizations have pursued this noble venture. Alula and Gatachew (2008) point out that proper resolution of conflicts in any society is crucial for peaceful co-existence, and such an undertaking is worth pursuing. Such endeavors are geared towards attaining an environment that can support human survival and the development of humanity in all spheres of life. The strategies meant to resolve conflicts can be referred to as conflict resolution.

In Kenya, there have been two broad conflict resolution strategies utilized to resolve conflicts. The indigenous/informal and the western/formal strategies though each has its strengths and weakness in terms of its application. The informal approach is founded on a given society's customs and cultural values, where local actors like the elders, religious leaders, the family, and the chiefs have been useful in resolving conflicts. In contrast, the formal mechanism utilizes institutions such as courts and police to administer justice. The British colonialists introduced this strategy in Kenya during the colonial period. These two strategies are founded on distinct cultures; therefore, their application should be guided by the same principle. The actors involved in conflict resolution must employ creative and innovative approaches to prevent, resolve, and transform conflicts to avoid intensification to uncontrolled levels that will interfere with the social fabric.

Indigenous conflict resolution systems play a critical role at the grass root level in resolving conflicts, where elders performed a crucial task of resolving conflicts among various communities. For a long time, this institution was used to procure peace by resolving interethnic conflict leading to these communities coexisting peacefully. The development of disputes in a society is as old as the societies themselves. This necessitated that every organization devises various mechanisms unique to that society to help them eliminate or control these conflicts. On the same note, there arises a need for every government to establish multiple mechanisms for conflict resolution that are

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geared towards ensuring security for all its citizens through maintenance of law and order through different organs tasked with this responsibility.

Apiyo (2014) reported that the indigenous strategies of conflict resolution application have been applied in highly organized Western countries like Italy, Denmark, and Germany, and Asian nations like Southern Korea, Singapore, and Malaysia. Yet its application in Africa has decreased. The study of Chepkoiywo (2010), has observed that indigenous conflict resolution mechanisms have been applied in India led by *Panchayat, Jirga* in Afghanistan, and mediation committees in China. Gaston *et al.* (2013) gives an example, of Afghanistan, where many of the disputes are settled through informal strategies outside the formal system. On the same note, in Italy, indigenous methods like mediation and negotiations were employed to resolve livestock-related conflicts, especially on Ardinian Island.

On the other hand, Wojkowska (2007) argues that the developing world has not been left behind when it comes to applying the Indigenous Justice system. Some African countries that have embraced this process include South Africa, Nigeria, Somalia, and Kenya. For instance, in Malawi, only 10 to 20 % of all disputes are taken to the corridors of justice, pointing out that about 80 to 90% of conflicts are resolved using indigenous mechanisms. In Bangladesh, between 60 to 70% of disputes were resolved using traditional justice mechanisms, while among the Burundians, only 20% of disputes are formal, leaving 80% solved through standard Justice Mechanisms. Watson (2002) and Edosa *et al.* (2007) observe that the Abba Gadda is an informal dispute institution in Ethiopia among the Borana and the Oromo societies that have been at the forefront in resolving disputes relating to natural resources. Gang (2011) notes that in Sierra Leone, the preference for informal justice mechanisms is high as compared to formal due to high cost and time usage.

On the other hand, Kirby (2006) has observed that formal strategies for conflict resolution failed in Ghana, especially courts. In the same breath, Agyeman (2008) argues that applying formal strategies to another culture can prove futile. This is based on the lack of knowledgeability of the local roots and dynamics, which make their outcome myopic. It's worth to note that, cultural dynamic and the type of the conflict

form some of the main ingredients that determines the approach to be utilized in resolving the conflict. This is founded on the fact that for effective resolution of any conflict the conflict actors must gain an understanding of the dynamics of the conflict. Baldwin (1962) argues that various conflict resolution and resolution strategies have been employed, especially in Africa, to resolve interethnic conflicts. Unfortunately, these strategies did not result in an atmosphere of peace, stability, security, and inter-ethnic co-existence in Africa.

On the same note, Mc Onyango (1995) observes that one of the reasons for persistent inter-ethnic conflicts in Africa is the use of top-bottom approach. This approach, according to him, does not address the origin of the causes, but instead, the actors do concentrate their energies on managing the symptoms. This then cultivates an environment that is conducive to socio-economic and political scores among the various tribes. Conflict resolution in society is significantly depended on whether the communities own the strategies (Mwaniki, 2007). This work demonstrates an excellent preference for using the traditional justice system in managing conflicts, showing its importance in resolving disputes.

Nan (2013) observes that conflict resolution strategies have evolved. This has resulted in a multidimensional approach to resolving conflict, the techniques ranging from Track-One, Track-One and Half, and Track Two to Multi-Track diplomacies. According to the Nan, adoption of such strategies largely depends on several factors. On the same ground, Wallensteen (2002) observed that Darfur resolution of conflicts in Sudan show a multidimensional approach where the government functionaries and the UN worked to resolve the dispute. Where this approach heavily borrowed from indigenous mechanisms of solving disputes.

In Kenya before the arrival of the British colonialist and even during colonial period traditional conflict resolution strategies were employed by communities to fix various conflicts. The Samburu, the Pokot, Marakwet, and the Pokot have resolved their conflicts through elders (Pkaya, 2004). On the same point, Kariuki (2015) observes that among the Agyriama in the Coast region, the *Kaya* and *Kambi* were used to resettle land disputes. The latter was a private entity that helped determine if one was guilty or

not. Mburugu and Macharia (2016) work show that the Njuri Ncheke social institution among the Ameru has been at the forefront in resolving the boundary conflicts at the local and family level.

The coming and eventual colonization of the Kipsigis and the Abagusii in early 1900 led to the introduction of formal strategies that were largely alien to the African communities. These strategies were assumed by then to offer a perpetual solution to the Kipsigis and the Abagusii conflict. Omwoyo (2000) argues that strategies like: depastoralization, paying taxes, paying individual and collective fines, colonial police to patrol and arrest cattle raiders, sentencing culprits in courts, police levies, and using chiefs to resolve the conflicts. Unfortunately such measures employed during the colonial period proved futile. This was directly opposite of the colonial expectations. However, previous researchers have not discussed how the introduction of colonial-led techniques undermined the Indigenous strategies of conflict resolution leading to the persistence of the conflict.

Kirby (2006) observes that the use of a formal approach to conflict resolution had failed in the Northern part of Ghana, especially for those individuals who sought the court process. This is in line with the case of the Kipsigis and the Abagusii conflict resolution. This, therefore, necessitate a study to investigate the colonial-led resolution strategies and how they affected the informal conflict resolution strategies and then suggest a resultant conflict strategy that would have been used to resolve the conflict by the end of the colonial period.

1.2 Statement of the Problem

Inter-ethnic conflict can be a great stumbling block to the development and survival of human beings in a society. Conflicts have resulted to the loss of many lives, enormous property destruction, fear, insecurity, instability, and other social evils witnessed. In the traditional setup, the Kipsigis and the Abagusii communities were faced with an inter-ethnic conflict. These communities came up with various indigenous strategies to resolve their conflict and as such, these strategies had proved effective in controlling the conflict to manageable levels. Furthermore, during the colonial period, the British colonialists introduced new conflict resolution changes that were western oriented in

determining the conflict between the two communities. However, the colonial-led conflict resolution changes resulted to the persistence of conflict between the two communities throughout the study period. This necessitates study to assess how the introduction of colonial-led conflict resolution strategies affected the indigenous conflict resolution strategies of the two communities further establish how successive was the resultant conflict resolution strategy by the end of the study.

1.3 Purpose of the Study

The study examined the impact of colonial-led conflict resolution strategies on the indigenous conflict resolution strategies among the Kipsigis and the Abagusii 1905-1963.

1.4 Objectives of the Study

i. To analyze the Kipsigis and the Abagusii indigenous conflict resolution strategies.

ii. To assess the impact of colonial conflict resolution strategies on the existing indigenous conflict resolution among the Kipsigis and the Abagusii from 1905 to 1963.

iii. To evaluate the success of the resultant hybrid conflict resolution strategies among the Kipsigis and the Abagusii by 1963.

1.5 Research Question

The research was guided by the following research questions.

i. What were the indigenous conflict resolution strategies that the communities of the Kipsigis and the Abagusii communities used up to 1963?

ii. What were the impacts of colonial conflict resolution strategies on indigenous conflict resolution strategies from 1905 to 1963?

iii. What was the success of the resultant hybrid conflict resolution strategies among the Kipsigis and the Abagusii by 1963?

1.6 Significance of the Study

The Kipsigis and the Abagusii conflict have received growing attention from researchers leading to various publications. However, many of these studies have predominantly majored in the causes, effects, peace-building strategies, historical interactions, and militarism among the Kipsigis and the Abagusii conflict. None of them has researched how colonial-led conflict resolution strategies impacted on the indigenous conflict resolution among the Kipsigis and the Abagusii, an area this research would delve into.

This study contributes to the body of knowledge on the political historiography of the two communities, especially on conflict resolution strategies that have been used to resolve their conflict, thereby contributing to the field of peace studies. Academically, the study contributes new knowledge that is valuable in formulating conflict containment measures and pointed out new areas for further research. The study as well seeks to develop more data and information that is useful for conflict resolution.

The outcome of this study makes it clear that policymakers in government need understanding of the role of Indigenous institutions conflict resolution can perform. In the light of this understanding, the government should then formulate relevant and improved measures that can be used to address inter-ethnic conflicts. In the same breath, there is need to empower the elders so that they can help in resettling disputes and avoid overburdening the courts.

The study is not only crucial to the public but as well to private practitioners. The county governments can utilize the study findings to develop improved conflict resolution strategies that will go a long way in strengthening relationships among various communities. On the other hand, the private sector can use the study's outcomes as a yardstick to device policies, regulations, and procedures to help resolve conflicts in organizations. The UN and other linked bodies can use the resultant research findings to understand some of the best strategies for conflict resolution.

There can be no meaningful economic development that can be realized in a society where there is no peace. For the realization of Sustainable Development Goal sixteen

which promotes peaceful and inconclusive societies for sustainable development. There is a dire need for the government to embrace a hybrid conflict resolution strategy.

1.7 Scope of the Study

The study focused on the historical analysis of the strategies used to resolve the Kipsigis and the Abagusii conflict in the traditional setup and during the colonial period 1905-1963. The year 1905 provides a good start for this research as it marks the beginning of the first strategy the colonial government used on these communities. The British colonial government used the first-ever punitive expedition sent in July among the Kipsigis and in September 1905 among the Abagusii. These expeditions were meant to achieve the colonial government strategy of de-pastoralization of the two communities. After this expedition these communities realized that their conflict was under check by the British colonial government. However, the study included the period before 1905 simply because the indigenous conflict resolution strategies were passed from one generation to another. As well information the period prior to 1905 will serve to lay the background for showing the indigenous resolution strategies so as to show how they were impacted by the colonial-led conflict resolution strategies. The year 1963 marks the end of the study because it was the year the reign of colonial government came to an end. The year 1963 marks the end of the survey; because it was the year, the reign of colonial government came to an end.

The study was carried along the Sotik-borabu border. The colonial border was strategic to the study because they have served as a battlefield for many years and communities live along the boundary have been worst hit by the of the two communities conflict.

1.8 Limitations of the Study

The study faced some limitations, mainly because most of the respondents who were interviewed were elderly and as such they had to be handled with a lot of care. Because of their age, varied experiences, and memory challenges they may have not exhausted all the desired information on community history. This pointed out that some respondents might have given inadequate information. To this end, the available historical records were fully corroborated to provide all the required information. However, the knowledge gained was able to assist shedding more light on the topic

under study, while other information from existing data, especially the archival data, was useful in supplementing this. The researcher faced language barrier, especially from the Kipsigis community, though the researcher sought for research assistant from the community to help in this area. The study being security issue some respondents seemed to be suspicious of the information they provided. However, all respondents were assured that their information would be safeguarded with a lot of confidentiality. The questions were phrased in a tone that was not judgmental to ensure that the respondents were comfortable.

1.9 Assumptions of the Study

i.   There were existing indigenous conflict resolution strategies that resolved the inter-ethnic conflicts between the Kipsigis and the Abagusii.

ii. The introduction of colonial conflict resolution strategies impacted on the existing indigenous conflict resolution strategies leading to the persistence of the conflict.

iii. There existed a hybrid conflict resolution strategy between the Kipsigis and the Abagusii by 1963.

1.10 Operational Definitions of Terms

Abagusii: Refers to people who live in the highlands south of the Nyanza region; they are the neighbors to the Kipsigis and they practiced mixed farming.

Colonial Conflict Resolution Strategy: These were new changes that the colonial government used so as resolve the Kipsigis and the Abagusii conflict that was non-African in nature and they were detested by Africans.

Colonialism: It was the period when the white man had a total control of social, political and economical the Kipsigis and the Abagusii.

Conflict: Conflict refers to the lack of peace between the Kipsigis and the Abagusii communities.

British Colonialist: Refers to both the missionaries and the British colonial government officials and any appointed person by the colonial government and working on behalf of the colonial government.

Indigenous Conflict Resolution Mechanisms: These were traditional/ community founded ways and means the Kipsigis and the Abagusii came up with to help them resolve the conflicts they faced.

Inter-ethnic Conflict: Refers to lack of cooperation between the Kipsigis and the Abagusii that resulted in fighting or strained relationships.

Kipsigis: An African community which reside in the Rift Valley region and practice nomadic pastoralism; they share a boundary with the Abagusii.

Strategy: Denotes purely traditional or colonial-led
                                             method that colonial or the communities of
                                             the Kipsigis and the Abagusii employed to
                                             resolve their conflicts.

CHAPTER TWO
LITERATURE REVIEW

2.1 Introduction

The chapter explored related literature on the topic under study. Therefore, the literature that was reviewed delved into the analysis of indigenous conflict resolution strategies, and European colonialist's strategies that were used to resolve the Kipsigis, and the Abagusii conflict. Then look at the asses the success of the resultant hybrid conflict resolution strategies that were employed to resolve the conflict.

2.2 The Indigenous Conflict Resolution Strategies

Apiyo (2014) argues that the application of the Indigenous conflict resolution therein otherwise known as ICR has been applied in highly organized Western countries like Italy, Denmark, Germany, Asian nations like Southern Korea, Singapore, and Malaysia. Still, regrettably, it's application in Africa has decreased. Some African countries that have embraced this process include South Africa, Nigeria, Somalia, and Kenya. The use of ICR has been instrumental in finding solutions under traditional mechanisms' guidance in Afghanistan (Gaston *et al*, 2013). In Italy, ICR has helped resolve livestock-related disputes through mediation, and negotiation. However, the authors have not looked at some of the success of the resultant conflict strategy area this study will undertake while looking at the Kipsigis and the Abagusii conflict.

Chumo (2017) argues that community-led strategies are used where other mechanisms of bringing social order have failed. They helped to deal with disputes related to cattle raids, and grazing rights. These mechanisms are headed by senior members in the community who are assumed to possess cultural knowledge, and wisdom. Ingelaere (2008) observed that Rwanda's *Gacaca* courts were traditional conflict resolution mechanisms that helped to handle the perpetrators of genocide. They were later institutionalized in the country's legal justice. The two authors' work is crucial in showing how indigenous conflict resolution mechanisms were instrumental in ensuring peace prevailed among the warring communities. However, the two studies have not demonstrated how formal strategies can interfere with informal approaches. A gap this study is meant to undertake is to assess the indigenous obstacles mechanisms

encountered that made them not resolve the Kipsigis and the Abagusii conflicts leading to the persistence of the war.

Oruwari (2006) revealed that in the Niger Delta region, conflicts resulted from the non-effectiveness of the indigenous institutions such as elders and chiefs. Instead of resolving the disputes among the communities in this region, these institutions found themselves in the middle of the crisis, where they ended up becoming the victims of the conflict. This points out that the continued conflict in this region resulted from the inability of the informal institutions to resolve the dispute, leading to the whole area plunging into disputes. However, the researcher has not discussed how the indigenous institutions contributed to the persistence of the conflicts in the region, a place this study has covered while looking at the contribution of the indigenous institutions to the persistence of the Kipsigis, and Abagusii conflict.

Chapman and Kagaha (2009) have shown that a council of elders successfully solved the interethnic conflict among the Karamojong, and Teso communities. These elders were crucial in ensuring social order-controlled community violations through negotiation, and compensation. Pkaya *et al.* (2004) revealed that the conflict among the Samburu, Marakwhet Pokot, and the Turkana, has been in most cases resolved by a council of elders. These elders have employed mediation, arbitration, dialogue, negotiation, and signing of peace agreements. This arrangement resolved interethnic conflicts related to cattle raids, and competition over grazing areas, thereby leaving these communities peacefully coexisting with each other. However, this study was carried out among the Pokot, the Samburu, the Turkana and the Marakwet. In contrast, this study will cover the Kipsigis, and the Abagusii. In addition the two authors did not cover the process that the ICR used to resolve the conflict, an area this study will cover.

Kariuki (2015) observed that the Agiriama community at the coast region had institutions tasked with resolving conflicts like land disputes. One of these institutions was a council of elders (*Kaya*) and the Oracle. There were different elders with distinct functions to ensure that all parties in conflict would get justice without partiality. However, the author has only discussed how the council of elders helped resolve disputes without informing us of other indigenous social institutions that are also

crucial in conflict resolution. An area this study will cover by looking at the contribution of other institutions in resolving the Kipsigis and the Abagusii conflict.

Traditional justice system was crucial in resolving disputes among the Kipsigis society (Sergon, 2016). The results from the study showed that without access to justice, especially through the indigenous justice system, the attainment of social justice as conceived in the constitution cannot be realized. The author in this case emphasized the importance of supporting the application if indigenous justice systems in Kenya. He further proposed for the independence of the informal institutions, and insisted that the formal institutions like courts to support the development of the customary law, and traditional justice systems through what he called a supervisory role. The study concluded that there was a need to document the all proceedings of the indigenous systems so as to assist the formal systems in investigating their decisions. However, the study did not discuss how formal institutions interference to informal can hinder their operations, an area this research will delve into.

2.3 The European-led Colonial Strategies'

Byrne (1997) revealed that the British colonial policy of divide, and rule dated to the twelfth century in Ireland, and Canada. The main aim was to ensure that the majority divided for easy rule and administration. The colonial powers used divisive factors such as buffer groups to achieve their motive (Horne, 2018). However, the two authors have not demonstrated how the policy was created and continued to further African conflicts. Consequently, it became a challenge to the peace-building process, an area this study covers concerning Kipsigis, and Abagusii conflict.

According to Macfarlane (2006), the outbreak of conflicts in Africa can be blamed mainly on use of the formal justice system. This is because the traditional approach to African conflicts had its origin in the societies that utilized them. This made the application of the legal system to African communities look alien as the system did not consider the culture of the Africans upon which some of the conflicts formed the bedrock. This finally made this system ineffective in handling some of the African conflicts leading to the transformation of these conflicts to uncontrolled heights. This work is valuable though it's too general it will guide my study that is specifically

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addressing how British colonial-led strategies impacted on the Kipsigis, and the Abagusii ICRs.

Kungu (2015) observes that legitimacy is the main hindrance to the state's weakness. According to the author, the state's inability does not spring from its law enforcement institutions, and structure but people's perception and legitimacy. The author points out that, people consider themselves members of a sub-national, pre-state, society entity (tribe, village) to the state as foreign or an external force. This perception can sow the seeds of (dis)loyal against the state. People are mainly devoted to their group, leaders of a particular group, and not with the condition. Such a perception can negatively affect the policies that a state develops so as to govern, and control people. Its on this ground that this study endeavored to investigate whether or not the Kipsigis, and the Abagusii perception of the colonial government, and its application of various policies resulted to the vicious cycle of the conflict.

Kirby (2006) posits that the influence of formal resolution mechanisms in the Northern part of Ghana were not fruitful. A good number of parties in conflict, and had sought the court process had opted to seek the help of Non-Governmental Organization to resolve their problems. However, such organizations were unable to resolve their conflict due to a lack of understanding of the root cause of their problems. He further concludes that local conflicts can be resolved after understanding their relationship with the culture under which they are founded rather than adopting formal systems that are not familiar with African traditions, and contexts of the conflicts that take place locally. While this valuable work guided this study, the current study to investigate how then the adoption of British colonial-led strategies led to the conflict persistence throughout the colonial period.

Ndima (2013) argues that the establishment of colonialism, and capitalism in Kenya led to formal legal mechanisms that significantly undermined the application of traditional dispute resolution mechanisms. Tamang (2015) additionally argues that this system originated in the European worldview founded on retributive philosophy that rides on hierarchical, codified laws, procedures, and punitive. This system endeavored to punish the offender for satisfying the victim. In most cases, this system brought a

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clash of cultures. As far as punishing the wrongdoers was a concern. The Africans had their method of solving conflicts based on the African customary an opposite of the Western way of administering justice to the victims. Thus, applying the Western way of solving disputes by the colonial government proved futile, especially in controlling, and managing the Kipsigis, and Abagusii conflict. Therefore, the study sought to understand, the change of perception in terms punishing the wrong doers, how it impacted on the African indigenous conflict resolution strategies.

Martin (1982) contends that the reign of colonialism was characterized by economic and political domination in Africa. The French colonial administration policies were meant to assimilate Africans though cultural differences significantly became a hindrance. On the other hand, the British use of indirect rule significantly antagonized already divided communities by aligning them as collaborators or resistors. This work is relevant to this study. However, the author did not demonstrate how the colonial administrative policies of the British contributed to ethnic conflict in an area. This study will closely examine some colonial-led policies affected the ICRs strategies among the Kipsigis and the Abagusii conflict.

Obioha (2008) argues that most African countries have developed a keen interest in resolving ethnic conflicts by developing various ways of managing these conflicts, giving Nigeria as an example. However, according to the scholar, the techniques used resulted in minimum results. The battles have been mitigated for a short while, giving them a chance to evolve to another level. Obioha further asserts that it is paramount to devise strategies that can bring long-term results. However, he did not cover why the above techniques never resolved the conflicts. Therefore, this study will bridge this gap by examining why the colonial strategies for managing inter-ethnic conflicts between the Kipsigis, and the Abagusii failed.

Pettigrew and Tropp (2011), while writing on the dynamics of inter-group contact, observed that when the instruments of the state are not up to the task of ensuring that legitimate authority, and laws are not followed, then an opportunity arises for people to engage in crimes. However, this does not show how the weakness of state instruments contributed to acts of impunity. This gap will be bridged by looking at

whether the colonial government's agencies like police were inadequate in their operation, an issue that would have contributed to the persistence of the Kipsigis, and Abagusii conflict.

Nyange (2017) opines that the efforts of the third party were crucial in creating a conducive environment that led the government and the Sudan Peoples' Liberation movement to be invited to Naivasha for negotiations. Before this, a national dialogue of Sudan resulted to the reconstruction of the South Sudanese state by creating a new social contract between the people, and the state. This included the post-conflict repatriation, resettlement of the displaced individuals, establishing a clear functional military, and establishing the interim government based on truth, and reconciliation. This work indicates a conflict can be resolved, depending on the motives of the actors. While this study guides my research, my work will look at the actors' contribution in resolving the Kipsigis, and the Abagusii conflict.

Lokiyo (2014) while discussing the mitigation measures on the Turkana, and Pokot conflict, by the colonial and post-colonial government strategies that they employed. The colonial government did not achieve many benefits from its strategy of anti-pastoral policy. On the other hand, either the post-colonial government, the researcher notes that the people of Kacheliba were unhappy with the uneven disarmament exercise and the acts of inhumanity that the Pokot received during this period. As a result, this endeavor negatively impacted the Pokot, and later in the short period, they were attacked by the enemies for cattle and many fatalities were recorded. It's alleged that the security personnel greatly benefited from the conflict. The author faults these strategies as they did not bear maximum fruit's as far as the search for peace between the Turkana, and the Pokot was concerned. While this work serves as a guide to this study, however, the author has not discussed why the colonial anti-pastoral policy failed, and what the government did to the rogue officers that were not working to achieve the government goal, a gap this work will fill.

2.4 The success of the Resultant Hybrid Conflict Resolution

The emergence of conflict among people arises because human beings are social animals. Therefore, it is crucial to devise strategies to manage, resolve, and transform the conflict. This is because the outbreak of a conflict can lead to many people being killed, and disrupt peace amongst people, leading to an environment of fear, and other related risks. This then points out that the way a conflict is responded to be one of the critical determinants to its termination or evolvement of the conflict to spiral levels. It's worth asserting that the success of any conflict resolution strategy will depend on how it is presented as well as the perception the warring parties have. For instance, how the disputants view the strategy, their willingness to adopt it, and own the strategy, a situation that will determine the stretch of the conflict. These facts then call for the adoption of practical ways to resolve the conflict to keep its effects at bay.

Magoti (2019) observed that the communities of Kuria of North Mara in Tanzania were faced with a conflict during the colonial period. Therefore, the colonial government by then appointed Hans Corry to investigate how the conflict would be resolved. The author reveals that the conflict was resolved by clan elders who understood their traditional laws, and had experience based on arbitration. The recommendation of Cory's was that clan elders were to be included in courts. Such recommendation led to the revival of Traditional leaders. The researcher concluded by proposing that the Kuria Parish councils, due to their recognition by the colonial government by the 1950s, were most efficient, and effective in resolving the conflicts in Mara Region. However, this study was carried out in Tanzania, while this study was carried out in Kenya. The current study investigated whether or not the colonial government accommodated the indigenous strategies in resolving conflict.

Magoti (2019) observed that after the break down of the Somali nation in 1991the traditional institution of the council of elders, were crucial in rebuilding, and maintaining peace in North-Western Somalia, as widely known as Somali, and. Here customary institutions worked in collaboration with modern state institutions to achieve their mission. Together with their councils, the clan elders were at the forefront of the peace building process as guided by their customary laws. The author concludes that after the state government realized this council's significant role they were

constitutionally incorporated in the Somali political system. However, the author has only discussed how effective this elder's institution was. The current study has gone a step further to discuss factors that can hinder success of hybrid conflict resolution.

In Papua New Guinea, Magoti (2019) opines that those traditional institutions were crucial in building peace in the Bougainville region, especially after a decade of war. This led to the inclusion of traditional institutions into the new constitution of Bougainville. In a similar manner in Rwanda, the Traditional District Resolution mechanisms *Gacaca* proved helpful to the state, especially after the Rwandan Genocide of 1994. This institution helped to deliver justice for the number of cases referred to them. From the discussion, it is clear that integration of informal and formal conflict strategies was fruitful in resolving the Rwanadan conflict. Most of these studies were carried out mainly after independence when most of the countries were independent, and free to do what they thought was right to improve their justice system. However, the current study focused on the colonial period to examine how colonialism impacted the indigenous conflict resolution strategies.

Morgenthau (1978) argues that the need to preserve peace has become one of the primary concerns for all countries worldwide. Various organizations and cooperation have been created at the international level, regional, national and local levels to fulfill this task. However, the success of this noble undertaking will be greatly determined by, among other factors, the effectiveness of utilization of conflict resolution strategies. In the same breath, Howard (2008) observes that the success of conflict resolution is one of the crucial ingredients to the sustainability of peace. The author concludes that this will depend on whether these strategies are based on state-building and grassroots conflict resolution, where the principle of a bottom-up approach should guide the process. While these studies will serve a guide to the current study, however this study has investigated the success of top-down strategies on grass-root mechanisms for success in resolving the two communities' conflict.

The ultimate goal of conflict resolution is to eliminate the tension among the parties in conflict to create an environment of tranquillity. Ouma (2016) asserts that efficiency of methods used in African conflict resolution, depended on three levels. The First level

is the Contingency level that expounds on the nature of the problem to increase the chances of success in conflict resolution. The second level is conflict transformation, which looks at the contribution of the culture, and peace-building initiative. Finally, the third level is conflict settlement, where negotiation and mediation processes; conflict containment may involve preventive peacekeeping, limitation of war, and post-ceasefire peacekeeping. However, this study tries to look at conflict resolution methods that have been used in Africa in general. In contrast, the current study has examined how integrative conflict resolution strategies among the Kipsigis and the Abagusii did contribute to finding peace among these communities.

Ouma (2016) study revealed that the African Union had achieved peace in its mission of searching for peace, and security among the African nations. The researcher argues that signing peace agreements among the warring parties remarkably proved to be one of the Union's compelling methods. However, there are several pockets of violence and instability in Africa today. This poses the question of the effectiveness of such peace agreements as the conflict resolution method. Therefore, this study sought to investigate whether there was collaboration among the conflict actors that engaged in resolving the Kipsigis and the Abagusii conflict.

Machozi (2009) study reveals that various approaches and methods have been employed to manage conflicts in East Africa. These methods include demilitarization, disarmament, resettlement, checking the military exchange from external sources, civil society participation, power-sharing, multiparty elections, equitable distribution of resources. However, the above study tends to consider methods that have been used in East Africa in general, and have not discussed the success of such approaches were developed by both the parties in conflict and the third parties a gap this study bridges concerning hybridity resolution strategy.

Lokiyo (2014) reported that the Kenya government's poor conflict resolution strategies were responsible for the continued conflict between the two communities. The author observes that the to-down strategy adopted by the government in dealing with the conflict significantly contributed to the failure in the quest for a lasting solution. The researcher also notes that the conflict resolution adopted strategy that was alien to

indigenous conflict resolution modalities. However, this study considered the conflict between the Pokot, and the Turkana communities. While this study will investigate the success of the top-down strategy regarding the Kipsigis and the Abagusii conflict.

Mkutu (2003) work on the Pastoral communities' conflict between Kenya and Uganda found out that the intervention strategies used faced many weaknesses. One of the strategies to resolve the conflict was development assistance programs geared towards helping the affected communities recover from the conflict. This was done at the expense of unearthing the origin of the problem yet the actors did not take time to understand the dynamics of the problem. The author reveals that there was little attention to community involvement in searching for the solution. Finally, the researcher concludes that various conflict resolution actors did not coordinate the intervention strategies adequately. From the above discussion, it can be concluded that the achievement of any intervention strategies largely depends on proper coordination, and involvement of the community actors to own the strategies developed to resolve the conflict. While this study will serve as a guide, the current study has gone a step further to examine on the success of collaboration of conflict resolution strategies on the platform of hybridity while assessing the Kipsigis and the Abagusii conflict.

Omwoyo (2000) while studying the Agricultural changes in the Kipsigis land between 1894 to 1963 the researcher observed that modified and marginalized and eventually subordinated the Kipsigis indigenous agriculture. To achieve this aim the colonial government set out on a mission to depastoralise the Kipsigis so as to shift their attention from animal keeping to growing of crops. Their land was alienated and their labor utilized by the colonial government for its benefit. As well the researcher touches on the one major cause of the Kipsigis and Abagusii conflict and hosts of strategies the colonial government used to resolve the conflict. The study demonstrated that these strategies failed to resolve the conflict between these two communities. This was directly opposite of the colonial expectations. The research's work demonstrated how colonialism changed and transformed the agriculture in the community under study. This valuable work will serve as a guide to my study however, the current is meant to bridge the gap the above researcher did not attend to on how colonial led conflict

resolution strategies impacted the indigenous resolution resolutions among the Kipsigis and the Abagusii communities.

Ombati (2015) in this study the researcher the critical role the women can play and therefore contribute to peace building process among the Sotik and Borabu border. The researcher was of the opinion that women can greatly contribute through indigenous conflict resolution. In this case women are used as key participants thereby re-emphasizing the traditional role roles for peace building empowerment and sustainable development. The above study sought to show the role of women in peace building however, the current study is meant to discuss the impact the of colonialism on indigenous conflict resolution among the communities of the Kipsigis and the Abagusii along the Sotik and Borabu border.

Hellen (2016) while studying the Kipsigis and the Abagusii conflict, her study specifically did consider development of the conflict from 1963 to 2002. The study revealed a range of factors like political reasons, incitement of politicians, failure of security forces, re-introduction of multi-party politics, social-economic factors like land, raiding and unemployment. The study extensively addressed the conflict's aspects, especially in the post-colonial period. However, this work has been done on the post-colonial factors fueling the conflict. At the same time, the current study will cover the development of the conflict during the pre-colonial through colonial periods but exclusively by assessing how colonial led strategies and their impacted on the indigenous strategies, an area that the researcher hasn't touched on.

2.5 Theoretical Framework

The study used two theories namely; structural functionalism and the Articulation of Modes of Production. The structural functionalism was used to interpret objective one and two while the Articulation of Modes of Production was used to interpret objective two and three.

The theory of structural functionalism is one of the classical schools of thought that developed around the 1800s out of the works of the French and British sociological philosophers. Some of the leading proponents of this theory include Comte, Spencer,

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Radcliffe, and Malinowski. The focus of the proponent of this theory was to explain how order and stability of social mechanisms can be achieved through the concept of systemic needs, socialization, and interdependency. At the beginning of the 1900s, the British anthropologist Radcliffe-Brown's (1935), and Malinowski's (2013) ideas greatly influenced and contributed to structural functionalism. On the same note, Abbott (1997) observe that on the same period, some theorists from the Chicago School of Sociology also made it clear that social life can only be understood by learning how various actors interact within the society. Holmwood (2005) avers that the central idea of the functionalism theory was that social institutions would be best understood in line with the duties they perform in the society.

The American sociologist Talcott Parsons together with his students, significantly as well contributed to the structural-functionalism during the second half of the 20th century. Their ideas become authoritative during this period as a sociological paradigm shift. Parsons (1939, 1951), while supporting the idea of using the biological metaphor that had been in existence in understanding the society, on his part, briefly argued that the society would be as well be understood by looking at how the society observes the shared norms and values. As well how veering from these norms and values would be detrimental to the survival of the system or in this case the society.

One time student of Persons by the name of Robert Merton did a critical analysis of the core tenets of Structural Functionalism, and revealed that not all functions were essential to the society's survival. Merton and Merton (1968) argue that the functioning of various parts would influence the system's survival positively or negatively, thereby interfering with the society's stability. In the same breath, Merton recognized that even maintaining the existing state of affairs can endanger the health of a social system or society. Helm (1971) argues that the study of the social institutions by Merton revealed that some of the functions were either manifest (intended), latent (unintended), or dysfunctional. This understanding brought about a different perception, especially concerning the knowledge of the functioning of social institutions as earlier articulated by Person that structural functionalism primarily emphasized manifest functions only.

Almond and Powell (1966) argue that political scientists around the 1960s used structural functionalism to compare, and apprehend different political mechanisms. They applied structural functionalism as probabilistic functionalism that explained how political arrangements were highly interdependent though not necessarily meant to coexist at stability as early purported by classical structural-functionalists. The authors made it clear that political science considered structural-functionalism probabilistic when they assumed that change in one structure within the system posed a high probability that the parts of the system would follow suit to harmonize the changes.

This theory conceptualizes society as a system of interacting parts whose primary objective is to aid stability through their interaction. Chilcott (1998) argues that this theory puts it forward that in order to understand any social system, for example, the society, it is critical to consider looking at the parts of the system that substantiate discrete activities through their reciprocal relation.

Radcliffe-Brown (1935) observes that society has structures that perform various functions. These structures are intertwined, and reliant on one another, and therefore the great focus is directed on maintaining the state of balance. In the same breath, Chilcott (1998) contends that for the better survival of the system, all the social system structures must perform their function correctly. On the other hand, Mafeje (1971) asserts that because these organs are interdependent, and inter-cooperated, once the organ is affected, the whole organism of the society will feel the effects. Some of the strengths of this theory were the emphasis that all the components must perform their functions for the society to survive well. In the same breath, unity deemed key as various components of the society focus their energies in the execution of their duties so that the society can operate in a normal state. As well this theory has been criticized on the ground that its conservative in nature since it does not easily welcome change. All that said and done this theory proved useful in interpreting the objectives of the study.

This theory will explain social institutions' role in resolving the Kipsigis, and the Abagusii conflict. These institutions included warriors, families, an age-set system, (*Laibon*) religious institutions and a council of elders, as well the colonial government

functionaries like the colonial police colonial chiefs. For example, the work of the warriors among the Kipsigis, and the Abagusii was to protect the community, and carry out raids, and counter raids. The institution of the *Laibon* served as the unifying symbol for the Kipsigis and some the Abagusii communities during the colonial period. The colonial chiefs were crucial in controlling the Kipsigis, and the Abagusii cattle raids to bring order to the society. Both elders and *Laibons* blessed the warriors to carry out cattle raids successfully. In some cases, the two communities in the conflict demonstrated times of peace that facilitated trade exchange for each to acquire what they did not have. This theory can also be used to analyze various strategies/ways that, if they were used, would have prevented the further development of the conflict.

It's worth noting that a society is a complex system, and as such, it has the ability to adopt to any change that occurs to it. When any system develops the society has the ability to adjust so as to maintain the society in the new system. This results from the interaction of the members of the society to the new system. However is largely determined by the information as they interact with the immediate environment, and the new system itself. With time the members learn how to survive and live with the system. In so doing they are able to develop self-organizing ways that will help them achieve their objectives. Therefore, the study sought to investigate how introduction of the colonial-led conflict resolution strategies made these two communities to adjust to the new change.

The study as well utilized the theory of articulation of modes of production. Here, the production mode refers to how a given society is organized to produce given goods, and services. To achieve this, forces of production, and relations of production must work harmoniously. Ortner (1984) and Roseberry (1989) have argued that this theory resulted from structural Marxism, and political economy as an interpretation, and mode of production, and social formation concepts. Wilk and Cligget (1996) are of the opinion that this theory holds that various economic systems connect so that both are affected. The theory clarifies that despite the predominance of the capitalist mode of production, there still exist some elements of non-capitalist in peripheral societies which to date continued to reproduce.

Meillasoux (1974) in his research from West Africa revealed that the arrival of capitalism did not completely transform all the existing economic and social systems. The researcher alternatively suggested that colonial capitalism was dependent on exploiting the capitalist mode of production there preserving them. What is implied here is that when a capitalist mode of production is introduced in a pre-capitalist social formation, it does not mean that it will immediately and automatically substitute the existing mode of production. But instead, capitalism slowly aligns with the pre-existing mode and utilizes them for its gain. At the same time, as the capitalism takes root in the process of subordination it ends becoming assertive over the non-capitalist mode. In such circumstances non-capitalist mode in order to survive the existing environment it must recreate itself reference to the capitalist mode of production. The theory as well became useful especially in explaining the co-existence of colonial-led conflict resolution strategies and indigenous resolution strategies among the communities of the Kipsigis and the Abagusii. Based on the above discussions the researcher chose to employ this theory especially in interpreting the objective two and three of the study as discussed therein.

The culmination of the Berlin conference of 1884-1885 sealed off the scramble, and partition of Africa discourse. This then squarely brought many countries in Africa under the sphere of influence of various European powers including Kenya. The colonization of Kenya was coupled with the introduction of colonial capitalism that was accompanied by a host of economic, social, and political changes that were designed to empower the colonizers to develop, and establish their hegemonic power. However, worth noting is that the initial stages of British capitalism worked with the pre-capitalist modes then slowly modified, preserved, and consequently marginalized at the periphery.

The result was the co-existence of various modes that later came to be known as the articulation of modes of production henceforth known as AMoP happened in three phases. Economically some practices that the colonial masters considered primitive were greatly discouraged at the expense of introducing modern economic practices. Politically the introduction of western political perspective of administration greatly interfered with the traditional justice system. Some of the traditional practices were

hindered while others were marginalized as their operations were interfered with but they were not completely wiped away. Socially some African religious practices were encouraged while others were restricted.

The AMoP theory will help explain how the introduction of colonial-led conflict resolution strategies undermined some traditional conflict resolution strategies, and at the same time shed more light on the exploitative relationship that characterized the relations. On the same note, this theory can be used to explain why some traditional conflict resolution practices were left to operate. The theory will also help explain the resultant hybrid conflict resolution strategy that again did little in resolving the two communities' conflict.

The AMoP theory basically stresses on the multiplicity of various modes. The central idea of this theory is that the introduction of the new Mode of Production therein otherwise known as MoP does not immediately and automatically supersede the pre-capitalist MoP but instead strengthens them. As time progresses, the new mode of production slowly establishes itself over the pre-existing mode, and then as a result the two modes are left in a complex, and sometimes contrariness struggle. With time the incoming mode of production transforms, subjugates the pre-existing MoP, but by using it instead of ejecting it a side.

The control, and eventual colonization of the Kipsigis, and the Abagusii communities, led to the introduction of the cash economy. The British colonial authorities had realized the extent, at which these two communities depended on cattle, a thing that was the main cause of their conflict. Armed with this fact they therefore set themselves on a mission to depastoralize them through discouraging the pastoral livelihood that was to large extent considered primitive. To this end they then introduced the capitalist economy that was based on the growing of crops under modern agriculture. This was done deliberately with the intention of shifting their attention from animals to growing of crops. On the same line other economic policies like paying of taxes, and forced labor were introduced. The mode of paying taxes in cash immediately introduced these two communities to cash economy as opposed to their traditional exchange through batter trade. As it will be discussed later therein for example this cash economy proved

to further the conflict instead of resolving it. Worth noting is that the two communities continued with exchange among themselves using barter trade. As well the colonial government still allowed the two communities to plant crops while at the same time continuing with their pastoral life though it was greatly checked through depastoralization.

Politically, the colonization resulted to the introduction of formal systems resolution that were based on the administration of justice through government functionaries like police, chiefs, headmen, and the use of courts. These formal ways greatly interfered with the traditional justice system where conflicts were resolved using traditional resolution mechanisms like elders. Some of the social institutions like the Council of Elders otherwise therein known as CoE, witnessed some major transformations that at the end of the colonial rule left a few operational though not all of them were eliminated. In the same breath, Goodman, and Radcliff (1981) have attempted to justify that when the pre-capitalist MoP is not entirely shut out but it keeps on duplicating itself in association differently with the capitalist MoP. Based on this then, the pre-capitalist modes like the CoE and the use of traditional oaths among the two communities survived though they were subdued by capitalist system, through the process of destruction and preservation. These modes then, articulated with the capitalist system as witnessed through unmatched interchange relations. In the same breath, it's worth noting that some pre-capitalist modes were refashioned to fit the capitalist MoP. However, this reshaping of for example conflict resolution mechanisms had a great impact on them.

Articulation is therefore a two-sided concept that helps to explain why certain sectors of pre-capitalist modes were integrated into the capitalist economy, and others were not. This was spearheaded by the colonial government in order to benefit from such relationships. Again, this theory proves essential in explaining why the colonial government chose to allow, for example, the CoE to continue resolving African conflicts despite the full presence of colonial courts throughout the colonial period. In the same way the capitalist MoP spared the pre-capitalist modes for its utilization so did the colonial government to the CoE, as they were left to resolve the African conflict

so as to help create a conducive environment for the maximum exploitation of natural, and raw materials for processing in the British factories.

Before colonialism these communities were used to indigenous resolution strategies that were headed by elders and use of enforcing mechanisms like oaths. The entry of colonialism come with new resolution strategies like use of court, police, use of bible in courts. With time these communities had to contend with the two centres of conflict resolution, where some took the conflicts to courts while others took theirs to elders for resolution. During the colonial times the colonial government though restricted the use of customary laws, some leading social institutions like use of elders were left to operate though they were closely supervised by government officers. As well some traditional laws were reinforced, and promoted during the colonial era, though indigenous laws witnessed some change. Therefore, this theory was crucial to this study as it helped to explain especially the idea of change as spearheaded by colonialism.

CHAPTER THREE
RESEARCH METHODOLOGY

3.0 Introduction

This chapter presents the methodology that was crucial in this research. The chapter has discussed the research design used, the location of the study, the target population, the sample as well as the sampling procedures, research instruments that were employed for data collection, the way data was coded and analyzed and presentation, and finally ethical considerations.

3.1 Location of the Study

The selection of the study location for research purposes forms one of the key cornerstone in research work as this directly influences the results of the intended data to be acquired (Orodho and Kombo, 2002) the two scholars posits that to exactly locate the study area for data collection, it should first start from a given population or location and then continue to narrow down as the researcher eliminates irrelevant population and locations to a specific sample size that is favorable for the research work.

The study was carried out in Nyamira and Bomet counties in Kenya. Borabu-sub county forms one of the largest sub-county covering 248.3 KM2. Borabu sub-county is an administrative unity as well a political unit called Borabu constituency. (Source: Nyamira county annual development plan 2015/16). On the other hand, Sotik forms the second largest sub-county in Bomet county covering 479.2 KM^2 (KNBS, 2013). The two sub-counties are located along the Sotik and Borabu border making them to share a boundary.

The area under study is surrounded by enough water sources and rain that was evenly distributed throughout the year. There was enough rainfall that supported green vegetation leading to the production of enough grass to support the pastoralism activity for both the Kipsigis and the Abagusii communities especially before the British colonization. The area under study supports agriculture as the climate is conducive to the growing and keeping of animals. The keeping of animals and ownership of the animals was central to the two communities' conflict. On the same note, the completion for control and use of natural resources like water and grass were. Mwanzi (1977)

observes that modern Kipsigis were hunters and gatherers who supplemented it with crop production. With time the Kipsigis shifted their attention to animals after acquiring animals through organized raids from the Abagusii and the Maasai neighbors. Omwoyo (2000) argues that during the colonial period the Kipsigis the British's mission was to transform pastoralism into crop farming which was known as the depastorization policy. A policy that that ended up transforming the two communities life negatively.
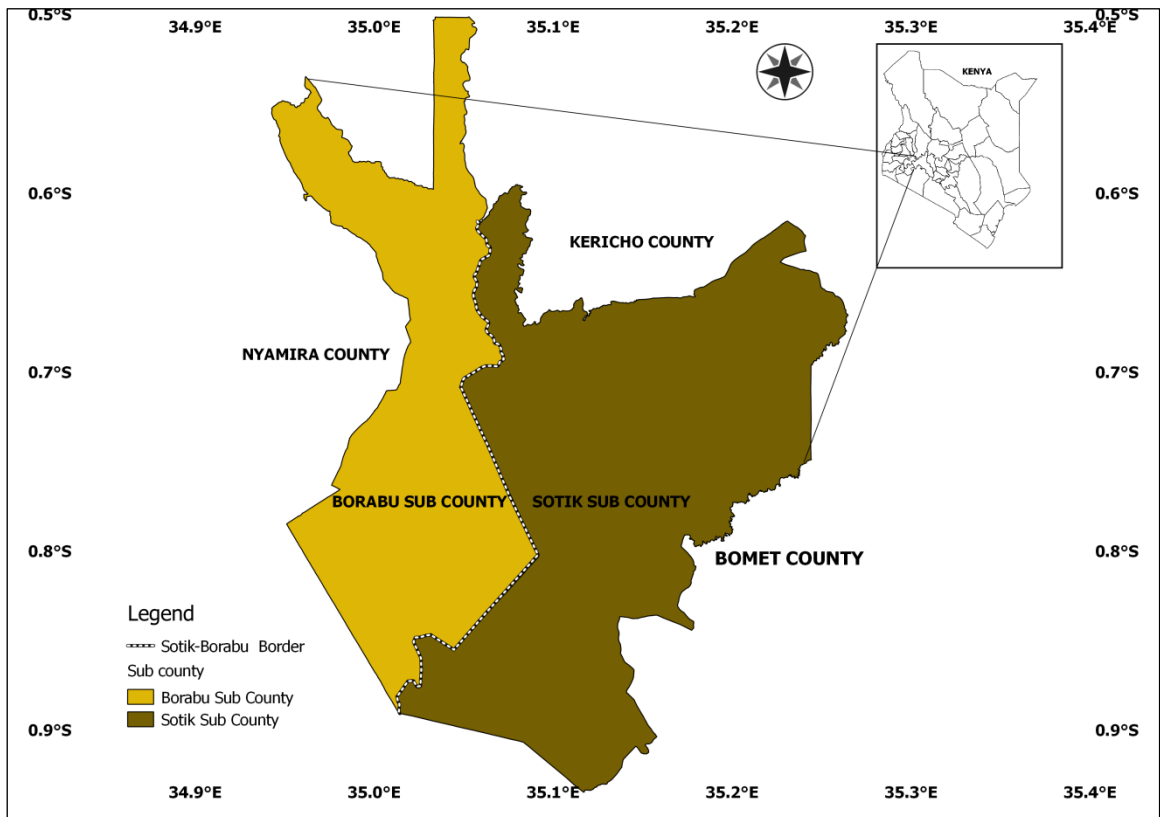
Figure 1: Map of the Study Area

Source: Galaxy Geo Consultants Inc. Thematic map showing Esise and Gelegele locations as study area. Map scale 1:50,000 created on 21st September 2020 using QGIS version 2.144 essen

3.2 Research design

Research design is an explanation that knots the facts to be gathered to the prime questions of the study (Creswell, 2009). This study primarily used a descriptive design where interviews were employed to acquire data from informants for qualitative research. Mugenda and Mugenda (2008) have averred that the main aim of a descriptive study is to adjudicate and account the way things are thus facilitating the understanding of the prevailing status of the population that is studied. In the same breath, Kombo and Tromp (2006) have argued that descriptive design is exclusively meant to acquire information concerning the current phenomenon and if possible then come up with reasonable conclusions from the information discussed. Therefore, it was on this very foundation that this study employed the descriptive design. This approach was advantageous as it enabled the respondents to participate freely in a manner that enabled them to give much of the information sought for this study. On the same note, the design uses an inductive approach where it focuses on a given situation, and people and greatly lays emphasis on the words rather than the number.

The study laid a major focus on capturing information on the conflict resolution strategies that were employed before and during the colonial period to resolve the Kipsigis and the Abagusii conflict. To achieve the aim of the study experiences of the respondents in conflict resolution strategies were captured through their voices and expressions. Therefore, this made the qualitative method most appropriate for this research. This is because qualitative research aims at capturing the informants' unique experiences and through that it then makes meaning out of a given context. To this end, qualitative research was used to describe and interpret the peoples' experiences in order to procure meaningfully meaning out of what they say.

This design is more useful in researching social studies in Africa, because it contextualizes the research topic, while at the same time gathering meaning from the ordinary setting of the contributor. On top of that qualitative research stresses procuring the insider's perspective on situations and events that show the extent and the magnitude of the problem, while at the same time presenting a deeper discerning of the situation as it's on the ground.

3.3 Target Population

Nachmias and Nachmias (2008) define a population as the totality of cases that correspond to the stand-in set of description. Ngechu (2006) goes a step further to specify the cases as an element, people, services and events, groups, and things that are set for investigation. Therefore, this study used the residents of Sotik and Borabu border to form part of the population of this study. This was because the residents of Sotik-Borabu border have been worst hit by the effects of the conflict of the two communities' conflict. The Borabu-Sotik forms part of the North Mugirango and Sotik areas that were alienated for British settler settlement. There is evidence that the colonial government used various strategies to resolve the two communities' conflict as such, the residents were purposively selected.

According to the Kenya Population and Housing Census (2019), the population of the Sotik sub-county who are especially of age 65 years and above was male 3,608 and residents. On the other hand, the Borabu sub-county informants of age 65 and above were male 1470. Therefore, the target population for the two sub-counties was 5078. The target population for this study included public servants like colonial chiefs, police and headmen, community members, and traditional security team like *Murenik* (warriors') among the Kipsigis and *Abamura* (warriors') among the Abagusii.

3.4 Sampling Procedure

Sampling is the process of choosing units (for example, animals, plants, and people) from a population that one desires to study, to help the researcher concentrate on the sample that will assist the researcher in fairly generalizing the outcomes from the sample chosen (Trochim, 2006) This research employed a target population of the residents of Sotik-Borabu border. Sotik-Borabu border was chosen using the purposive technique because the residents along the border have been the victims of the conflict as well the police patrols were carried along the border showing that such residents were affected. This border has served as the battle field for many years. As well the residents along the border have been affected by cattle raiding and counter raids.

This study utilized purposive and snowball sampling technique. According to Best and Khan (2006), the use of purposive sampling is crucial to the researcher in building a

sample that is suitable to the specific needs. The researcher selected the respondents who were of age 65 years in order for them to assist in giving data that was sought. Rubin and Rubin (2011) have as well made it clear that when choosing informants for the study they "should be experienced and knowledgeable in the research topic". This can be dictated by the position they hold in the community, their age, and the wisdom they have acquired over time. Therefore, the study purposively targeted the former colonial servants such as the colonial police, chiefs, headmen, community leaders like the council of elders, and community security forces like the Kipsigis and the Abagusii warriors. All such respondents were targeted because they possessed vast rich information on pre-colonial and colonial-led strategies of conflict resolution.

The snowball sampling approach was used to pinpoint respondents for the interview as shown in Figure 2. In this research the first respondent was identified through information provided by local leaders and close relatives of the target population then this respondent was used to identify other informants who were, in turn, requested to recommend other informants who could be interviewed on the Indigenous Conflict Resolution strategies otherwise therein known as ICRs and the colonial-led strategies among the Kipsigis and the Abagusii. The cycle ended when the elders to be interviewed were recommended on or more informants or data saturation was reached. In total 50 informants were interviewed for this study.

The sampling method of snowball proved to be useful to this study because it assisted to saving on time, as it became easier to locate respondents who were rich in terms of information on British colonial-led conflict resolution strategies and how they impacted the ICRs among the Kipsigis and the Abagusii.
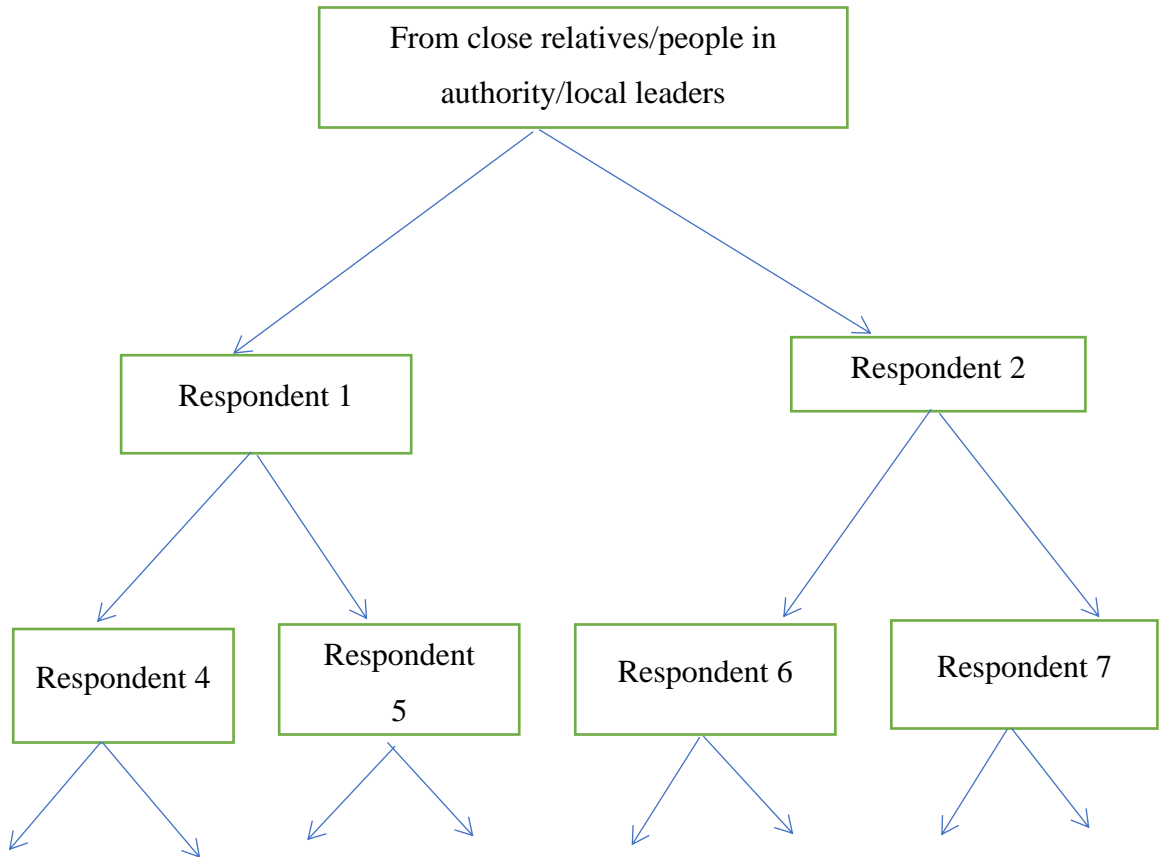
Figure 2: Network of snowball sampling technique

<u>Key</u>

Route continued until data saturation was achieved.

Figure 2: Indicates a network that was adopted from Braga and Schiavetti (2013)

Figure 2 explains sampling technique that was used to select informants who were 65 years and above. This was guided by the principle that such respondents were senior members of either the Kipsigis or the Abagusii communities and they had, therefore, interacted either straight away or indirectly with their lineage or the British colonialists and thus witnessed the British colonial-led conflict resolution strategies and its effect on the indigenous conflict resolutions in their communities. The public servants, community leaders, the religious leaders and the traditional defense teams were purposely sampled since they had useful information on the ICRs and the colonial-led conflict resolution strategies. As such, they were considered key in providing

information on what they learned from those whom they had interacted with, for example, their immediate family members, relatives, and even their neighbors, concerning colonial-led conflict resolution strategies and their impact on the indigenous conflict resolution strategies. Thus, chosen respondents provided most reliable information on research topic. The sample category included the public servants who worked with the colonial government, traditional security teams, and community leaders as well as any resident who was of target age and had relevant information on the topic.

3.5 Sample Size

This study was conducted using the idea of data saturation as proposed by Morse (2000) and Donna (2013). This being a historical study, interviews was majorly used for data collection. In order to achieve what concept of data saturation puts forward non-probability sampling techniques were employed to choose the rich and knowledgeable informants on the topic under study.

Researcher experts like Baker and Edwards (2012) as well as Adler and Adler (1987) have recommended a sample between 6 to 70 respondents to achieve data saturation. These experts, however, argue that the sample chosen depends on the following factors: research scope, researcher's financial resources, the nature of the inquiry, and the level of know-how of the participants, especially on the research topic. To know that the sample size of this study had reached the data saturation level, the following key point was taken into consideration. First, these were most of the important themes, ideas, perceptions, and experiences during the oral interviews had been captured. At this point the information sought for starts to repeat itself, therefore the researcher concluded that data saturation has been attained, meaning that crucial areas had been taken care of. To this end, this study managed to interview 50 respondents, then at the 50th informant, the information started to be repetitive. At this point then the researcher discovered that data saturation had been achieved.

3.6 Research Instrument

Interviews were used as a major data collection tool. According to Gall et al. (2007), the use of interviews in the study helps the researcher to investigate the informant,

especially on the desired issues. As well they facilitate the researcher to make some deductions from the respondents' verbal and non-verbal expressions. Therefore, one-on-one interviews were used because they facilitated the researcher to weigh the responses through facial expressions and other signals like the use of hands that were used during the interview. Again, the use of interviews has an added advantage in that one can get a response immediately. Interviews were conducted with a specific set of respondents that were selected using non-probability sampling techniques. These informants gave a lot of clarification and were able to shed more light on the British colonial-led conflict resolution strategies and their effect on the ICRs among the Kipsigis and the Abagusii.

The interviews were carried out by the researcher himself. Prior to every interview, the respondents were explained about the nature of the topic. The interviews were conducted using the vernacular languages of the Abagusii and the Kipsigis. Since the researcher comes from the Abagusii community, Ekegusii was used as a medium of communication. This made the communication easier as many of the respondents were illiterate.

The interview process started with the researcher giving a chance to the participants to provide their biographical information. In addition, they were asked some general questions that were meant to make them relax and regain their composure. This process was crucial as it enabled the informant to gain some confidence and meanwhile this very opportunity helped to create an environment for interaction. After this process, the researcher began to ask questions as per the objectives of the study. Questions in the interview guide were in form of open-ended and therefore they helped the researcher to add some supplementary questions wherever the need arose. Though the focus of the research work was maintained throughout the whole interview process.

The informants were provided with a conducive environment that enabled them to raise their concerns that they felt that they needed some attention as guided by their thoughts and viewpoints. As the interview continued, the respondents were accorded an opportunity to flashback on their careers, a situation that enabled them to give more

relevant information on the research topic. The interview process accorded some of the respondents a chance to give their thoughts, and memories in their own words.

The researcher and the field assistant then recorded the interviews and took notes from the respondents' responses and other key observations that proved relevant to the study. The researcher noted with a lot of carefulness phrases and words that were said and had a meaning and they later assisted the researcher in reconstructing the data.

According to Bogdan and Biklen (1992), field note writing is very important when doing social research in qualitative research. These notes were crucial, especially helping the researcher in visualizing each research respondent that used non-verbal expressions during the interview making the setting live again. The interaction with the respondents during the interview provided a lot of insights on colonial-led conflict resolution and how such strategies affected the ICRs among the Kipsigis and the Abagusii.

The study employed an interview guide that had unstructured questions that were addressed to specific conflict resolution actors. The former colonial police, chiefs, and village headmen were interviewed on various British colonial strategies that they implemented in their service to the colonial government during the colonial period. The traditional security team was interviewed on the role of social institutions, methods of conflict resolution, and the challenges they faced in their effort to partake in resolving the conflict between the Kipsigis and the Abagusii.

3.7 Data collection Procedure
Data for this study was collected using primary sources; oral, Archival and secondary sources

3.7.1 Primary sources
3.7.1.1 Oral sources
The primary data was acquired using oral interviews with sampled respondents that gave information on British colonial-led conflict resolution strategies and their effect on ICRs among the Kipsigis and the Abagusii. The respondents that were interviewed

included former public servants like the colonial police, headmen, community leaders like council of elders and traditional security teams like the *Murenik* (Kipsigis warriors) among the Kipsigis and the *Abamura* (young energetic initiated men) among the Abagusii.

3.7.1.2 The Archival Data

The archival data was gathered from the Kenya National Archives. The information acquired from this center provided rich information, especially during the colonial period. The information that was acquired from these sources provided first-hand information, especially on the British colonial-led strategies that they used to resolve the Kipsigis and the Abagusii conflict.

3.7.1.3 Secondary Data

Secondary data was collected from various libraries and documentary centers like Chuka University, Kenyatta University, and the University of Nairobi. As well as relative journals, published books, articles, unpublished theses on Indigenous conflict resolution, dissertations, authoritative internal sources and official reports from the government especially during the colonial period. The documents sought were the ones that had information on colonial-led conflict resolution strategies and their impact on the ICRs among the communities of the Kipsigis and the Abagusii. All this information gathered here was weighed for and against each other to establish the gaps in them.

3.7.2 Field Assistant

Being new to the area, especially some parts of Sotik-Borabu border this necessitated the researcher to have field assistant otherwise therein known as F.A. As well this was in line with my limited knowledge of the study area and the Kipsigis language. As a result, I had to seek the service of an F. A to guide the researcher in understanding better the research area as well as help in locating the potential key informants as identified by close relatives and local leaders. The F.A was equally important in translating the Kipsigis vernacular language to English when the respondents were either speaking or listening. This was in line with the suggestion of Berreman (1962) who thought that, the social recognition of the F. A by the study respondents is crucial for the research. This is because it helps the investigator to gain a lot of confidence

from the respondents as this is important, especially in gaining credible information. This stems from the fact that the F. A understands these respondent and their language and is aware of the informants location. As well the presence of the F. A gives the respondents some confidence as they interact with the researcher to whom they are not used to. The respondents are fully aware that the F.A knowledge on them will make them give truthful information. Based on these facts my F. A was chosen in relation to their familiarity with the study area, and to some extent their know-how of the topic under study. The F. A was a retired teacher who was able to get other F.A to help me reach the Kipsigis respondents for interviews.

3.8 Data Analysis and Presentation

Data analysis for this work followed the following steps; transcribing the raw data from recordings to the text form, organizing the interview data into various categories that are themes and patterns, and coding data after which the results were tested for reliability and understanding. The last step was thesis writing. The two selected theoretical frameworks were as well used to interpret the data before the writing commenced. Documentary review and content analysis were also done, to take care of the external and internal criticism. The documentary information was corroborated with the oral data. In the end, all data that was collected was used to support the research objectives and form the basis of the researcher's analysis and interpretation.

The data analysis for this research began right from the field as the researcher was writing, recording, and transcribing the information to make sense of the data required. Singleton and Bruce (2005) contend that data analysis starts with a careful search for the patterns in data to establish ideas that help to explain the existence of those patterns. Data analysis is crucial when it comes to translating the text into fundamental meanings of a distinct word. Osamba (2000) argues that data analysis helps the researcher to derive the meanings of the collected data to give it some understanding.

The data from the interview was transcribed and then coded to scrutinize the adequacy and consistency of the themes. After this, the data were classified into various categories and themes as per the objectives of the research. Coding here refers to data reduction, especially through the process of sorting unprocessed data into categories.

The study employed a thematic and chronological data analysis. This is where the data was closely checked in relation to who said what, who said something different, and how often. Osamba (2000) argues that during the data analysis exercise the researcher should read and reread the written notes, to discover important ideas and points and then connect the emerging patterns. After putting the collected content into various categories then the contents were used to represent the bigger picture of the research study. The documents from the archives formed one of the key components of the study. The data from this source was textually collected and analyzed. This was done after the researcher had visited Kenya National Archives and analyzed various archival sources, especially files, political records, correspondents and annual reports that concerned the colonial period.

Thematic data analysis was employed in the analysis of the data. Tesch (1990) alludes that thematic analysis is important in capturing the complexities of the content within textual data gathered. As well it's one of the key methods of data analysis, especially in qualitative research. The process analyzing started with data enlightening, coding, categorization, identification of patterns, and then explaining these patterns. The already identified data was then used, to develop themes that addressed the research objectives. Therefore, the themes of this study were concerned with addressing the ICRs among the Kipsigis and the Abagusii, colonial-led conflict resolution strategies and their effect on the ICRs among these communities, and finally the success of the resultant hybrid conflict resolution among the Kipsigis and the Abagusii by the end of the study period.

Initially, the data was first put together as received from the research instrument under the identified themes. Then the next process was to compare data from other sources and then merge the data as per the theme of the study. As well the data from archives and secondary sources especially written documents were then corroborated to ensure that there was validity, reliability, and preciseness of the information acquired. Then the information was organized in a systematic and chronological sequence according to the specific historical period and social phenomena in which the said event took place. Data was in the end, interpreted within the Structural Factionalism and Modes of Articulation theories to explain how the European colonial-led strategies impacted

the ICRs among the communities of the Kipsigis and the Abagusii. This resulted in having data that was plausible and that presented a general picture of the study area.

3.9 Ethical Consideration

Before collection of data the informants were informed about the study design and procedure to understand the meaning of the objectives of the study. This was meant to ensure that respondents cooperate freely and give informed responses during the interviews. According to Kitchin (2000), the elements of ethical consideration include: privacy, obscurity, confidentiality and being aware of the cultural differences. With these elements in mind then, all respondent's information was held with a lot of confidentiality throughout the research period and therefore, these collected data from field was not accessed to any an authorized person(s).

First, the respondents never forced so that they can give information about the research topic. Secondly, the researcher explained the purpose of the study to the respondents so as to enable them make informed choice on whether to participate or not to. Third, all the information given was regarded with a lot of confidentiality and their identity were not divulged. As well the information that was to be acquired from the informants was exclusively used for the sole aim outlined not for any other purpose whatsoever. With all this said and done the researcher then carried out the research work free of bias and clarity following ethical considerations and at the same time focusing on the research objectives.

CHAPTER FOUR

INDIGENOUS CONFLICT RESOLUTION STRATEGIES AMONG THE KIPSIGIS AND THE ABAGUSII

4.0 Introduction

This chapter will show the indigenous actors of conflict resolution, conflict resolution mechanisms, the process indigenous conflict resolution, the African conception of a conflict, traditional strategies if conflict resolution and the challenges indigenous conflict resolution that faced.

4.1 Respondents Demographic Characteristics

The following Tables provide demographic information on the respondents that participated in the oral interviews. In the overall fifty (50) respondents were employed for this study as guided by the concept of data saturation. They were categorized into twenty five (25) respondents from Kipsigis and twenty five (25) respondents from the Abagusii communities. Table 1 shows the age and composition of their ethnic.

Table 1: Showing the Age of the Respondents

	Range in age gap	65-69	70-74	75-79	80-84	85-89
Kipsigis		5	10	5	3	2
Abagusii		5	10	5	2	3
Total		10	20	10	5	5

Source: Field work 2022

It's worth noting that this study sought information on the conflict resolution strategies during the pre-colonial and colonial period therefore, the age factor was paramount. These ages in the table 1 were instrumental in providing either first, second, or third-hand information on the topic under study.

Table 2: Showing the Summary of all Sampled Respondents in Esise and Gelegele Location

Category of respondents	Sample from the Kipsigis community	Sample from the Abagusii community
Public servants	5	5
Community leaders	10	10
Indigenous security team	10	10
Total	25	25

Source: Field work 2022

4.2 Background to the Indigenous Conflict Resolution strategies

The Indigenous Conflict Resolution strategies otherwise therein known as ICRs arose because in any society conflicts are inevitable. Society members are always in constant competition for limited resources, pursuing hidden goals, ideas, and interests. As such, these strategies were developed so that they can help resolve the never ending conflicts in society. This type of resolution arises from the grass-root where people's culture, values, and traditions are transmitted through local language, passed from one generation to the next, making them a living testimony among the society members.

Various scholars have used different names that refer to indigenous conflict resolution; Chiba (2000) Unofficial law; Slade (2000), Traditional Justice Systems; Macfarlane (2007) Restorative Justice; Meron (2010) Traditional Institution of Conflict Resolution; Asefa (2012) Non-State Laws; Gowak (2008) Alternative Dispute Resolution; Gutema and Teressa (2016) Indigenous Conflict resolution. This study chose to employ Guetema and Teressa's terminology of the indigenous conflict resolution strategies on the ground that such strategies are a community founded and bed rocked in the community's culture and traditions. Volker (2007) observes that such strategies arise from traditional societies' structures and therefore have been practiced for a longer period. In addition, Barfield *et al*. (2004) argue that these practices observe the ethical code of rules that each member is supposed to adhere to for a harmonious living.

The indigenous conflict resolution strategies are otherwise therein known as ICRs greatly emphasize the tenets of humane, sharing, and collectiveness in resolving matters that community members face. This points out that the resolution of conflicts

in the society is part and parcel of every member of that society. Conflicts are bother to the society and as such, had already well-designed mechanisms to resolve them. Murithi (2006) observes that this mechanism uses the local conflict resolution actors who in turn utilize traditional community based judicial systems to resolve conflicts. Rabar and Karimi (2004) are of the opinion that informal strategies use customary laws to resolve conflicts and their judgments were restorative. Thus, it is clear that the community's culture, values, and traditions form the backbone of resolution in this mechanism. In line with this, Dagne and Bapu (2013) agree that any breach of the accepted practices attracted a direct social reaction and automatic punishment. The ICRs main objective was to heal the broken relationship, transform them and amend the relations. This was meant to bring stability in the society in line with the structural Functionalism theory. On the same breath, Sauve (1996) avers that people's relations were more important rather than the issues that made them differ therefore the settlement that employed reconciliation was intended to heal the broken heart. To achieve this there was always compensation for the aggrieved party.

4.3 The African Conception of Conflict

The traditional African conflicts can be classified as civil wars, tribal conflicts, family, communal, and interpersonal. When these disputes occurred, traditional Africa had already well-developed strategies that resolved these conflicts. These conflicts were resolved by the elders at various institutional levels. In the African context, the development of a conflict or violence for that matter was viewed from the holistic angle; considering the whole structure of the inconsistent, in a bottom-up structure manner to find an enduring solution.

Africans considered development of a conflict as an unusual occurrence and because of this reason strategies were hatched to help restore the normal state in line with the Structural Functionalism. The outbreak of a conflict was considered detrimental to the survival of humanity and nature. As the theory of structural functionalism holds order is one of the ingredients of a stable society. The said order was brought about in the African societies through reconciling parties in conflict to ensure that they live in an harmonious manner. The African society considered the effects of conflicts to be far-reaching not only to the land but as well affecting ancestors and gods. Nkosi (1999)

argues that land is a resource that supports humanity. Nkosi further avers that in the African context, land has a spiritual attachment since it is a gift from gods and ancestors and therefore it's a birth right for Africans. Since time immemorial Africans are known to live communal life that was characterized by a symbiotic relationship, where each depended for material needs from one another to facilitate their survival. The Ubuntu belief is evident in the following statement "I am because we are and we are because I am." This assertion demonstrates the social relationship where each individual was committed to the social welfare of one another.

The development of conflict in the African context therefore, afflicted various levels ranging from the individual, family, extended family, clan, and the community at large. At the family level, the conflict ended up affecting the children and parents. To this end the father was therefore responsible for resolving conflicts at this very stage. At the extended level, the elders in the family or clan elders resolved the conflicts at this level in an event conflict developed. At the apex level, the conflicts were decided by elders as well as the traditional chief of the area. These social institutions performed the function of conflict resolution as per the theory of Structural functionalism. Sometimes when the conflict resulted in the shedding of blood and causing serious injuries, this did not only affect the family or community involved but also mother earth (Swaniker, 2019). In this case, one respondent eluded that;

> "My friend shedding of blood was not a joke and when it happened whether intentional of accidental, the gods or ancestors had to be consulted, because any conflict in the African set-up had a spiritual dimension, therefore the role of gods in resolving the conflict among the African people was essential."(O.I., Omosa, 2022).

According to Abotchie (2006) any form of conflict and violence in the African setup ended up affecting the mother earth, gods, and the ancestors. As such when conflict developed the disputants were compelled by the tradition of the Africans to conciliate and beg for remission, especially from the spiritual world. In the African setting, both disputants were squarely blamed for their actions and their role in the development of the conflict. Therefore, the spiritual realm assistance was sought. Swaniker (2019) argues that the earth, the gods, the ancestors of the community, and the all-powerful God, had to be pacified and sought for forgiveness. This shows that the development of a conflict angered the spiritual realm.

The pacification of the offender involved giving the offender hard work to perform or pay a fine as dictated by gods'. Upon preferably performing the punishment, then the next step was the emancipation of gods forgiveness, protection, guidance, and indulgence for the offender. After this, the defiant is educated on the intricacies of the conflict. In case the disputants had uttered words that may attract a curse, the gods are and then approached and asked to reverse those words, because indeed they will affect the one who they were supposed to affect. The party that uttered those words was asked to recall the words and apologize for the action. All the above process was a community affair as one respondent argued;

> "Everybody in the community had to be involved especially when oaths were taken in the event that the criminal person was not known and then participating in the process of oaths was the only way to discover the person. For example, when unknown person sets the someones house on fire, there was a common oath for the all community member to know exactly who did that." (Ongiri, O.I., 2022)

The involvement of concerned parties for conflict resolution in the African context was on the ground that everyone in working towards the common good of the society as the theory of Structural Functionalism presumes.

Basically the development of a conflict in the African context was a communal challenge rather than an individual affair. When a dispute developed between two people or a community, this, if not checked, would end up drawing the family, extended family, or even the whole community into the conflict. As already indicated conflict in the African setup was a community undertaking, therefore when a dispute developed it was immediately reported to the concerned authority. The process of conflict resolution was done in an open place probably under a tree where elders or the traditional chief, or village elders. Apart from elders, everyone was invited to come and listen, this was meant to attain a threshold of transparency and accountability. The conflicting parties were accorded adequate time to explain their case to the elders and when each party was done, witnesses were called to ascertain the claims of the disputants. The elders would then use their wisdom to dispense the ruling. The resolution was consultative and through brainstorming. In most cases, the outcome was a win-win situation, as dictated by the African concept of brotherhood. This is because the ruling was meant

to reconcile the parties in conflict. To help them maintain their relative peace and stay in harmony, thereby amending the broken relationship.

The Values and Fundamentals of ICRs

One of the key pillars of ICRs is that they operate under the value of the compensation of the damage caused rather than punishing. All the oral sources were in agreement that the main aim of ICRs was not to punish the offender but instead to seek ways of restoration of damaged relations. This mechanism took care of the future relationship of the parties in conflict, especially their good relations as they live. The ICRs were concerned with the harmony, cooperation, and unity of the disputants. The element of cooperation and consensus that the ICRs sought forms one of the key element of Structural Functionalism. The concept of future generation was taken into account. This was because if parties' conflicts are not well solved, this conflict will affect the future generation and even plant the seeds of hate and revenge. On the same note, Tarekegn (2008) reported that parties in conflict were ready to resolve their conflicts to improve and restore their relations peacefully.

Another essential element of the ICRs is that they work under the value of forgiveness. Mwagiru (1999) observed that in conflict, disputants are requested to forget the past or old feuds as they focus on the future, meaning that they had no option but to forgive one another to live with each other in harmony. The conflict resolution actors provided an environment for remorsefulness, remission, and reconciliation with the restoration of good relationships among the members. The oral sources from both the Kipsigis and the Abagusii communities confirmed that there were ritual ceremonies that mostly culminated in the process of reconciliation and forgiveness that was demonstrated through sharing of the sacrifices. In conclusion, the ICR method was founded on the values of truth, forgiveness, and reconciliation to restore broken relations and establish harmonious relationships.

The Process of Indigenous Conflict Resolution

Indigenous conflict resolution formed one of the crucial factors that acted as a foundation stone that helped to resolve conflict in the pre-colonial societies. Eshetu and Getu (2009) they have pointed out that informal institutions were qualitatively disparate

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from formal processes. In this process, disputes were resolved with the help of a non-party third party who is neutral and chosen by both parties. The process of conflict resolution starts after the parties have chosen the third party of whom they have the confidence to help them resolve the conflict. In this case, the third party chosen depends on the social level where the conflict occurred; in most cases the parties would make use of elders. Then the parties would then congregate at the agreed place, especially under a tree where they look at the issues at hand that made them differ (Volker, 2007). This discussion is crucial in revealing the facts and truth about the conflict as the elders listen keenly to the discussions, where possible witnesses were called to confirm the allegations.

After the elders listen, consult depending on the nature of the conflict, they then make a conclusion that is founded on the facts raised, if it's agreed by both parties, the instigator is asked to ask for forgiveness and if the other aggrieved party accepts the apologies and then forgives the other party the conflict is then resolved. However, the whole process was dictated by the weightiness of the conflict, culture, and norms. This process ended when there was the exchange of material goods as compensation. This compensation was supposed to link the two parties while the process of exchange signified that the resolution has been reached.

The process of settling conflicts using informal conflicts was led by the traditional leaders like chiefs, CoE and Village elders (Volker, 2007). The fore-mentioned conflict actors formed part of the society structures that performed an essential part of resolving African conflict, as per the theory of Structural Functionalism. The choice of the people that qualified as elders;

> "Depended on their knowledge of the community's customs, wisdom, character, and experience in resolving the conflicts. Some of them were, good orators skillful mediators, and reconcilers and thus possessed the social capital as leaders of their communities and therefore, they were best suited to be their communities as negotiators." (Kosgei, O.I., 2022).

Eshetu and Getu (2009) argue that once a conflict had been fully resolved between the disputants a ceremony was held to cement the social relations of the parties that were in conflict. This was done in various forms for example, sacrificing to the gods and ancestral spirits, exchanging assets, and prayers, performing habitual activities like

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destroying spears and arrows, eating and drinking together, dancing jointly as well as drinking certain concoctions. All these activities symbolized a newly established relationship and harmony among the parties (Volker, 2007).

4.4 Background to the Kipsigis and Abagusii conflict during the Pre-colonial Period

It should be clear from the onset of this discussion that the Kipsigis and the Abagusii conflict had a lot to do with livestock. Therefore, any attempt to hold deliberation that does not take livestock into account is set to bring about a blurred picture of the conflict. However, this does not limit other causes that might have promoted the conflict in one way or the other. There were large-scale battles between the Kipsigis and the Abagusii such as the battle of Chemoiben, Ngoina, Tiiriit ap Moita, Kibongwa, Chelemei, Kapsabanut, Mabasi and the worst was that of Mogori that was fought around the 1890s. All these wars were fought largely by caused by livestock (Mwanzi, 1977; Toweett, 1979). The oral sources and the historical accounts of scholars that have studied the Kipsigis are all in agreement that raiding was the key cause of this conflict, where the Kipsigis were considered as the aggressors and intruders than the Abagusii (Peristiany and Evans-Pritchard 1939, Orchardson 1971, Kenyenga, O.I., 2022; Mibei, I.O., 2022).

The warrior groups of the Kipsigis and the Abagusii were the ones that engaged in raiding their neighbors as well as protecting the livestock. The conflict worsened when raiding institutionalized among the Kipsigis community was. The function the warrior group performed was different from that of the elders in line with the theory of Structural Functionalism. As a matter of fact the oral sources insisted that no Kipsigis was allowed to raid his fellow Kipsigis, this was unheard of in the community and thus those who tried it were put to death, this acted as customary law (Rono O.I., 2022 and Mibei O.I., 2022). Orchardson (1971) started that among the Kipsigis any raiding that was carried out was supposed to be successful because those that aborted the warriors' punishment was death. This meant that raiding was a well-organized activity, executed by experts and the masters of the activity. Therefore, raiding menace was an activity that ended up being raiding and counter raiding. This vicious nature then sustained the conflict throughout the pre-colonial and colonial periods.

There were some killings on a quite small scale. Only warriors were killed as they were the ones that participated in the raiding activity the most remembered killing was the killing of the warriors between the two communities was the Mogori battle of around the 1890s. It's worthwhile to note that during the pre-colonial period raiding among these two communities was not a means for warriors to enrich themselves, but as well a way to recoup their animals' loss through diseases and other natural calamities (Omindi, O.I., 2022; Rono, O.I., 2022)

4.5 The Traditional Strategies of Conflict Resolution among the Abagusii, and the Kipsigis

The fact that the effects arising from conflicts are in most cases negative, the human race has been tasked with finding a solution to the problems they face. In terms of conflict resolution, various methods have been employed to resolve conflicts. According to Lopez *et al.* (1956), such methods must bring members to an agreeable solution or terminate the conflict so as to avoid the reoccurrence of the conflict.

Conflict resolution actors have agreed that for every conflict that develops there is an equal conflict resolution strategy. Gulliver (1979) considers conflict resolution as either violent or peaceful. On one hand, the knock-down mechanism includes the use of war or hostilities while on the hand, peaceful conflict resolution involves the use of methods like negotiation, arbitration, adjudication, mediation, use of avoidance, and use of symbolic process where a dispute is buried'. Peace researchers like Gulliver (1979) have suggested and recommended the use of peaceful conflict resolution methods, for example, avoidance where one disputing party can willingly move away from the other party. This research found out that conflict resolution actors in the Kipsigis and Abagusii conflict largely adopted peaceful resolution methods except during the pre-colonial period when violent mechanism was employed.

The Abagusii community used various strategies to resolve their traditional conflict with the Kipsigis. First, the oral sources confirmed that indeed the Kipsigis posed a serious threat to the survival of the Abagusii community. Their strained relation dates back to the 17th and 18th centuries when they encountered each other during migration periods.

"They coined names that portrayed their enmity the Kipsigis called the Abagusii *gosobindet* to refer to the enemy while the Abagusii referred to the Kipsigis as *abanyamato abaibi* to mean thieves. The two communities' face to face encounter took place at *Kabianga* literally translated in the Gusii language as things have refused. The Kipsigis' love for cattle made them carry out constant raids on the Abagusii." (Omosa, O.I., 2022; William, O.I., 2022).

During their stay at *Kabianga*, the Abagusii community evolved some traditional strategies that were geared towards resolving their conflict with the Kipsigis. The first strategy was the building of the *Orwaki* (forts) to secure their animals. These forts were reinforced with deep trenches from outside that were meant to tighten the target in this case the animals. These walls were further strengthened through the use of laying heavy Acacia trees on top. The second strategy was physical fighting with their enemies using at first spears, clubs and *Enguba* (traditional shield). They later learned the use of poisoned arrows from their enemies (Agetha O.I., 2022; Mochama O.I., 2022; Nyagosia, 2017). As well they evolved the use of using *Chinduruche* (slings) and *Ebiranya* (a special curse) the greatly terrified the Kipsigis (Akama, 2017). The final strategy was to migrate, simply to escape from the persistent, and provocative raids from the Kipsigis as well look for a conducive climate for crop farming and animal keeping.

The use of warfare between the Kipsigis, and the Abagusii as a means of conflict resolution have been well-captured by scholars like Mwanzi (1977) and Toweet (1979). These authors have documented the accounts of the large-scale battles like the battle of Chemoiben, Ngoina, and worst of all called the Mogori or Osaosao battle. All these battles were fought because of cattle Gulliver (1979) argues that war can be used to resolve a conflict. Thus, these communities have tried to employ this method, as already alluded to but at last, this method worked for the Abagusii in the famous Osaosao battle as discussed therein.

The oral sources confirmed that the *Abakumi* (traditional chiefs) from the entire Gusii region met at Kitutu, and thereafter made a declaration that was backed by *Emuma;(pl. Chimuma)* an oath to unite them against the common enemy. The famous Gusii prophet Sakawa is said to be in attendance, he then led these elders in appeasing the Gusii ancestral spirits, and blessed the warriors in readiness to start war with the Kipsigis.

Before this meeting, there was some intelligence on the impending massive raid by the Kipsigis, whose animals had been depleted by Rinderpest. After the meeting, the *abakumi* returned to their respective clans and held meetings with the council of elders who in turn disseminated the same information to warriors to prepare for war (Agetha, O.I., 2022; Ongiri, O.I., 2022 and Akama, 2017).

Besides the blessing of Sakawa, the Abagusii as well used *Ebiranya* (traditional medicine). This *Ebiranya* was meant to *kobakundek*a (to bind them) the Kipsigis warriors, and act like a boundary where they were not supposed to by-pass. Unfortunately, once they passed this point where the *Ebiranya* was placed they were now 'bound spiritually' this what the Abagusii refer to as *Amarimu (*state of confusion). After their loot, the warriors became confused, doubted, and lost a sense of cooperation, and unity. Toweet (1979) and Nyagosia (2017) both agree that after the successful, and massive raid in North Mugirango and Kitutu, and having left a trail of destruction, two leaders Chesengeny, and Malaban they failed to agree after the raid whether to return home at night or continue with the raid expedition, such a disagreement greatly impacted negatively their teams' lives. Agetha explained it that;

> "The warriors became suspicious of themselves in that state of panic they were easily defeated. In such circumstances, they were not able to sustain the battle, because coordination and order was disrupted, and thus it was easy to vanquish them." (Agetha, O.I., 2022)

This war became a turning point for the two communities. For the Kipsigis almost the whole generation was wiped out. This made the elders think very first, and after holding an argent meeting they resolved that rules that regulated marriage were to be adjusted leading to the initiation of young boys, and consequently allowing them to have uncontrolled sex, a situation that seriously denounced the observance of the African customs concerning sexual relationships (William, O.I., 2022; Mwanzi, 1977). As the Structural Functionalism theory holds when one part of the society is affected the whole society is at stake, that why the decision of the Kipsigis elders came in handy in advancing the community what to do so as to save the whole community from vanishing.

On the hand, for the Abagusii it was such a glorious moment to have achieved historical overwhelming victory over their traditional enemies. This very war is still engraved in

the Gusii fork history, and it lead the Abagusii to migrate and occupying new territories North of Mugirango spreading to Sondu, and Sotik (Nyambega, O.I., 2022; Akama, 2017). Indeed as Gulliver (1979) argues that war can act as a resolution to a conflict. Respondents from both communities agreed that after this war, there were almost thirty years of peace accompanied by the drastically reduced number of cattle raids between the Kipsigis, and the Abagusii. Mochama one of the respondent argued that;

> "The *Osaosao* battle as it is known in Gusii land or *Mogori* in Kipsigis land. The war ended the provocative nature of the Kipsigis thereby making raids and counter-raids remain at reduced levels. The war brought a major shift that changed the conflict from being provocative, intentional, malicious and war-like as witnessed in the battles of Chemoiben, and Ngoina to cultural conflict." (Mochama, O.I., 2022).

Before this war raiding was a large-scale event that was well organized and planned and it involved many people, it now became an individual affair. Where now when a young boy from Kipsigis land who wanted to be circumcised would go to Gusii land steal animals to facilitate the process. As well when a young man in Gusii land who wanted to marry would go and steal from Kipsigis land. It was a way to demonstrate brevity by getting a few cows to satisfy cultural appetite (Agetha, O.I., 2022; Ngeno, O.I., 2022; Bett, O.I., 2022).

In the reconciliation process, as already indicated above the Kipsigis elders took drastic measures to salvage the Kipsigis community. The reconciliation process began with the old the Kipsigis elders taking a journey to Gusii land visiting the Gusii elders. They came along with gifts like bulls to appease these elders. The elders consulted the Sakawa to inform them whether the visit was genuine or it was a spy-like visit. The two groups of elders then held a consultative meeting. (Agetha, O.I., 2022). The ongoing discussions clearly portray the overriding role the elders had in helping to bring order and stability in the society an idea that Structural Functionalism tries to put forward. After which they slaughtered a bull from each side, and shared a sign of peace after this the Kipsigis requested to be given young men that will assist in reviving the Kipsigis generation. The elders agreed, and a word was sent to various Gusii clans that those who had more boys to consider donating some. This is how the names of the Gusii clans ended up in Kipsigis land like *Ababasi, Abagisero, Abasweta, and Abamatobori,* they later became Kipsigis clan with corresponding names such as

Mabasik, Buskurerek, Baswetek, and Mataborik respectively. Since then, the Kipsigis refer to the Abagusii as Kamama meaning uncle because they consider the Gusii men as their uncles that were left in Gusii land. (Agetha, O.I., 2022; Nyaoma, O.I.,2022; William, O.I., 2022)

The two communities used trade as a measure to maintain their good relations as witnessed in trade exchanges between them. According to Mwanzi (1977) the late nineteenth century ended with a serious drought that brought about a famine to the Kipsigis land necessitating them to seek food from their neighbors the Abagusii community. The Kipsigi's traditional accounts have it that they pawned their children in exchange for grains like finger millet, and wimbi from the Abagusii community (Peristiany and Evans-Pritchard 1939; Orchardson 1961and Ochieng' 1974). Most of the respondents agreed that the Kipsigis community relied to the Abagusii for food exchange in terms of grains, and animals. This exchange, however, was only possible when the two communities were experiencing peaceful periods that facilitated the free movement of the people in, and out of each community as they searched for food in these societies (Langat, O.I., 2022; Ombuki, O.I., 2022; Mwanzi, 1979).

As a way of guarding their animals which was an important resource the Kipsigis community evolved the use of special marks on their animals. They used various marks ranging from branding, piercing the ears as well to cutting the ears in a special way so as to distinguish them from animals that their neighbors had (Langat, O.I., 2022; Soi, O.I., 2022; Omwoyo, 2000).

These two communities intermarried with each other as a way of trying to improve and cement their relations to reduce tensions between themselves. The oral sources together with the works of Toweett (1979) were in agreement that there existed intermarriage between the two communities. The evidence that can be attributed to this practice was the borrowing of names. For example, the names of the *Mabasik, Mataborik, and Baswetek* correspond to Abagusii names as *Ababasi, Abatobori, and Abasweta* respectively (Toweett, 1979). As well as names of months like Kiptamo, and Mamut corresponding to Abagusii names as *Egetamo* and *Amaumutia*. These are the names of March, and May months of the year (Rono, O.I., 2022; Nyarangi, O.I., 2022; Peristiany

and Evans-Pritchard, 1939). A vegetable name like Spinder flowers the *Sayget* (Kipsigis) and *Chisaga* (in Gusii language). All these names show a close relationship in terms of pronunciations justifying their origin. Though some of the respondents claimed that the borrowing of names was a result of interactions that culminated into the assimilation and absorption of the Abagusii community's members. This claim can be true due to the fact that these two communities have had many years of interaction that resulted in displacement, and migrations thus leaving some of the remnants that might have been assimilated by the mightier group.

The Kipsigis and the Abagusii had prophets and diviners. Among the Abagusii there were *Abaragori* (diviners), the *omobani* (the prophet or seer) like the famous *Sakawa,* and the Kipsigis had the *Laibons* (prophets). Most of the undertakings of these two societies were done in consultation with the prophets, and diviners. They performed both political and religious functions in their respective societies. The seer, for example, *Laibon* was able to foretell how successful or unsuccessful the raid would be, as such they were involved in the planning, and execution of raiding expeditions (Toweett, 1979). For every successful raid *Laibon* was awarded a cow (Mwanzi, 1977). These prophets were important in shaping the political actions through their warnings of the impending outcomes of the future undertaking of their respective community. This made the prophets and diviners serve a critical purpose, in line with the Structural Functionalism. In this manner, they assisted in guiding the community through proper advice. Such a group of prophets and seers had immense knowledge, and experience that greatly helped in determining the future outcomes. They worked in conjunction with ritual experts, and medicine men in their communities.

On the other hand, the ability of the seers to see into the future was an important element that helped them to warn people, and as such, this became crucial in resolving community conflicts, especially raiding. Omwoyo's (2000) study revealed that the Kipsigis community, especially warriors regretted having disobeyed the advice of the *Laibon* leading them to lose the Mau and Mogori battles. The *Laibon* had asked the warriors to postpone their raiding expedition but they did not listen to his advice. As a result, almost all warriors were killed during the raid in what became to be known as the Mogori battle of 1890. Due to the disobedience of *Laibon* directive there came in a

serious disaster among the warriors of the Kipsigis. From this example, it's clear that the prophets like *Laibon* were involved in conflict resolution matters. As the theory of Structural Functionalism holds every structure in the society had well defined duty to perform. In that connection all members were supposed to be in consensus so that the society can move forward. Once the members fail to follow some directions that were given such development became a stumbling block to the development and advancement of the society as demonstrated by the grave mistake the Kipsigis warriors did.

The Oath-taking

From the theoretical standpoint, oaths administration before and during the colonial times played a functionalistic role that served to maintain the society in a state of equilibrium. One of the key pillars of this theory is equilibrium. The theory posit's that whenever this state of equipoise is endangered, there are social institutions that help to resuscitate its balance. Different societies had social institutions that functioned independently and interdependently so as to resuscitate the equilibrium that was meant to enable the members of the society to have a harmonious relationship (Brock-Utne, 2001). Social capital is another element of this theory that greatly helps to explain how a given society functions. Fred-Mensah, (2007) while explaining the use of informal conflict resolution as a social capital defined it as the;

> "Capability of social norms and customs to hold members of a group together by effectively setting and facilitating the terms of their relationship…sustainability facilitates collective action for achieving mutually beneficial ends".

According to Choudree (1991), social capital explains that legal institutions function in a manner that they guard against the breakdown of social harmony, as well that restore harmony in case there is some instability. Societies are united when they have strong social ties, without which there is a breakdown. Indigenous mechanisms like oath-taking among the two communities under study were meant as backups and truth stumpers in the cycles of the conflict resolution process. Oaths were to guard against false declarations from the disputants; therefore, they served as the reinforcement of truth.

As well they acted as a mechanism of instilling fear so that the parties participating in resolution process would say nothing other than the truth. In simple terms use of oaths

can be linked to the modern use of the bible in courts before any resolution process starts. In a similar manner, the use of the bible is connected with the spiritual realm, and the oaths served the purpose in the African setting, in that any person who bore false accusations for or against the other after taking any oath was reliable for divine punishment. This made the oaths to be one of the main boosters in the spheres of conflict resolution in the African setup.

Based on this premise this study used this theory to explain the function of various oath-taking, and other related mechanisms among the two communities. The use of the oaths during the pre-colonial and colonial period was a well-structured mechanism that was given a lot of respect, and strict observance ceremony. Before taking an oath, the parties were counseled on the serious impending effects of participating in the oath process. Oath-taking served a key ingredient of the resolution process and reconciliation among the Africans. Choudree (1999) observed that oath-taking among the African people served "to restore a balance, to settle a conflict, and eliminate disputes".

The administration of oaths had the following benefits; to begin with, the practice was informal, and therefore less tiring. In addition, the actors who applied it or to whom it was administered were ready to undertake the process, and lastly, the practice was sacred, because it invoked the spirits of the ancestors, God, neighbors, and family members (Mbiti, 2015). This qualified the practice to be accorded the seriousness it deserved, because of, especially the consequences that were associated with the process. In fact, the oral responses made it clear that before the parties took the oath they were counseled properly and informed of the impending repercussions if they were to lie in the process of resolution.

The main function of the indigenous mechanisms of conflict resolution in any community was to amend the strained relationship, rectify the wrongdoing, and restore justice (Brock-Utne 2001). These mechanisms were designed to bring order, harmonize relations of the society members, and create an environment that would allow the peaceful coexistence of members. Fieddie and Koketso (2013) observed that oath-taking was deeply rooted, and bed rocked in ancient African societies. They had

remained formidable forces in the administration of justice, law, and order in different societies. During the colonial period, with time realized the overriding role the African customary laws carried, and therefore supported them, though they underwent some considerable transformations. Those that were in the application were allowed because they served the interest of the colonial master (Killingray, 1986). On the same note, the use of oaths among the Abagusii, and the Kipsigis was on the ground that they posed little danger to the colonial rule, and their results proved positive, especially where the formal law was inadequate. During the colonial period, the undertaking of oaths among the communities of the Kipsigis, and the Abagusii was considered one of the elements of the customary law that were largely classified as informal mechanisms of conflict resolution. The administration of oaths was closely monitored by the colonial administration.

Classes of oaths among the Abagusii; Oaths that underscored the truth

The conflict resolution actors have found it had to administer justice, in a situation where truth is an illusion. Each disputing party can present issues and witnesses in a manner that makes it hard for the truth to be discovered. To safeguard the truth, the traditional societies, therefore, developed mechanisms that were time-tested and proved effective to help them to unearth the truth. Among the Abagusii the 'Omotembe' tree oath commonly known as *Erythrina Abissica* was used to challenge the parties in conflict to say the truth. This tree was planted in venues where the elders used to sit when they administer justice. The tree that was preferred was the living one, before the parties would testify their testimonials, one was led to the tree site and then allowed to hold the trunk or a branch, and say that he or she was about to say was nothing but the truth. It was believed that negative consequences not limited to death or bad omen would befall whoever gave false information (KNA /DP/18/13).

As well the *Omotembe* tree oath was used together with the '*Ekeore*' in what was known as the skull oath. This type of oath was commonly used at the '*Ritongo*' courts commonly known as Native courts during the colonial period. Where the elders got the human skull, they were using remained their secret. However, some of the respondents claimed that during the colonial period the skulls were not a hard task to get. This oath was used when serious crimes such as killing as well as assault had taken place. The

agonized person then did hold the skull in one hand, and said that he or she was ready to say the truth later the accused as well does the same. There were two flowers of the *'Omotembe'* that were inserted in the sockets of the eyes of the skull (KNA /DP/18/13; Ondieki, O.I., 2022).

The land is an emotive issue any claim over land was taken seriously. If there was conflict relating to land it was taken to the elders, who in turn would listen to the case so as to determine the real owner of the land. Because land was not demarcated before and during initial stages of colonial period this increased some frequency of land conflicts. The tree known as '*Orosiaga* 'was used where each party was allowed to hold a stalk of the *Orosiaga* and then told the repeat the oathing words as led by an elder. Taking an oath was the last step in this process after which there was adjournment was done so as to wait for the verdict if both parties had accepted to take an oath. If one party decided to withdraw from the process then the elders will just conclude that person did not give honest information (KNA/DP/18/13). As well there was *Rigio* oath this involved breaking an old pot in the disputed land, owing to the repercussions of this oath it was not encouraged, one of the respondents claimed that such oath attracted a lot of curses as it was accompanied by the *Omotembe oath.* Breaking of the pot signified destruction, literally translating that such land has been 'destroyed', and as such none of the disputing parties was supposed to occupy it. They lost this land ownership as such the land would only be used by a member of a different clan who does not have any relationship with the parties in conflict (Mochama, O.I., 2022; Nyarangi, O.I., 2020).

In case of conflicts that involved debt, especially where one party was not ready to the own the debt *amasagisa oath* was used. It involved the use of *the Omebeno/Emenyinga tree* together with *chintamame* flowers, *Orosiaga* and a skeleton of a dead dog was all put in a traditional basket, and taken at night to the debtor's house, and placed before the door. This was done intentionally to make sure that when the individual gets out he or she will come face to face with the awaiting 'visitor'. If the person did not want to attract the curse will then make arrangements to pay or meet the other person, and request time to pay the debt (Nyaoma, O.I., 2022; KNA /DP /18/13).

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The Oaths that were designed to Establish hideout Suspects

There were conflicts that arose when for example, somebody maliciously destroys other peoples' property, and in that connection, it was not easy to know the suspect. In such a case *Orosanga oath* (sharing oath) was administered so as to unearth the suspect. For example, when a person comes at night and slashes somebody's cows. A meeting was organized immediately where then a piece of meat from the affected animal was cut and attached to *the Oronsanga* tree stack. The owner of the animal would then challenge each person in attendance to take a bite, and whoever refused was considered the suspect (Nyarangi, O.I., 2022; KNA DP 18/13).

Another oath was known as *the Amaera oath.* This oath was used where arson had taken place making it hard to know the culprit. Some burnt charcoal from that house was crushed and then sieved in water then the suspects were challenged to drink the water. As well a small burnt stick was taken secretly and buried in the nearby water drinking sources. If the suspect drank such water, one would then run mad or become abnormal in one way or another. (Nyambega, O.I., 2022; KNA /DP/ 18/13)

The last oath was the *Amasangia* oath. This oath was supposed to guard against conflicts that were related to adultery cases that concerned women, especially rape. (KNA/ DP/ 18/13). The woman who had been raped was asked to strip naked and open her legs for the suspects to pass under while at the same time carrying a spear in one hand, and a native shield in the other hand. She was led by the elders in uttering some cursing words during the whole process. (Nyarangi, O.I., 2022).

Use of *Mumek* among the Kipsigis

The *mumek* was used to resolve disputes that involved serious crimes like witchcraft, and theft (Orchardson, 1961). They were used where there was no sufficient evidence, and as such when a person had decided to take an oath, then no one would accuse her/him. To do so it might transfer the *Mumek* from the criminate to the accuser (Serem, O.I., 2022; Cheruyoit , O.I., 2022). As well the oral sources confirmed that oaths were taken seriously as the consequences affected the whole family including the animals. Before the elders would intervene, and held a cleansing ceremony to stop the spread of the effects.

Forms of *mumek*

Those that were made to ascertain the evidence *Mumek ap ngotwek* oath was conducted by the elders. A day was set where all members and relatives of the accused gathered to witness the oath-taking. Two spears were stuck on the ground facing upwards, sometimes they were tied with a given poisonous animal. Then one elder who supposedly had a strong character would then lead the accused to take an oath. Meanwhile, before the process began the concerned party was reminded of the impending consequences of taking the oath. If one was innocent he or she would then take the oath, but those who knew they were not, they rarely took the oath (Cherurei, O.I., 2022; Langat, O.I., 2022). The *Mumek ap liteito* was an oath that was taken, especially to bind up the peace pact, it was taken by both parties.

Other Conflict Resolution Mechanisms

As well the elders employed other community-respected mediums of conflict resolution, besides listening as demonstrated in table 3.

Table 3: Showing other mechanisms of conflict resolution as used by the Kipsigis and the Abagusii communities.

Method	Frequency	Percentage %
Use of oaths	30	60
Cursing	10	20
Instilling discipline	5	10
Advice	5	10
Total	50	100

As indicated from table 3 there were other mediums that the two communities used to help in resolving the community's conflicts. All were directed towards one goal of achieving peace through conflict resolution. The use of oaths *(emuma)* for Abagusii and *mumek* for Kipsigis was at 30 (60%) of all conflict resolution processes started and ended with oaths. Therefore, the performance of the oaths were designed to perform a specific function on behalf of these communities, especially in conflict resolution cycles. They were meant to make the disputants remain truthful to what they said especially when they seemed to be reluctant to participate in the process. As well Holmwood (2005) observe that the undertaking of the oaths served a psychological and

physiological function for example, it instilled fear, so that the participants can remain truthful.

The use of curses at 10 (20 %) were used for various reasons. First, to make sure that parties participating in resolution process remain faithful, especially in fulfilling the elders' resolutions. In addition, they were used to curse disputants who were in the hideout and who had refused to come and participate in the resolution process. In both communities, curses were uttered by elderly who usually met at a river to perform the curse, but before they cursed the culprit was given a specified period to come forward and ask for forgiveness. Upon the expiry of the amnesty period then the elders met and cursed the culprit. The use of advice at 5 (10%) was especially given to guide and counsel members of the society to avoid conflicting with each other and for the young people to respect and honor elders. As well advice was more important to disputants before they chose to take *emuma or mumek* as they were counselled of the effects of the process. Lastly, instilling discipline at 5 (10%) was another form of conflict resolution, especially where it involved caning the wrongdoers mostly at the family level. It was guided by the biblical concept that 'spare the rod and spoil the child'. As such it was a measure of correcting the deviant children in various families.

Reconciliation and rituals

The research established that not all conflicts were solved using ritual ceremonies. In both communities, it was a serious offense to shed human blood whether it was from within or without. In the event, that a person has killed another person, it then followed that animal blood was to be shed so as to cleanse the person. The person who has killed another person among the Kipsigis was called *rumindet* (murder) while among the Abagusii was called *Omorominta (*murder), such a person(s) was not allowed to share with other members of the family until such a time one has been cleansed, as they risked to share the curse of bloodshed to other innocent community members. In both communities they had a rigorous process for cleansing such persons. (Nyaoma, O.I., 2022; Ageta, O.I., 2022 ; Kiptanui, O.I., 2022; Peristiany and Evans-Pritchard 1939). Among the Abagusii, when a person sheds blood leading to death or as well injuring a close relative that leads to shedding blood, there was always a ritual ceremony to cleanse the person. In case one had killed an enemy for example, the Kipsigis, the

Omorominta was supposed to smear half of the face with *embiro* (soot), and the other half *etago* (special clay) as the *Omorominta* waiting for the cleansing ritual. Meanwhile, the *Omorominta* was to sleep inside the *Ekiage* (traditional granary) not supposed to intermingle with the society members until such a person has been cleansed. The process involved use of *ekeng'eta mbori* (a special plant that was used to suffocate the goat during the sacrifice) and *emurwa* (a special type of grass) in most a spotless white goat was used. The process was led by *omokundekane* (traditional priest). Once the goat was slaughtered and then removed the skin on one side, then the stomach was opened to observe how the *egesingo* (a special protrusion among the intestines). If the elders were satisfied how the egesingo were arranged then they would announce to other congregation that *ekengwanso giacheranirwe* (the sacrifice has been accepted). The respondents were in agreement that once the sacrifice was accepted then they believed the dispute was totally resolved. (Nyambega, O.I., 2022; Omwenga, O.I., 2022). If the *omokundekane* was not satisfied then another goat was to be sacrificed and the process again was then followed until such a time when the elders were satisfied that all was well.

As already noted, besides the two communities being traditional enemies, they shared a lot in terms of culture and conflict resolution structures. For example, among the Kipsigis after the *Kiruogindet neo* (special judge) or *kokwet* elders having listened to the presented case, then the *Kiruogindet neo* would then stand wave the *ingotiat* (a special well-made animal tail) as sign for every to be quiet, then puts some questions forward to test the various reactions of other elders. He can ask for further clarifications after which he will deliver the judgment. After this process a goat or a bull was slaughtered depending on the weight of the matter, before cerebrating the meat the intestines were keenly observed to see whether they were in agreement with the verdict given. If not another siting was arranged to review the process and use other mechanisms like *mumek.* Every time the conclusion and the culmination of the verdict were supposed to be in line with normal white the colors of the animal intestines (Too, O.I., 2022; William, O.I., 2022; Peristiany and Evans-Pitchard, 1939).

4.6 Ways of Conflict Resolution among the Kipsigis and the Abagusii

From primary sources, respondents pointed out that these communities had for a long time utilized the methods of reconciliation, mediation, and negotiation to resolve conflicts. These methods became critical pillars of finding peace and as such, the ended making the two communities leave in harmony. Prior to and during the reign of British colonialists, dispute resolution was through the use of ICRs. The disputants appeared before the council of elders especially the *kokwet* for the Kipsigis and *Etureti* as well as the *Abagaka begesaku* among the Abagusii who in turn helped them to resolve their conflicts. The council was at least led by two arbiters. Another method of ICRs was the use of negotiation and reconciliation. This method was commonly utilized by Kipsigis elders when they sat down with the Abagusii to resolve conflicts that these two communities had during the colonial period. In addition, mediation was employed to resolve Kipsigis conflicts, however, as noted from the field it was applied at the lowest level is the family, where the father was in most cases was sole mediator in resolving family conflicts.

Table 4: Showing the Methods of Conflict Resolution in their Order of Merit Among the Kipsigis and the Abagusii

Methods	Frequency	Percentage %
Negotiation and Reconciliation	30	60
Mediation	20	40
Total	50	100

From Table 4 the method of negotiation and reconciliation was preferred at 30 (60%) as it was key in resolving conflicts between the Kipsigis and the Abagusii. In this process, the conflicting parties come together so that they can identify and discuss issues that were tearing them apart. The elders from both communities who were well experienced in terms of conflict resolution met after the Osaosao/Mogori battle to discuss how to resolve the two communities' conflict in mutual way. Before this battle the elders from the two communities never met. They referred to each other as *etago* (special clay, grey in colour) and *embiro* (soot) meaning that they would not mix in any manner, such negative relations made meetings between the two communities impossible before the Osaosao/Mogori battle. It was after this battle that the two communities were able to hold meetings, as well during the colonial period. The elders' successful negotiations would then help to reconcile the two communities as they chose

to put aside their differences. The lowest level of conflict resolution was at home observed at 20 (40%) where the father resolved the conflict of the household members using the mediation method.

4.7 Institutions of Conflict Resolution under Indigenous Conflict Resolution

The presence of various social institutions like the family and elders and the function each performed as far as conflict resolution served to justify the use of the theory of structural functionalism in this study. The two communities had a hierarchical governance right from family level extended to council of elders, at each level had duty to perform as discussed below.

The family was the basic social institution between the two communities. The family consisted of the father, children and wives. The father was the head of the family, and their authority was unquestionable. As such they were accorded a lot of respect, especially from children. The father was the overall family administrator, and the custodian of the family resources (Cherurei, O.I., 2022; Omosa, O.I., 2022). Among the Kipsigis, and the Abagusii the man was responsible for resolving all disputes at the family level. All conflicts that developed were taken to the father for resolution; each family member looked to the father for leadership, and direction of the family.

The extended family was composed of the nuclear family, the old parents, relatives, in-laws, and other family defendants (Nyaberi, O.I., 2022). This level formed one of the social-political institutions of conflict resolutions. Among the Kipsigis and the Abagusii for instance, this level was crucial for resolving conflicts. All conflicts that were not resolved at the nucleus family were set to be resolved at this level. This level then served as an appellate 'court' in resolving all family matters in this regard. The matter at hand would then involve the help of the extended family, especially the elders to offer their help in resolving a certain conflict. Some respondents observed that there were private matters (conflicts) that only required the input of the extended family.

The clan formed another branch of conflict resolution. Both the Kipsigis and the Abagusii considered the clan as one of the socio-political organizations that brought on board distant relatives to whom they were related in terms of blood but separated

geographically. These members still had ancestral linkage. As such they were bound together by traditional rules, for example, in both communities' clan members were not supposed to marry. When it comes to conflict resolution these members gave joint support to all issues that was of interest to the clan.

Among the Abagusii there were various groups of elders, namely the *etureti*, *abagaka* b*egesaku*, and the *Abakumi* (Omwenga, O.I., 2022). The *Etureti elders* (sub-clan elders) came from the surrounding villages within the sub-clan. According to Akama (2017) these elders were chosen depending on their good character, their experience in conflict resolution, and their wisdom. They handled conflicts related to witchcraft, assault, and boundary issues. They were in a position to impose fines and make consultative decisions concerning the cases they handled. To reinforce their decisions, they would administer *emuma* to the disputants. There were also *Abagaka begesaku* elders (clan elders) whose composition came from the senior-most elders of the *etureti*. They dealt with cases appealed from the *etureti* elders. They resolved conflicts between different clans, boundary disputes, and any other case brought to their attention. Respondents claimed that these elders had some magical-related powers, especially due to the fact that they were able to invoke a curse (Nyarora, O.I., 2022; Ochwari, O.I., 2022). The next typology of elders was the *Abakumi.* They formed the apex of the indigenous conflict resolution among the Abagusii society during the pre-colonial period, and their decision was final. Such were elders who had influenced positively the whole society, making them come, and a lot of respect, honor, and recognition. They were able to give the community direction based on their wisdom accumulated over years. They as well performed religious functions on behalf of the Abagusii society.

Conflict Resolution during the Pre-colonial Period

The table 5 shows those who were responsible for conflict resolution, especially during the pre-colonial period. This question was posed to all categories of respondents.

Table 5: Showing resolution actors during the pre-colonial period

Type	Frequency	Percentage %
Elders	35	70
Society social institution (Age-set, father and Ebisarate)	5	10
Religious leaders	10	20
Total	50	100

The resolution of conflict during the pre-colonial period was exclusively executed by elders as demonstrated by 35 (70%). This was based on the fact that they were endowed with wisdom and accumulated experience in conflict resolution and community traditions and values. Other social institutions closely followed with 5 (10%) since they as well assisted in resolving conflicts in their respective establishments. Finally, the religious leaders took a percentage of 10 (20%) they gave guidance to the community members and as such they served to reduce conflicts. For example, the *Laibons* advice served to control the raiding activities and in a way, they guided the warrior on when to raid and when not to do so. To this end they controlled the conflict that arose from cattle raids especially they were warriors listened to them. Failure was a grave consequence as it happened during the Mogori battle.

The Institutional structure of Elders of conflict resolution among the Kipsigis

Among the Kipsigis the ICRs process is categorized into three bottom-up hierarchical governance levels that included *Kotigonet, Kokwet, and Kiruogik (*Kosgei, O.I., 2022). Such classification of elders at different levels served to differentiate them in terms of level of conflicts they handled. At the base was *Kotigonet* that resolved conflicts at the family level, such conflicts were required some advice and direction. Resolving of family conflicts just started at this level, before they qualify to move to the next level of *boisek ab Kokwet* (village elders). Rono one respondent argued that;

> "…any misunderstanding or conflict amongst the family members was resolved by the *kwandab loog* (father) or by eldest members from the extended family member, who would advise members to live in harmony through sorting out their difference." (Rono, O.I., 2022)

If the members felt that their dispute was not resolved satisfactorily then, one would proceed to *boisek ab Kokwet.* This social institution was composed of village elders (*boisek ab Kokwet*). Primary sources indicated that *kokwet* was well organized in that

they had a chairperson who was supposedly the senior elder in the group who at the same time displayed a lot of skills, and wisdom. This afforded him a chance to make sure that the resolution process was conducted in an orderly manner. This group of elders came from around the village and helped to resolve all cases that arose within the village. The composition of the elders was different depending on the weight of the matter to be resolved (Mibei, O.I., 2022; Marer, O.I.,2022)

The next level that the parties moved to if they felt that their conflicts were not resolved to their satisfaction was (*Kuruogindent* or *Kiruogik in plural)*. As well these groups of elders that participated here were chosen based on their wisdom in terms of understanding the customary laws, respect, oratory skills, and fame they got after resolving serious conflicts (Cheruyot, O.I., 2022). Some of them would come from very far depending on the need for the conflict to be resolved. Some respondents claimed that these elders were 'experts' in resolving some conflicts, such experience was accrued over a long period of resolving conflicts. The elders from *Kokwet* would sometimes consult these elders for advice. The decisions made by *Kiruogindet* (sing.) or *Kiruogik* (pl.) were final, and as such, they were respected and adhered to by disputants.

The composition of the Kipsigis ICR members

From the oral sources, it turned out that this very institution of conflict resolution was composed of men only. Interestingly when women appeared in such forums they were either complainants, witnesses, or helping in the process of conflict resolution. Again women were supposed to address these elders while in a knee position. One respondent claimed that women were supposed to be seen not to be heard. Such a statement displayed a lot of male chauvinism in the eyes of the researcher.

Types of Cases handled by the Kipsigis and the Abagusii Elders

The primary sources revealed that the indigenous institutions dealt with conflicts, and indeed they helped to resolve conflicts before, and during the colonial period. The disputes resolved included: disputes related to the division of land, boundary disputes that involved the use of natural resources, family-related disputes, and cases of trespassing of that of animals (Cherurei, O.I., 2022; Mochama, O.I., 2022). Many

respondents claimed that boundary dispute conflicts existed, especially with their neighbor the Abagusii. The *abagaka* b*egesaku* and the *kokwet* elders would convene a meeting with Abagusii elders. A traditional expert (*Kiriogik elder)* who knew as far as the boundary creation was concerned was invited by *Kokwet,* who was set to help the parties in conflict to establish the true position of the boundary where necessary witnesses were called to give their evidence in the matter. Conflicts that involved succession were also resolved by *kokwet* elders.

Other disputes that the Kipsigis and the Abagusii elders resolved included cattle raids, which were rampant with Kipsigis and the Abagusii communities, fighting that ended up causing bodily harm, rape and assault. To resolve conflicts, customary law was followed; however, some serious cases like rape were referred to the police, especially during the colonial period, though some cases were hidden. In case a young man had forced a girl to have sex with her that was considered rape he was fined some goats (Cherurei, O.I., 2022; Ongiri, O.I., 2022; Ombuki, O.I., 2022).

Respondents' awareness of Conflict resolved by Elders or Council of Elders

Table 6 shows how respondents answered the question of whether they were aware of any conflict that was resolved using elders during the pre-colonial period. The answer that was expected was 'yes'.

Table 6: Showing respondents' awareness of conflicts resolved by elders or council of elders.

Response	Frequency	Percentage %
Yes	48	96
No	1	2
Not sure	1	2
Total	50	100

The study found out that council of elders were central to conflict resolution, and the promotion of peace at 48 (96%). This was a result of its structure, and use of the wide range of strategies that were used to resolve the Kipsigis, and Abagusii conflicts. The indigenous conflict resolution structure started from the homestead where the father formed the lowest organ of conflict resolution the CoE being at the top of the traditional

resolution organ. This study was in line with Macharia, and Kirema (2016) whose work revealed that 62.7% of the disputes were resolved by the Njuri Ncheke elders.

Table 7: Showing where the conflicts were resolved among the Kipsigis, and the Abagusii communities.

Place	Frequency	Percentage %
Homestead	10	20
Specific areas where CoE met	30	60
Ebisarate	5	10
Among the Age-set groups	5	10
Total	50	100

As revealed from Table 7 most of the conflicts constituting 30 (60%) were resolved by the CoE, and minor cases that happened at home comprising 10 (20%) were resolved by a father who was in charge of his family. The conflicts were resolved by age set and at *Ebisarate* level at 5 (10%) each, where the elders of these groups helped to settle any conflict that arose. Due to the interaction nature of the family, individuals and their neighbors' conflicts proved to be inevitable among the two communities. As such, the two communities had well designed ways that helped them to handle conflicts when they occurred. Both communities had social institutions that were crucial in handling conflicts at their institutional level. This was supported by the theory of Structural Functionalism the holds that various interdependent parts work in a cooperative manner so as to achieve a stable and functional society.

In the study, the two communities were in support of the decentralization strategy of conflict resolution making the process simpler and manageable at various levels. It was clear from the respondents that they were happy with the way the CoE resolved their conflicts as they observed the principle of justice. The decision was final and binding to the parties in conflict. In most cases, the elder's meetings were held publicly, and the members of that community were allowed to attend which made the exercise transparent. As well each conflicting party was given adequate time to present their case, and back it with evidence where possible. Then the elders would listen carefully before they made a consultative decision.

4.8 Challenges that face the Kipsigis, and the Abagusii ICRs

Both oral sources and written sources were in agreement that the judicial matters were largely handled by the patriarchs. Though women were at times involved, especially during the cleansing ceremonies, their work was to assist in doing women-related work but when it came to making decisions, especially regarding the conflict process their input was not sorted for. The women whose service was considered, were taken to be endowed with some wisdom, and had admirable character. Therefore, they were allowed to offer their services when they were called upon. Respondents from both communities claimed that;

> "Women were to be seen not to be heard, especially before the pre-colonial period. As well they claimed that woman's gossiping nature would lead to the communication of deliberations of elders before a final judgment was done." (Cheruyot, O.I., 2022; Agetha, O.I., 2022).

The greatest challenge in the resolution process was to determine the sincerity of the parties in conflict. The nature of the relations between the two communities sometimes interfered with the reconciliation process. It was not easy to determine the genuineness of the party seeking to be reconciled. Both parties from the Kipsigis and the Abagusii did not trust each other, as they were always suspecting one another where each thought that the other party was looking for the chance to spy on the other party. That's why in most cases the reconciliation meetings were held on the border lines not near homesteads, especially in Gusii land. However, this hurdle was overcome through the use of traditional mechanisms such as observation of the entrails of the animals these communities slaughtered at the end of the reconciliation process (Rono, O.I., 2022 and Peristiany and Evans-Pitchard, 1939).

Finally, each social institution in the society performed a specific function in relation to the continuity and the survival of the society as put forward by the Structural Functionalism theory. For example, the *Ebisarate* among the Abagusii were evolved by this community so that they can ensure security and protection to their animals that seemed as a prey to the Kipsigis community. The presence of the *Laibons* among the Kipsigis was crucial in directing the community especially, blessing the warriors and predicting the success of the raiding activities. As such, they gave the *murenik* go ahead during as far as raids were concern. Besides this they performed a wide range of other functions in the Kipsigis society. In both communities the oath taking served a purpose

of making the parties in conflict to remain committed to the resolution process. The social institutions among the two communities as well helped to resolve conflict at their institutional level. Finally, the presence of CoE among the two communities served the purpose of resettling conflicts and acted as the final court of appeal before the advent of colonialism.

CHAPTER FIVE

THE CHANGES AND IMPACT OF BRITISH COLONIALIST CONFLICT RESOLUTION STRATEGIES ON THE INDIGENOUS CONFLICT RESOLUTION STRATEGIES

5.0 Introduction

This chapter is meant to discuss the of the British colonial-led strategies on the indigenous conflict resolution strategies among the communities of the Kipsigis, and the Abagusii. The process of conquest and eventual inauguration of the colonial rule over the Abagusii and the Kipsigis communities formed the basis for the transformation of the two communities' political, social, economic and cultural spheres. These changes affected these communities positively and negatively as it will be discussed in this topic.

5.1 The Origin of colonial-led conflict resolution strategies in Kenya.

According to Mbondenyi, and Ambani (2012) argue that the white settlers advocated for the establishment of formal justice because it was best suited to handle their matters. This then led to the creation of the first judicial system in Kenya under the name of the East African Order in Council of 1897. This Order was the origin of the dual system of the superior court on the one hand for the Europeans, and on the other hand African courts. To the white settlers, the African courts were considered inferior including the native courts and Muslim courts while colonial courts were taken as superior. The authors outline some of the reasons that led to the creation of a dual system. To begin with, many settlers felt that the English law and legal procedures for Africans would not suit the African setting. In addition, they felt that the use of formal laws and legal procedure for non-Europeans were unjust, especially to less advanced races.

Thus, the white settlers laid the foundation for constant regulation of the Indigenous Conflict Resolution strategies otherwise therein known as ICRs throughout the colonial period. Within a short time, the white settlers realized that formal justice was unfit for many African natives who still chose to settle their disputes through the use of the ICRs mechanism. Shadle (2012) in the same breath states that the white settlers noted that Africans were more inclined to using of ICRs than the use English law. Shadle

concludes that the white settlers finally realized that it was in vain to impose a formal justice system on them, and therefore some chose to support the use of ICRs.

The creation of the dual system of courts, as observed above brought about divergent approach in resolution of conflicts. Shadle (2012) observes that white settlers were in denial that the ICR mechanisms contributed to resolving African conflicts, and as such, they continued to undermine the use of indigenous conflict mechanism while at the same time imposing English laws on the Africans. Onyango (2013) argued that the white settlers justified the application of English law through "English law was the culmination of centuries of evolution, and was unsurpassed for its justice and logic." With such a conclusion, an overruling attitude towards the use of ICRs meant that indeed such strategies were set to face a hard time in the foreseeable future.

The above discussions, clearly demonstrate that the white settlers were faced with the reality that they were on African soil, and as such things were to be done differently other than the normal way they were accustomed. They realized that the western justice system was largely alien to Africans because they had their mechanism of conflict resolution. Left with no option the colonial administration, was now forced with circumstances to recognize the use of ICRs mechanisms for African conflict resolution. With these, chiefs and village elders were appointed, and empowered to be in charge of conflict resolution process actors within their area of jurisdiction. Mbondenyi and Ambani (2012) observe that this development institutionalized the use of ICRs among the Kenyan communities. This extended to the creation of the Native Court's Ordinance in 1907. This very discussion serves to lay the foundation that will help in understanding, how the colonial-led strategies impacted on ICRs in the study period.

Western View of a Conflict and its Resolution

The formal resolution of a conflict is founded on the western culture. Avruch (1998) thinks that culture forms one of the key elements that greatly influences people's subconscious actions. As well the author puts out that western culture has dominated the conflict resolution process where western standards are used as a yardstick. The western conflict resolution perspective henceforth therein known as (WCRP) lays a lot of emphasis on individual and human rights. The two elements then form the bedrock

for justice administration. Quinney (2002) asserts that the formal way of resolving conflicts is not bothered with building and restoring broken relations as in the case of informal conflict resolution but rather its focus is tilted towards serving justice of the wronged person. All eyes are directed to the stability and peace of the nation. As one respondent note;

> "You see non-Africans consider the resolution of a conflict as an individual affair. This is because it's caused by a single person or an individual as such the person involved is held responsible for his or her actions and as such they are then tried using formal mechanisms." (Johnston, O.I., 2022).

Senkaya (2013) argues that formal conflict resolution is based on objectivity and administration of justice to ensure stability as opposed to the African perspective that is concerned with the creation of a peaceful environment for coexistence. Mechanisms like courts were created for disputants to seek justice through rule of law. From the western perspective, the administration of justice and execution of punishment for wrongdoers overrides the whole process of conflict resolution. This is seen as a great contrast, especially from the African perspective that is concerned with dealing with the inconsistencies created by the conflict to attune the disputants. Swaniker (2019) observe that WCRP is handled mainly by courts, where conflicts are resolved by judges who give the verdict to both parties after they have presented their cases. Both parties are given a chance to seek the services of a lawyer and the main goal of this formal system is the judgment to prove who was wrong in the whole process. This kind of justice is known as retributive, deterrent, and restorative justice.

Strengths of the Western Perspective

This perspective has in store an assured justice for the parties that decide to use it. This is because the end process must establish who wronged the other party in the conflict, then the culprit is either punished through jail term, fined or both, then at this very juncture justice is considered to have taken its course. Strength is based on the use of rule of law disputants simply go to the court because they know that the rule of law will help them determine who was wrong and who will then receive the punishment while the innocent person or group is then rewarded accordingly. Nyaberi one of the respondents noted that;

> "People always believe that the courts are impartial or corrupt though we hear some cases concerning that. When people go there they are confident that

regardless of their race, color, status in society, and gender they will be served with justice." (Nyaberi, O.I., 2022).

Again, once the process starts depending on the intensity of the offense, it draws many other interested parties that act as watchdogs' thereby ensuring that parties are served with justice at the same time this makes the process to be more authoritative.

5.2 Evolution of Conflict Resolution Strategies in Kenya

Various communities in Kenya were ruled through traditional methods that evolved from African ontological metaphysics (Ndima, 2013). This made the members of every society well conversant with the concept of the traditional law that had been hatched and passed through generations, guided by culture, and traditional religion. Mazrui (1986) holds the same view that most of the traditional societies' members were united through consensus, and the use of force was at minimal levels. The use of coercive laws in Africa arose with the establishment British colonialism, a feature that was lacking in traditional societies. Such new development was in line with the introduction of new elements of capitalism as seen in the theory of Articulation of modes of production. Introduction of capitalism come with new modes that seem to be alien to the pre-capitalist societies. As Langat noted;

"Before the white man came the elders used resolution methods that were geared towards bring people together. They used enforcing mechanisms that binded their decisions." (Langat, O.I., 2022).

However, the coming of the British colonialist, and the eventual introduction of capitalism in Kenya, gave birth to formal legal systems of conflict resolution that greatly introduced some restrictions on the application of the ICRs (Ndima, 2013).

To discuss how the colonial conflict resolution strategies affected the indigenous conflict resolution strategies among the Kipsigis and the Abagusii. It's important to underscore that this area will look at the conflict resolution actors from both perspectives to establish the effect of their interactions. The modern/western/colonial-led conflict resolution strategies will include the use of colonial government functionaries like the Provincial commission, district commission, colonial judges, European settlers, the missionaries, the police, appointed chiefs, headmen, and sub headmen. The use of various conflict resolution actors was in line with the multiplicity

of modes of production so as to maximize the resolution process. The traditional conflict resolution strategies will include the family (the father), the clan, the CoE, the religious leaders, and the warriors of the two communities.

Modern Resolution Mechanisms.

Modern or formal resolution mechanisms are founded on western values and customs of the Americans and Europeans. They used the word 'modern' to connote the new/latest way of doing things. During the colonization of Africa, this mechanism was meant to modernize Africans to use the modern ways of resolving conflicts as opposed to Indigenous ways of resolving conflicts. This mechanism was one of the historical pillars that the colonialists left in the resolution cycles. One of the outstanding features of this mechanism was the focus on individual rights where written laws are designed to safeguard human rights and any violation was to be dealt with. The party that violates these rights was punished depending on the offense done this was meant to appease the other party as if it was a game of 'tit for tat'.

In short, the mechanism was a total shift from informal conflict resolution mechanisms that worked hard to reconcile the parties in a conflict, by resolving the conflict in a winner-winner manner as opposed to formal winner-loser. The formal mechanism singled out the offender and punished the culprit, and probably alienated the accused from society as the lawbreaker was considered as an outcast in society. Whereas the informal considers the errand member as an individual who needed counsel and guidance to be reintegrated into other society members.

The formal mechanisms are led by trained professionals such as judges, and lawyers and operate under well-designed structures. Tusu (2011) observes that such training enhances legitimacy and neutrality. The professionals' core mandate is to dispense justice in a loser form manner. Other constituents of this formal justice mechanism are the police, the court, and the penal code, (Gang, 2010). The use of various modes as demonstrated here underscores the need to diversify the resolution process as the theory of Articulation argues. This formal mechanism was introduced among the communities of the Kipsigis and the Abagusii by the British colonizers.

From the historical point of view, these two communities were colonized by the British almost at the same time as such the conflict resolution shows the entry of new actors in the process. The colonial state functionaries become now the major stakeholders in the conflict process, as they noticed the conflict between the two communities. Therefore, they engaged in a new strategy of conflict resolution that was western oriented. Some of the strategies used to become the foundation of structural violence but being justified morally. This made these formal strategies fail in resolving the Kipsigis, and the Abagusii conflict as it was from the onset cemented with imperialist philosophy.

The Entrenchment of the Colonial Rule among the Kipsigis and the Abagusii

The major aim of the British occupation of the Kipsigis and the Abagusii land was to establish hegemonic control over them. Achieving this aim was not an easy task, as the two communities offered some resistance at the initial stages of their occupation. It's worth noting that the process of articulation is not always smooth, as such, it must encounter some resistance. To this end the capitalist actors use divergent strategies so as to achieve their aim of penetration to the pre-capitalist society. As fate would have it, the British colonial government used the two community's conflict resolution process to their advantage leading to the persistence of the conflict during the colonial period. To this end, the British colonial used different conflict resolution strategies that were alien to ICRs among the Kipsigis, and the Abagusii communities, in their quest to find a lasting solution.

The existence of a conflict between the Kipsigis and the Abagusii during the colonial period.

The table 8 shows the responses that confirmed that there was indeed a conflict between the two communities during the pre-colonial period.

Table 8: Respondents' Awareness of a Conflict between the Kipsigis, and the Abagusii during the Colonial Period.

Response	Frequency	Percentage %
Yes	49	98
No	1	2
Total	50	100

From Table 8 the respondents agreed 49 (98 %) that there existed a conflict between the two communities as the colonial period started. This situation necessitated the colonial government to come up with various ways of resolving this conflict, as will be discussed later.

5.3 The Colonial-led Conflict Resolution Strategies among the Kipsigis and the Abagusii communities.

The colonial government's use of colonial-led strategies served as an opportunity to alienate the administration of justice from the hands of traditional African leaders of the Kipsigis, and the Abagusii communities. These two communities had evolved their systems of governance that was well structured that proved crucial in resolving conflicts. In most cases, the African governance system was led by elders at various stages, and they used other African-based mechanisms like oaths, and other rituals to enforce their decisions. The colonial government considered such systems and mechanisms as primitive and therefore they sought to replace them with modern ways of governance.

The colonial government used a range of strategies in their quest to resolve the Kipsigis and the Abagusii conflict. They did this by first appointing the colonial chiefs and headmen in every location. On top of this, they established the police unit, and courts, and crowned this development with the creation of various policies, and ordinances that greatly impacted the two communities' ICR cycles. This was in line that articulation of modes of production theory critically underscores the need to diversification of the modes of economy. In our case the use of wide range of conflict resolution strategies was geared towards maximizing the conflict resolution process.

The creation of Buffer zone was the first political strategy of the British colonial authorities was to create a buffer zone. Saltman (1975) observe that the colonial government alienated Kipsigis and availed it to white settlers. This was done in the pretense of creating a buffer zone to separate two antagonistic communities. They claimed when these two communities are proximate to each other, their chances of conflict increase as such they chose to separate them. This would then reduce their

chances of 'tribal' war (arap Korir, 1978). On the same note, one respondent observed that;

> "They took our land right from around Raitigo through Manga to Sotik highland for their settlement and planting tea plants, this ended separating us from the our traditional enemies (Kipsigis)." (Ombuki, O.I., 2022).

According to Omwoyo (2000), the British government wanted to use all manner of tactics to force the Abagusii community to enter into a money economy. To achieve their aim they started by criminalizing political institutions like the *Ebisarate* where they crafted propaganda that the young men who stayed in these cattle camps were according to Gordon (1946) "…were worst offenders against the British treasonable, and war-like." In connection to this, they introduced a hut tax in 1907 that was supposed to be paid in cash. Within two years of European negative attitude towards these camps, they were no longer in existence. As Hyden (1980) observe that it was necessary for the capitalist to substitute the seemingly ineffective pre-existing forms of production. The archival evidence showed this through the following statement by D.C in 1909 and 1911;

> "…I mentioned that I considered it important that the cattle villages should be broken up and the young men who inhabit them forced to return to their parents' villages until married. This has to a great extent come about automatically through having them counted for hut tax and informing the natives that every hut in cattle villages must pay… "the Kisii Kisarati (sic) or cattle villages are now a thing of the past" (KNA/DC/KSI/1/1/1909; KNA/DC/KSI/1/1/1911).

The police posts were located along the Kipsigis and Abagusii border so as to deter cattle raids. The police patrols were as well used to search for stolen animals to recover them. The police post was stationed at Kipkebe and Sotik in 1926 with a detergent of police whose maintenance was in the hands of the Kipsigis and Abagusii. These police were meant to ensure that patrols were carried out to net the raiders who frequently visited North Mugirango that was greatly affected by raiding (DC/KER/1/2/1926.) As well the guard huts were established to assist in curbing the raiding and resting the thieves to take them to court for sentencing. This post was considered to act as deterrence to the Kipsigis raiders and in a way scare them from engaging in cattle raiding. According to archival sources, the placement of Kenya police officers in reserves was a short time cure for raids as they only reduced them but did not eliminate the vice (DC/KER/1/18/ 45).

The colonial authorities through the colonial chiefs held border meetings along the designated border areas. The colonial chiefs and headmen were instrumental in organizing these meetings. The elders of the Kipsigis, and the Abagusii together with young men formed part of the audience. These meetings discussed the problem of raiding and chatted about the way forward to the problem. The colonial chiefs used these meetings to rebuke both tribes for engaging in the vice, those who were found were fined either in cash or in cattle (DC/KER/3/1/1913). As well the oral sources confirmed that;

> "When things were not good, especially there was no movement in ad out of the two communities place and may be some animals have been stolen and have been followed up to a certain place, where the foot prints get lost, a border meeting was called and the chief of that place together with the people told to produce animals of face a government punishment, they were given some time to bring the animals and his used to work." (O.I.,William, 2022).

Besides the border meetings, *Baraza* (public meetings) were held especially, on the Kipsigis and the Abagusii border. They were attended by high-ranking officials like the provincial commissioners, and Assistant District Commissioners. Such meetings were meant to discourage these communities from engaging in the primitive act of raiding one another. As well in these meetings the culprits were in broad daylight condemned for engaging in raiding. In addition, the culprits were publicly beaten as a way of humiliating them and deterring others from on the same act (DC/KER/3/1/1913). As well one respondent observed that;

> "It was mandatory to attend the *Baraza*, the officers real complained of the behavior of us stealing from one another, we were told to talk to our young men who were engaging of stealing of animals so that they can stop that." (O.I., Rono, 2022).

The colonial government was fully aware that controlling the Kipsigis and the Abagusii in reserves as well as forcing them to support their wage economy was not an easy task. To strengthen their grip, especially on the colonized people they decided to use the local administration chiefs, and headmen. This then formed one of the elements of indirect rule, where the appointed chiefs were to instill discipline, and control over the local people of both communities. These chiefs were at the top of their communities, and they were instrumental in ensuring the colonial agenda has been fulfilled. This was in total disregard for the two communities that had placed the CoE at the top of their

governance level. The issue of chief phenomenon was the creation of the colonial government. As such they almost became illegitimate in the eyes of the colonized people save for the support they received from the colonial government.

The colonial government established their rule with the aim of exploiting African as well as civilizing Africans them. One of such areas that received that intended transformation was conflict resolution. In line with this, there was a host of colonial policy changes that were introduced in Kenya. Arthur Philip who was writing on behalf of the colonial government showed various policies that were enacted. These policies as discussed later therein greatly affected the traditional justice system, especially the institution of the CoE which was the supreme traditional organ during the pre-colonial period. Worth noting was that, these policy changes did not completely eliminate the institution of the elders in conflict resolution, though these said changes as they will be discussed later resulted into sort of struggle between the colonial functionaries and the institution of the elders.

The establishment of colonial rule led to the creation of courts. Ramadhani (2019) observed that the colonial courts were grouped into African courts or Native courts that solved African based conflicts. On the other hand, there were magistrate courts that offered services to white settlers. The Native courts used the customary laws in the administration of justice while the magistrate courts used modern laws. However, during the colonial period in Kenya, all the high-ranking colonial officers like the Provincial Commissioners (P.C), District Commissioners (D.C) as well as Assistant District Commissioners (D.C) resolved cases just like the magistrates.

Sialai (1998) observe that the colonial authorities had set to demolish the social institution of *Laibon* because they greatly contribute to raiding. They did when the warriors consulted the *Laibon* to foretell how successful or unsuccessful the raid would be. As such they were involved in the planning of the raiding activities. In the same breath, Omwoyo (2000) argued that the colonial authorities were determined to uproot the whole clan, and deport them outside the district because their influence had spread as for as Gusii land. In connection with this arap Koileki, and Kiboygot were deported to Fort Hall in 1914. On the same note, the theory of Articulation makes it clear that it

was necessary for the capitalist demolish seemingly ineffective modes. As D.C noted the strategy worked for some time "…large decrease in cattle thefts" (DC/KER/3/1/1914). Even after the deportation of *Laibons* in 1929, there were increased border troubles that were associated with cattle raids that were closely related to the return of some *Laibons*.

The archival sources cited one example of the propaganda, and allegations against the *Laibons*. This propaganda was meant to justify their efforts of demolishing this very social institution. The oral sources from the field however denied such claims by the colonial authorities.

> "Apart from the amazing increase in crimes of every kind in 1932 and 1933, the *Laibons* were found to have no less than twenty-two firearms of various caliber and considerable supplies of ammunition…the case was represented so strongly to the government that 'the removal of *Laibons'* Ordinance in 1934 was passed and received His Majesty assent on 27/08/1943." (DC/KER1/19/1943).

In the same breath Ochieng (1974) observe that among the Abagusii there were bitter feelings that were associated with the British abolishing of the *Ebisarate* among Abagusii. This made them to join a social organization that was called the Mumbo cult. This anti-colonial movement was adopted from the Luo and the Abagusii community utilized it actively to rebel against British colonial government. The movement actively championed the return of the old prophets and old ways of worship. This movement was therefore considered military as opposed to religious, and in that connection, it was banned by the colonial authorities in 1954 though the sustained fight against this institution began in 1918 (Ochieng, 1974).

From the oral sources, it was evident that the Christian missionaries' activities in one way or another assisted to resolve the Abagusii and the Kipsigis conflict. The respondents claimed that though they were not the creation of the colonial government, their work was boosted during the colonial authorities. During the colonial period, the Christian missionaries were able to move their gospel services close to many people. They preached on brotherhood, and the need to love one another as Christ loved us. With time they got convers with both the Abagusii and the Kipsigis that continued the gospel border line as well as campaigning on the need to live peaceful and shun the primitive cultural patterns that affected their lives.

The Colonial-led Conflict Resolution strategies among the Kipsigis and the Abagusii

Table 9: Strategies the colonial government used in the effort to resolve the Kipsigis, and the Abagusii conflict.

Strategy	Frequency	Percentage %
Depastorilization policy	20	40
Taxes, and fines	5	10
Use of police	5	10
Appointed chiefs	8	16
Appointed headmen	2	4
Missionaries	2	4
Abolition of Ebisarate in Gusii land	6	12
Border meetings	2	4
Total	50	100

From Table 9 it turns out that the colonial government was indeed convinced that shifting the attention of both communities from animals to growing crops would have resolved the conflict as it stands at 20 (40%). Oral interviews confirmed that the colonial government used all tricks of manner to reduce the animals the two communities had. These techniques included cattle confiscation and taxation that led these communities to sell their animals to pay taxes. It should be noted that the introduction of the new elements of capitalism as noted above served to intensify the raids because they interfered with the indigenous means of survival thereby greatly disrupting the two communities' peaceful efforts. As well oral sources confirmed that the colonial government wanted Africans to change their primitive living to modern ways that were meant to reduce their conflict though these communities were not ready to adopt that immediately (Langat, O.I., 2022; Wesley, O.I., 2022; Atuya, O.I., 2022).

To this end the transformation in nature and character of cattle raiding was as a result of change that was brought by colonial economy that largely rode on colonial policies that were crafted to promote colonial economy. Unfortunately, this new development affected the whole system of the community as a result there was increased raids and counter raids in order to satisfy the desires of the colonial state. In this manner cattle stealing was modified to paint a picture of hate against each other as opposed to initial traditional practice that had social controls. As result of introduction of colonial policies raiding related cases spiraled leading both the colonial and colonial resolution

mechanisms to spend their resources and manpower in resolving such cases. The respondents felt that the use of police, taxes, and fines only controlled the conflict at 5 (10%) Many respondents believed that this strategy failed because it ended up increasing the conflict levels. Imposition of taxes and fines ended up making these communities to adjust to the new development leading to the increased raids in an effort of getting cattle to sell to pay taxes. As well the colonial police failed because they concentrated only on collecting fines at the expense of controlling the vice (Kipngeno, O.I., 2022; Mogusu, O.I., 2022).

As well the respondents felt that the use of colonial headmen, missionaries, and border meetings each served only to resolve the conflict at 2 (4%). Interestingly some oral sources confirmed that elders who attended meetings only encouraged their young men not to steal from their fellow kinsmen. The missionaries' factor to some extent worked, especially after their fellow Africans started campaigning against this vice, and as such preaching peace, especially through churches.

The colonial chiefs proved a great deal in controlling this conflict. This was because of the pressure they had from the colonial authorities based on the fact that they interacted with the local people. The colonial authorities never condoned lazy chiefs who were not able to execute their mandate as they were immediately replaced. At times their pay was withheld when their performance was below average in terms of curbing cattle raids in this connection they worked hard. The arap Tengecha was mentioned as being one of the effective colonial chiefs (Omwoyo, 2000)

Finally, the abolition of the *ebisarate* in the Abagusii community reduced conflict by 6 (12%). As noted by the colonial government the oral sources confirmed that the presence of these camps fuelled the conflict. The unity of young men facilitated raids but after their demolition raiding became an individual affair long before livestock commercialization took root. Though some respondents claimed at the same time the Abagusii cattle now became a direct target to cattle raiders due to the fact that the security of these animals was compromised with the absence of *ebisarate*. They faulted how the colonial authorities carried out the processes, a development that greatly affected the community as discussed therein.

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Worth noting is that the process of articulation was not a smooth process, as such the communities of the Kipsigis and the Abagusii resisted most of the colonial led strategies. For example, colonial economic policies like paying of taxes, depastorilization policy was greatly resisted by the communities under study. To achieve their goal, the colonial government used all manner of tricks like forced labor, cattle confiscation and use of government functionaries so push the communities of the Kipsigis and the Abagusii to embrace the new systems of conflict resolution that were largely alien to them.

The Introduction of Forced Labor

One the economic strategy for colonial authorities was to get the communities to work on the white settler farms. As one of the respondents argued from Gelegele;

> "The mzungu (white man) wanted to teach us that everything comes from the soil not as we knew it comes from cattle and he was serious about he meant, this made him use all tricks to teach us." (Soi, O.I., 2022).

In this case the colonial wanted both communities to shift their attention from animal domestication to crop growing. The colonial government then introduced taxes that, were supposed to be paid in cash (Maxon, 1994). This made young men, and middle-aged men, now forced by circumstances to seek jobs in the white settler farms, and tea estates of Sotik, as tea pickers, especially the Abagusii while the Kipsigis took care of the animals. Homes were left to mothers, who were now in charge of the families. The family being the lowest social unity of governance that was crucial in moulding the behavior of children was greatly destabilized. The presence of the father figure in the homestead serves to instill respect and fear in children in terms of following the laid down code of pattern in the family.

Through oral interviews, the researcher learned that most of the homes where the mother left to take care of the children had some anti-social behavior that made some of them look down upon their mothers. As one of the respondents put it;

> "A home without a father is a broken home, children sometime don't listen to their mothers especially when they are aware that their father is far." (Kenyenga, O.I., 2022).

Some of the respondents confirmed that when they returned home, their wives reported various misbehaviors, especially from the children. To them, they associated this upcoming behavior with their absence. Therefore, this study concluded that the principle of governance among the Kipsigis, and the Abagusii was founded on the bottom-up approach.

Table 10: The impact of the colonial-led strategies on the ICRs

Responses	Frequency	Percentage %
Yes	35	70
No	10	20
Not sure	5	10
Total	50	100

From Table 10 the respondents' view was that indeed the colonial-led conflict resolution strategies affected the ICRs standing at 35 (70%). Some claimed that this was a result of the creation of two centres of conflict resolution. This results were in line with that of Kirby (2006) found out that formal strategies for conflict resolution failed in Ghana, especially courts. The western methods like the use of courts, colonial chiefs, and police all served to reduce the influence and the position of the CoE they had before colonialism. The application of customs by the elders in resolving conflict now became under the watch of colonial authorities as well as other traditional mechanisms of conflict resolution like oaths. As various ordinances that were enacted greatly impacted the CoE and as such reduced their influence on conflict resolution cycles, especially during the colonial period.

This area was characterized by disruption of the operations of governance and administrative systems. The conquest and the ultimate establishment of the colonial rule over the communities of the Kipsigis, and the Abagusii communities became the main cause of the various political changes that these two communities faced that in many instances affected the indigenous conflict resolution mechanism. To set the ball rolling as accomplished in different ways.

5.4 The Impact of colonial strategies on ICRs

Generally the introduction of colonial-led conflict strategies in one way or the other intervened with the operations of the ICRs. For example, the colonial supported the

penetration of the penetration of appointed headmen, colonial chiefs and police, D.Cs and there full operation especially in the resolution cycles to the great extent.

The Appointment of Colonial African Leaders

For the colonial government to establish effective control over the two communities, they resorted to appoint their leaders in form of colonial chiefs, and headmen, who were meant to facilitate the implementation of the law, and order at the grass-root level. Such appointment interfered with the hereditary dynasties and the process that was embraced among these two communities. It was apparent from oral sources that there was a specific clan in the respective communities that produced African leaders like chiefs. Such clans were respected due to their production of excellent leaders. Such leaders were trained in the statecraft of leadership and groomed with skills that made them achieve their roles. Therefore, the appointment of colonial chiefs and headmen was a total dislocation of the hereditary processes that were greatly embraced by these two communities (Ombuki, O.I., 2022; Omindi, O.I., 2022; Pius, O.I., 2022).

Maxon (1994) notes that those earlier appointed African leaders were based on the collaborative nature of the colonial government. Such appointed leaders by default were meant to fulfill the interests of the colonial government instead of those of Africans. They were the sole implementers of the colonial policies in their respective communities. Their tenure in office depended on their excellent performance in the execution of colonial policies. They were replaced immediately when performance was below the expectations of the colonial state. This was the opposite of what was observed during the pre-colonial period when the African chiefs stayed in office until their death. This made many of them work hard to serve the interest of the colonial master at the expense of their fellow Africans. The principle of servant leadership was hijacked by the desire of the employers, thus shifting the intention of leadership. The oral sources argued that the office of the chief was transformed, and nearly became a paramilitary office. This was in line with the execution of changing roles like the collection of taxes that were collected with a lot of brutalities, and forceful recruitment of African labor. To this end, there was a complete metamorphosis between the office itself and the institution itself.

The appointment of these leaders reversed their roles, especially in the African context as the leaders now became the chief coordinators of the colonial ambitions, and wishes. This reversed role made it hard for them first to adapt to the changing roles because these roles were alien to them. As one respondent pointed out;

> "The element of Africanism among the colonial chiefs was brainwashed with time they were transformed, and they joined the band wagon of the colonial government that exploited their fellow Africans." (Nyambega, O.I., 2022).

The oral interviews confirmed the changing role when they claimed that some chiefs became corrupt by exploiting their fellow through a collection of taxes that were never taken to the colonial government, enriching themselves through a collection of fines, and even taking away some animals. The introduction of capitalist elements economy resulted to the changed role of the chiefs. The discussions above indeed show that the appointed African assumed a transformative duty during the colonial period. Some respondents asserted that;

> "The colonial chiefs were powerful you would not point them a finger, they turned against us as if we were not like them, they were different from the former African chiefs, they took the advantage of their position to take our wealth." (Ongiri, O.I.,2022; Tanui, O.I., 2022).

The Abolition of the *Ebisarate*

After the settlement of the Abagusii at in highland, they developed the use of *Ebisarate (sing. egesarate)* where various clans that were adjacent established military cattle villages where able-bodied young men of age between 16 to 20 camped to protect the cattle against raiders that were still a hindrance to the survival of the Abagusii. When the colonial government took control of Gusii land, they wanted to exploit the available resources including human labour. As already indicated the colonialists considered cattle keeping as a primitive mode of production, as such they set to replace it with a new capitalism mode that involved the cultivation of crops. To achieve this, they needed massive labor which the Abagusii were not ready to offer. The colonial government then introduced various policies like forced labor and the hut tax in 1907. As various respondents claimed the introduction of the hut tax, was aimed at drawing the labour force from the *ebisarete*. The paying of hut tax for every hut was made compulsory, the worst was that this money was supposed to be paid in cash, the inadequacy of money forced many Gusii people to pull down their huts, including the *ebisarete*.(Mochama, O.I., 2022; Omwoyo, 2000). The necessity of the expansionist

policy of the colonial government in all spheres of life formed the basis for the demolition of the ineffective primitive forms of production so as to substitute them with more proficient ones (Hyden, 1980). In this regard, in 1909, D.C. wrote: that

> "In my report of 1ast year, I mentioned that I considered it important that the cattle villages should be broken up and the young men who inhabit them forced to return to their parents' villages until married. This has to a great extent come about automatically through my having them counted for hut tax, and informing the natives that every hut in a cattle village must pay…the Kisii Kisarati(sic) or cattle villages are now a thing of the past" (KNA/DC/KSI/1/1/1909; KNA/DC/KSI/1/1/1911).

It's apparent that indeed these cattle bomas were swallowed by economic policies. This development greatly affected the Abagusii unity and future security of their animals due to the demise of this social institution. This meant that each withdrew their cattle from the cattle bomas to their respective homes where they stayed permanently. Respondents agreed that this led to increased conflicts relating to cattle raids, and grassing zones. (Ongiri, O.I., 2022). The abolition of these cattle bomas within a short time was on the ground that the capitalist mode had secured dominance over the pre-existing modes, in that such modes would be destroyed at will by the colonial government.

The dismantling of these cattle bomas affected negatively this conflict resolution strategy that the Abagusii had evolved to protect their cherished resource. The *ebisarate* were crucial because they formed the centres for training young men the specialized military skills as provided by experts who taught the warrior fighting tactics. As well they were taught how to use different fighting tools like bows, arrows, shields, and spears. During the colonial period, these youth encampments attracted a negative attitude from the colonial government as they were labelled as centres for hiding criminals, and as such, they posed a great danger to the British administration (Atemba, O.I., 2022; Ombuki, O.I., 2022; Gordon, 1946 and Akama, 2018)

The establishment of *ebisarate* served various functions besides the military training the youths received, they were as well trained on the leadership statecraft, especially on how to head their families, and assume other clan responsibilities if given a chance. They acted as an administrative system where elders controlled the social behavior of the youths and engaged their energies in economic activities. The abolition of the

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e*bisarate* without a prior arrangement by the colonial government how to engage the youth from these cattle camps was faulted by many Gusii respondents. They claimed that these youths became a bother in the villages as they were involved in anti-social behaviors' like rape, thuggery, and other petty crimes (Mochama, O.I., 2022; Akama, 2018). These were the consequence of the dissolution of this very pre-capitalist social institution, though it was done to satisfy the needs of the colonial government it ended up affecting the Abagusii social life. Some of the colonial led strategies were geared towards destruction of indigenous modes that they considered primitive. On the same manner the theory of Articulation sometimes involves destruction of pre-capitalist in in the effort to end them and in the process create some space for improvement. As such, the Abagusii community resisted the attempt that's why after the abolition of the *ebisarate* by the colonial authorities the youths got solace when they joined the Mumbo movement (David, 1971). This movement was meant to unite them once again.

In conclusion, the abolition of *ebisarete* was detrimental to the Abagusii solidarity that reinforced their security cooperation. The Abagusii principle of unity and pooled defense were affected, and well-organized administrative system that served to train young meant on leadership skills was dismantled. As a result, this was the bottom-up governance structure of the Abagusii society.

The use of the Bible verses the Oaths

The colonization of the two communities led to the introduction of new elements that were different from the African setup that ended up replacing the grounded African structure of conflict resolution. The oral sources revealed that both communities used oaths as one of the enforcing mechanisms in conflict resolution. The coming of the missionaries brought a gospel that taught people to say the truth to be set free of their bondage. The concept of the bible was then introduced to the Africans, and in that case, it was supposed to lead them to understand what their creator required of them, and thereby get converted to salvation.

Before colonization, the Abagusii, and the Kipsigis used the oaths during conflict resolution to compel the individuals participating in the process to say nothing other than the truth. All interviewed respondents agreed that the use of oaths was the most

proficient and effectual means to extract the truth from the disputants. They claimed that once the participants accepted to take oaths nobody disagreed with what they said, because they in most cases thought to have said what they were expected to say.

The colonization of the two communities led to the introduction of the use of courts where before the resolution process began the participants were first required to take an oath using the bible. The use of the bible, therefore, was set to replace the African way of administering oaths. Respondents faulted this development, especially when oathing the using bible was abused by the Africans. To them they associated the increase of the conflict among the two communities to the disregard of traditional oaths. Many claimed that the consequences that resulted from oathing by the bible were foreseen, and they were not dire, unlike the results that resulted from African oaths. They praised the use of African oaths because the results were immediately as well they took a short time to be witnessed. The respondents' claimed that the Almighty God was merciful unlike the provoked African gods that would always act immediately upon their call. (Ageta, O.I., 2020)

The use of the bible was favored against the use of African oaths because it was considered a modern way. The use of oaths was left to be used in the African tribal courts, and wherever African actors in conflict resolution held their resolutions. In this case the process of Articulation was not fully devoted destruction of all modes of production, in some cases, some modes were spared. As such the oaths were left to be utilized be elders in conflict resolution. So, when this mechanism was replaced with the bible, the respondents alluded that the parties no longer feared taking the oaths using the bible, and the result was that many now referred to taking their cases to court as opposed to African tribal courts. With time the colonial agents claimed the use of oaths was a drastic way of dealing with wrongdoers, as such this mechanism was closely monitored this made the caretakers of this indigenous mechanism invent another method that seemed somehow friendly (Peristiany, 1939). Oral sources confirmed that both the Abagusii and the Kipsigis used social ostracism as a form of social sanction. The habitual offender was secluded from society gatherings, especially beer parties. The society members were not allowed to conduct any business with such

individuals; as well no family would allow their daughters to be married to such individuals. (Nyaoma, O.I., 2022; Rotich, O.I., 2022; Mibei, O.I., 2022).

The Introduction of Courts

From the onset of colonialism, the colonialist agenda was civilizing Africans in this case the Kipsigis, and the Abagusii. When they come, they realized that these communities had their informal ways of resolving conflicts like use of elders. To the colonialists such a mechanism was primitive, and in that connection, it was meant to undergo changes. Meanwhile, they introduced a new legal system, in this case, the use of courts to assist in resolving conflicts. Courts were operating on a new set of written laws as opposed to indigenous resolution mechanisms that were using customary laws that were largely undocumented. From the oral sources, it turned out that these courts brought about the competition in terms of which resolution centres were more preferred than the other. These courts being a new development attracted many clients as opposed to the CoE mechanism. With this, the CoE slowly started to lose fame, prestige, position, and respect that were accorded to them prior to colonization. As the Articulation theory puts it forward the establishment of capitalist mode pervades and secures dominance over the non-capitalist mode. As such, respondents associated the lost glory, and trust in CoE elders in conflict resolution with the colonialism period (Nyakoe, O.I., 2022; William, O.I., 2022).

The introduction of courts interfered with the voluntary nature of conflicting parties to the conflict resolution process. Long before the colonialism period disputants would voluntarily report to elders for their conflict resolution without force, this was due to the high level of respect that they had for elders. Introduction of courts led to the use of court sermons a situation that made the process more official and formal for the disputants as compared to the attendance of elders' meetings. These new changes revolutionized the resolution process due to the introduction of new elements of capitalism were observed thus strengthening the formal process, and made look superior to the informal resolution process. As well the involvement of government functionaries like police and chiefs helped to make sure that the conflicting parties adhered to a court summons.

The introduction and use of courts in the resolution process affected the people's attitudes, and perspectives. The civilized Africans considered courts as an effective mechanism as they resorted to the elimination of culprits from society thereby leaving the rest living in a peaceful environment. This was totally different in the African context where the indigenous mechanisms worked toward reconciling disputants. Some respondents claimed that though disputants still took their conflict to elders for conflict resolution, their souls, and minds were in the courts. This was evident where some disputants would appeal the decisions of the elders in courts. Such instances served only to paint the indigenous institutions as inferior in conflict resolution because no case that was resolved by courts was appealed at the tribal courts except only that when it was referred to them for resolution. Some respondents still maintained that during the colonial period, some disputants took their conflict with elders just for formality. They claimed that if their cases were not fully resolved they still had a chance to appeal to colonial courts. This was a totally different situation where such thoughts would not hold water as there were no other options for appealing resolutions of the elders. As such, the introduction of courts to a greater extent impacted the indigenous resolution mechanisms.

Among the pre-colonial Kipsigis, and Abagusii conflicts were resolved by elders at various levels. These elders in most cases were able to resolve the conflicts brought to them, and then decisions that were backed by effective traditional mechanisms like an oath. The conflicts were resolved in a win-win manner leading to a compensation process. In Africa, it was not possible to run away without fulfilling, especially the decisions of elders in terms of honoring the promises of the resolution process. The use of complex rituals and oaths to this end were employed making it impossible for the disputants to fault the process. However, with the introduction of formal strategies like courts provided some disputants with an alternative resolution process that some respondents claimed was abused. In this connection, some culprits were accorded a chance to defeat the end of justice. This was possible when some culprits would flee after they have committed a crime or choose not to pay the compensation. In this case, the Africans had an opportunity to utilize both modes of production. As already noted African setting had mechanisms like curses that would still reach run-away disputants, and punish an element that was lacking in the formal setting.

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The introduction of courts rendered the utilization of CoE conflict resolution almost ineffective. This very mechanism had served well the two communities in terms of resolving their conflicts as discussed in the previous chapter. They had their own backing mechanisms like the use of oaths that were designed to enforce their decisions. This made the ICRs like the CoE struggle to assert their influence, and position in society. Such a situation resulted from the dominance new modes of capitalism colonial functionaries like appointed chiefs, headmen and police. As one respondent put it;

> "When courts came they made our social institutions like the CoE to be almost irrelevant, various individuals chose to take their conflicts to courts, especially when they felt unsatisfied with the way the elders had handled their cases." (Mabiria, O.I., 2022).

Some conflicts that were culture based, and as such required to be resolved through the use of customary laws proved an uphill task for the colonial courts. This was because these courts used western culture, in this manner then this foreign culture would not meet the needs of the natives in that connection some conflicts were directed to native courts. In this manner the native courts were utilized to the advantage of the colonialist, in the sense this non-capitalist proved effective to resolving conflict required customary laws, as such this very institution was pre-capitalist was preserved by the capitalist.

In the colonial courts, mechanisms like the use of oaths were not allowed as such a mechanism had proved to be a most effective way of compelling the parties in conflict to remain truthful in the resolution process. The use of oaths was disregarded as the primitive mode of conflict resolution, and in that connection, it was replaced with a mode that is the bible, as used in the western culture. This in the eyes of the colonialist the use of bible was a way of modernizing the resolution process, as such the use of oaths was left only to be used in African native courts and wherever African were resolving their conflicts. As such, this African mechanism was not completely abolished.

The indigenous conflict resolution process was based on the attainment of social harmony through reconciling parties in conflict. This system was purely based on restorative justice where in most cases there were compensations that were designed to

uplift the aggrieved party to afford them a chance to accept an apology, and then forgive the accused party. The compensation and apologies that the accused offered were meant to facilitate the aggrieved party to soften their hearts, and therefore forgive to improve social relations (Abu-Nimer, 1996).

The respondents' claimed that the introduction of courts came with a new architecture to conflict resolution that endeavored to establish the party that was wronged and innocent, and then in that manner declare the winner, and the loser. Such an arrangement was a great shift from restorative justice to retributive justice. The indigenous compensatory system that was one of the key elements of conflict resolution in the indigenous model now became irrelevant and backward as now courts were not meant to reintegrate members into the society but just eliminate them from the society. This development was as a result of penetration of capitalism in the conflict resolution that ended up introducing new elements that seemed alien to the true meaning of indigenous process. The Oral sources claimed that sometimes the colonial government could allow the parties to go and settle their differences outside the court especially if they requested so, so as to fulfill their African process of resolving the conflicts.

The application of formal strategies like the use of courts, and police were on the ground that for peace to reign all 'criminals' were to be excluded so as to attain a steady peace-building society. In this regard Mac Ginty (2008) argues that;

> "Instead of reciprocation, and sustainable resource sharing there was the imposition of western models of peace, and peace making through written peace treaties, and violent suppression of individual groups, and appropriation of their resources."

The author notes that the indigenous social structure of the inter-tribal relationships was often destroyed over many years through the advancement of missionaries, and monetary value. To this end, they undermined indigenous tribes, customary norms, and peace-making were not able to preserve their authority anymore (Mac Ginty, 2008). As such, Kruglanski *et al* (1993), observe that there was diminished power especially in the hands of indigenous resolution systems that made them just assume a shell of their former selves. They were greatly affected by the changing concept of justice, and conflict resolution that had been transformed as a result of colonialism. This made the patterns of social responses to conflict resolution cycles to be relooked fresh in the

changing phase of colonialism. The revolution of conflict resolution was as a result of the introduction new elements of capitalism that were greatly adopted by colonialist and embraced by their subjects.

The Irony of the Repugnancy Test

According to Eugene (1983), repugnancy test was one of the characteristic features of the legal system that was introduced during colonialism that greatly affected the application of customary law, and extended to social order. The establishment of formal law led to the establishment of courts to oversee the implementation of foreign law, while the trial court was left to operate under customary laws. The introduction of the repugnancy clause greatly impacted the application of the customary law, which was now to be employed in line with the molarity, and not being repugnant to justice. This double set standard was however left to be determined by the colonialist who was using the lenses of civilization. This new requirement for customary law use proved based on the fact that such a law was only applicable to the African setting. A working judge during the colonial era in East Africa noted that "The only standard of justice and morality which a British court in Africa can apply is its own British standard." Based on this, therefore, the observance of the customary law in terms of repugnancy was not possible.

Hyden (1980) avers that it was necessary for the capitalist to substitute the seemingly ineffective pre-existing forms of production with more productive ones. To this, end the colonialist authorities maintained that use of customary law was greatly depended on repugnance test and nothing else. Oral sources however, noted that observance of this clause helped in a great deal in resolving some conflict that seemed to contravene on human rights like killing birth twins that were considered a bad omen among the two communities (Kenyenga, O.I., 2022).

From a historical point of view, it's in the understanding of every historian that due to the imperialistic, and hegemony nature of the colonial period. The Africans had less say based on the premise that some African practices were up for civilization. Therefore, when it came to the concept of justice, and molarity the colonialists felt that Africans served to be guided, in that their opinions of what they regarded as moral was

pegged to western view. The clause made, especially the observance of justice in the African setting to be controlled by the British whose measure of justice and molarity was superior, and in that connection universal to the human race.

As such, the continued use of customary laws among the Kipsigis and the Abagusii was considered by the colonial authorities as ancient, barbaric, and uncivilized when compared to formal laws. Thus, from the initial stages of colonization, the colonial government was determined to discourage the application of customary law. As shown by Arthur the indigenous conflict resolution mechanisms greatly were affected due to the introduction of this clause. When it dawned on the colonial authorities that Africans were tied to the usage of customary laws, they then created two separate court systems. Whereas now the formal courts were left to employ the usage of common law while the tribal courts were left to still utilize the customary laws.

Some respondents observed that this limitation made resettlement of some conflicts to become an uphill task for the elders who are now tied to observe the clause (Momanyi, O.I., 2022; Anderea, O.I., 2022). They argued that such a clause was engineered towards undermining the application, and use of customary laws in favor of the formal laws. Then the clause made the customary laws look backward in that manner they were inferior when compared to the common law, especially in the British few. This faulted this thinking based on the fact that many of the customary laws had proved effective in resolving African conflicts. In view of this, the British the legitimacy of the customary laws was first to be checked measured and tilted toward well-defined British ideals. This preservation of the customary laws was in line that such laws were considered positive in terms resolving African conflicts. As such there were attempts by the colonial government to preserve to conserve some indigenous resolution strategies so that they can serve the overriding need for peace among the colonial period.

The Impact of Policy Changes on the CoE
Arthur Phillip report of 1945 sheds more light on the different policy developments that were developed by the colonial government, and how they affected the operations of the ICRs. The report demonstrates that the western way of resolving conflict was

preferred compared to the existing ICRs. The report again indicates that the two resolution systems coexisted but the modern conflict resolution worked to marginalize the informal methods of conflict resolution as discussed below.

The starting period between 1895 to 1902 colonial government fuzzily recognized the use, and the existence of indigenous judicial mechanisms, for example, the CoE that were pivotal in administering the native groups. At first, the colonial government as noted above recognized the primitive mode of conflict resolution before they established their own structures. The ICRs like the CoE were supreme organs in judicial matters in resolving all disputes that were referred to them. They were guided by norms, values, and institutional laws in reconciling the disputants back to society through a ceremonial cleansing. At first, the colonial government did not have a clear understanding of these institutions, as such they were left to continue to exist, and execute their mandate, under the 1897 Native Courts Regulation. Though this jurisdiction was left to the areas where the colonial government had not taken root.

The period between 1902 to 1910 shows the colonial government's efforts to develop the grass-root governance structures, by appointing chiefs. As capitalism took root the colonial government developed their own systems as noted above at the expense of the existing ICRs. They were to work closely with the Native Tribunals. Within a short time, the chiefs were empowered by the colonial government to administer justice in their areas of jurisdiction. This development greatly lowered the influence of the CoE in judicial matters as seemingly the chiefs' authority in judicial matters gained momentum. As time progressed the colonial government was determined to establish formal institutions in Kenya. In 1907 courts Ordinance changed the foremost provisions as far as the judicial institutions were concerned. The traditional institution of the CoE that was for long respected was thrown into a state of casualness, sulky acquiescence, and even faced some hostility. This new Ordinance squarely brought the functions of the chiefs under the stewardship of the governor they were officially allowed to resolve civil matters, and other "petty" criminal cases not limited to homicide matters. As well they were given the mandate to judge or fine offenders a fine not exceeding 250 rupees. These changes in the words of Arthur may have "…sown the seeds of many future difficulties."

The period between 1910 to 1920 period under the governorship of Sir Percy Girouard as well witnessed its policy changes. The introduction of the 1911 Native Tribunal Rules was supposed to reduce such tribunals substantially. The governor proposed a reduced number of CoE in the tribunals. Such councils were reconstructed following native laws, and customs to exercise jurisdiction over the members of their society. The result was a reduced number of Tribunals leading to uproar due to this change. There were some efforts to restore the indigenous authorities by the colonial government, but as Arthur noted "…this was more said than done… the authority, and the self-confidence of those bodies had been badly shaken." This meant that the colonial chiefs had a firm grip on judicial matters. The consequence was that the existing tribunals were subservient to the chiefs, and if they attempted to affirm their independence, they found themselves incapable to enforce their judgment. As the colonial period took roots, the collisions between the English/modern law, and the use of native laws gained impetus. Many native groups were against the idea of taking cases relating to the land to judges to 'decide' on when they did not know the native laws and customs. Its worth noting that as capitalism mode of production takes root it asserts itself over the existing mode of production this makes them to start the struggle against each other. As time progress the capitalist mode of production changes and subordinates the pre-existing mode of production by using it rather than pushing it aside as this discussion will show.

The period between 1920-1930 witnessed sustainable attacks from colonial-led functionaries on the Native tribunals. For, example the administrators from the district level (DCS) driven by malice, and selfish motives of desiring to gain control of Native Tribunals that were still in operation levelled several accusations against them. This was meant to gather enough evidence to convince the central government that the existence of such a Tribunal was "useless" if left untamed. They gave distasteful reports on the state of the Tribunals, some referred to them as generally corrupt and inefficient because they were not supervised. Some claimed that;

> "Courts of elders will not for some generations if ever, be satisfactorily criminal courts. Courts held by elders if not closely supervised by European officers would invariably lead to great abuses…the government was assisting the native judicature, which was largely corrupt, and 'impotent". (Report on Native Tribunals by Arthur Phillip, Crown Council 1945)

Owing to all these allegations, especially from high-ranking government officers, something had to be done to appease them through their accusations out of spitefulness. This then led to the enactment of the 1930 Native Tribunals Ordinance, which led the operations of the Tribunals to rest in the hands of the district-level supervision. Therefore, this ordinance greatly reduced the already minimal influence of the native tribunals.

The period between1940 to 1945 witnessed a great rift in terms of dispute resolution outcomes as handled by the native tribunals, and formal institutions like courts. The Natives tribunals were still guided by the African perspectives of dispute resolution where each part was supposed to win, while the formal perspectives principle was to declare the winner-loser verdict. Such differences arose in line with each perspective's aim of resolution, and culture.

The period between1945 to 1963 showed the building of modern court houses leading to greater separation of judicial, and executive. The administration of justice led to further decreased use of native customs, reduced members, and several native tribunals. On the same breath Goodman and Redclift (1981) observed that the pre-existing modes survived through the capitalist system though they were beneath the system through the process of retention and breakdown. This was in line with the application of the theory of articulation of modes of production, where at the end of the colonial period the institution survived the onslaught of the colonial policies. According to Arthur, only ten elders were to be salaried each month despite fifteen of twenty who had carried out a judicial authority before this change was drafted, and effected. In the report, Arthur lamented that out of hundreds of Tribunals that existed, only 139 survived as of 1945. The statistics were as follows Coast province 42, Nyanza province 29, Rift Valley 22, Maasai district11, Northern frontier 10, Turkana district 0. This meant that by 1940 hundreds of CoE Native courts had lost their effectiveness.

Initially the colonial government recognized the primitive ICRs like the role of elders among the Kipsigis and the Abagusii, before they established their own structures. In a short while the colonial government then established their own structures of governance right from the grass root levels at the expense of the ICRs. The government

functionaries like colonial chiefs, headmen, police and government officers like the district commissioners were established to intensify the resolution process. All these were done in the effort in control the conflict resolution at the expense of the existing ICRs. Unfortunately, the subduing effect of all these colonial led strategies did not stop the operations some of the ICRs like the elders and the use of oaths. Either did the colonial led strategies altogether overlook the contributory role of the ICRs in the resolution processes?

The survival of the native courts through the colonial period served justify how the capitalist MoP sheltered some of the pre-capitalist sectors so as to use and take advantage of them. The operations of the native courts though witnessed various change was preserved in order to help in resolution of African conflict that were ever rising. Under conventional circumstances the use of ICRs was supported as a crucial element to conflict resolution so that it can help in attainment of peaceful environment among the Kipsigis and the Abagusii communities. Such environment was to facilitate the colonial government's intention of economic exploitation.

The Council of Elders

Before colonialism conflicts between the Kipsigis, and Abagusii were resolved by the indigenous resolution mechanisms. They used methods that were guided by values that were deeply inculcated in these societies. These communities had a well-defined governance structure that was almost the same it was crucial in helping them resolve conflicts at different levels before they would proceed to elders for final authority if they had not been resolved from previous levels. The establishment of colonialism came with a new body as well as a new legal structure. This development in turn greatly impacted indigenous mechanisms like CoE among the Kipsigis the *kokwet*, *etureti*, and *Abagaka begesaku* respectively. This group of elders was tasked with the responsibility of resolving conflicts. However, with the introduction of government functionaries like the chiefs, district commissioners, some respondents claimed that it weakened and affected the operations of CoE as now disputants from both parties were at crossroads whether to use the CoE or to take their disputes to the government functionaries

Before the colonization of the Kipsigis and the Abagusii communities, the two tribes had their own well-established, time-tested indigenous conflict resolution mechanism henceforth. They employed the bottom-up approach system of legal administration of justice where in both communities the father of the homestead resolved disputes at the family level. The highest level was the use of the council of elders henceforth therein referred to as CoE. Written sources and fieldwork data both established that members who joined the CoE commanded a lot of respect, and displayed a lot of wisdom in the area of culture, taboos and values in their respective communities. Finally, they were individuals that were to be umuerable with their members of society. The CoE acted as the final court of appeal as they resolved various disputes relating to social, economic, and political matters. To achieve this they utilized using different methods like oath-taking, negotiation, mediation, reconciliation, and offering rituals to cement the disputant's relations (Sergon, 2021)

The colonial era, in Kenya, introduced a new perspective as far as conflict resolution was concerned. The British colonial government introduced the formal ways using appointed chiefs, headmen, and police officers, and the top was the use of courts. Most of these government functionaries were in full operation as the colonization took root and as such, they reduced the authority CoE enjoyed over years preceding colonization. The position of the paramount chief was created around 1910 as one of the colonial elements that signaled the use of the indirect rule. All these developments greatly impacted the ICRs as demonstrated in (KNA 1926-28, KNA 1941-54; Arthur 1930-1958).

The process of articulation was not fully devoted to the destruction and reorganization of social setups. In some cases these social systems were considered to help the colonial government to achieve their aim of a peaceful society so that they can maximize such environment for economic exploitation. Some of the institutions like CoE were rejuvenated and controlled so that they can obligate to the colonial interests. In line with this the contribution of institution of elders was considered to be positive, as such it was not destroyed and it survived through the colonial period. As noted by Arthur (1945) and oral sources such elders role was recognized and it attracted some salary

and they were operation from designated places as opposed to pre-colonial period when they operated from under a tree as such this institution was transformed.

The Breakdown of Social Bonds

The sustainable colonial-led efforts on Kipsigis and the Abagusii social entities like traditional religion that united these communities led to the fragmentation of social bonds. Before the coming of colonialism, these two communities had their religious mantle and leaders that united them. For example, the Abagusii had *Sakawa*, and Mumbo religions while the Kipsigis had *Laibonism*, which served both religious, and political functions (Keoch, O.I., 2022; Maragia, O.I., 2022).

 The young people of the Abagusii community joined this movement, especially after the abolition of the *Ebisarete*, they found an opportunity to reunite under the movement. It was clear from the oral sources that once the *Ebisarate* was demolished many of the Abagusii people were scattered thus the Mumboism provided a chance for reunion. Respondents were of the view that most important part of Mumbo was that it acted as a mechanism to reorganized action throughout the Gusii community. This allowed them to move to a high altitude of the political pyramid. The teachings of Mumboism spread throughout the Gusii land and it slowly started building the social and political bonds that had been twisted through colonialism. (Pastor Mochama, O.I., 2022; Kenyenga, O.I., 2022).

Maxon (1994) observes that in 1918 some members were arrested and intimidated by the burning of their cloaks. With these checks on the activities of this movement, with time this movement that was supposed to unite the Abagusii was crushed by the colonial authorities leading to its fragmentation.   In the following year, the minutes of the Executive council indicated the "Mumboism movement be carefully watched with a view to action being taken if required." As the theory of Articulation process may sometimes lead to the destruction of primitive modes that seem not beneficial to the capitalist mode especially when they seem to be in antagonistic to the capitalism.

On the other hand, the colonial government interfered and eventually paralyzed the indigenous social institutions of the Kipsigis. Mwanzi (1977) observed that the colonial

government wanted to indirectly adopt, and utilize the well-established *Orkoiyot* system to facilitate their effective rule. The process Articulation was not fully devoted to preservation and disorganization of the indigenous social setups. In some cases such social systems were considered primitive were either rejuvenated so as to obligate to the colonial interests. The colonial government appointed arap Koilegei as a paramount chief with a salary of Rs.600 per annum, the *maotik* were appointed as chiefs while the *alamalyet* were appointed as headmen, and sub-headmen. The oral sources from the area under study confirmed that *Mastamet* was the first chief.   In this this regard, the colonial government chose to use the local system to avoid rebellion. The oral sources confirmed that the main reason for the fall of *Orkoiyot* office was the interference by the colonial rule, and the eventual exiling of the members. Above all the clash of interest between the Orkoiyot and the colonial government was the main factor that led disintegration of this office (Rotich, O.I., 2022; Soi, O.I., 2022)

Before the colonial rule, this very institution had served the Kipsigis' religious, social, and political functions, and it was able to above all unite the community. The community looked at *Orkoiyot* for spiritual nourishment. The colonial government realized that the *Orkoiyot* office was directly responsible for increased cattle raids from the Gusii land. Mwanzi (1977) and oral sources were in agreement that Orkoiyot blessed raiders, and for any successful raid, he was gifted cattle (William, O.I., 2022; Marer, O.I., 2022). The efforts of the colonial government to end the cattle rustling between the Abagusii, and the Kipsigis show the colonial authorities evacuate the whole clan from the Kipsigis land. The consequence was the collapse of this institution and the decline of the traditional religion and its influence on the Kipsigis community.

Oral sources confirmed that Orkoiyot was consulted on issues concerning governance, especially by traditional leaders, thus it served political duties besides religious functions. As mentioned above when this social institution failed to help in establishing the effective rule among the Kipsigis it was demolished after some with the pretense that it was responsible for cattle raids, an issue that oral sources differed with. Many of the respondents claimed that the colonial government was not ready to tolerate anybody who was not collaborating with their rule.

Mbiti (1975) argues that the introduction of British colonial rule greatly impacted the African traditional religion. The colonial government together with the missionaries were against the ancestral worship that they denied had a connection with the living people. As such the traditional religion was branded superstitious, as evidently claimed by the Christian missionaries. The worship of African religion was primitive, and backward with no traces of civilization as such it deserved nothing but being regulated, by Christian missionaries and the colonial government. As such, this religion was set to be replaced by a more modern religion called Christianity. That is why Christianity was given a chance to be preached, and it got followers who discarded their traditional religion. With this the communities of the Abagusii and the Kipsigis once they were preached the new gospel denounce their traditional religion, and adopted Christianity. As well the converted Africans shelved their traditional cultural practices like taking oaths and rituals as they now associated this practice to worship of gods. To this end, they adopted a negative attitude to the traditional conflict resolution agents like the elders. To the great extent the colonial authorities and the missionaries did not manage to suppress the traditional religion completely as it proved hard, as such the two communities were left to practice their religion as long as it posed did not disrupt peace and cause chaos.

Oral interviews and Akama (2017; 2018) concuredthat the abolition of *ebistare* greatly affected the marriage cycle among the Abagusii. The untimely destruction of these cattle camps left these young men to return to their families, a situation that affected the marriage setting social institution (Nyambega, O.I., 2022; Momanyi, O.I., 2022). Initially the *ebisarete* confined young men of ages between 16 to 25 years. This confinement was crucial in the following ways; first, it was meant to increase the marriage age, especially for men to at least twenty five years, and in addition, it served the purpose of secluding young men from unwarranted sexual behavior. Before their elimination men would stay in the cattle camps until they attain the desired age stated above then they were allowed to marry. Meanwhile, they were taught how to be responsible to their families, and how to behave as upcoming elders. Therefore, the abolition of this *ebisarate* meant that the sexual behavior was left unchecked. This was further worsened by the decline in the observance of the *chionsoni (*the indigenous code of conduct that regulated sexual behavior). The result was increased marriages that

were of men less than the prescribed age, and unintended sexual activities that resulted in unwanted pregnancies. These can serve as one of the key explanations for the increased population during the colonial period.

The colonial authorities as well checked on the use, performance of the rituals, and the use of oaths. As already indicated the use of oaths and other rituals were one way that led to the revocation of an ancestral spirit to punish the culprits on behalf of the living society. Once these spirits were awakened indeed as it turned out from the oral interview, they performed their duties. As such this, mechanism of conflict resolution was highly esteemed by the pre-colonial Abagusii and the Kipsigis. Therefore, once such mechanisms for conflict resolution were now regulated, by the colonial authorities, fortunately they were not burned by the colonial government. The colonial authorities left the use of oaths to be utilized by elders at the grassroots level as long as they did not pose danger to other the members of the society. Otherwise, if the use of oaths was banned they would have left nothing but disastrous marks on the African resolution cycles.

Conflict Resolution Actors during the Colonial Period

The table 11shows the conflict resolution actors who tried to resolve the Abagusii, and the Kipsigis conflict during the colonial period.

Table 11: Showing the Conflict Resolution actors during the Colonial Period

Strategies	Frequency	Percentage %
Colonial-led strategies	35	70
Indigenous strategies	13	26
Religious strategies	2	4
Total	50	100

From table 11 the oral sources confirmed that colonial-led strategies were given upper hand in resolving the two communities' conflict at 35 (70%) as compared to 13 (26%) use of Indigenous strategies while religious strategies occupied 2 (4%). These results are in agreement with Okoth-Ogendo (2003) who argued that the colonial government considered the application of the traditional customary law as inferior compared to the use of modern ways of conflict resolution, and as such, they set various ways to limit its application. The colonial government created an environment that was almost

allowing colonial-led strategies to be the leading entity in conflict resolution. In this manner, they wanted to enforce their own ways of resolving the African conflicts with little help from indigenous conflict resolution ways. This was in line with the theory of Articulation of modes where once the capitalist MoP takes root it asserts itself over the pre-existing MoP in our context the ICR mechanisms. This makes the two modes to start to struggle against each other. With time the capitalist MoP changes and subordinates the pre-capitalist MoP but using it rather than pushing it aside. What the colonial government failed to consider was that they were not the only conflict resolution actor that would guarantee the security, and framework for conflict resolution among the two communities. The worst was using foreign strategies that to resolve conflicts that had a basis on the African setup.

The execution of indigenous conflict strategies at 13 translating to 26% meant that the two communities enjoyed some degree of independence where some took their conflicts to be resolved by colonial led functionaries while others utilized elders and use of other traditional mechanisms like oaths. Such ICRs were considered primitive because they operated under customary and religious channels. Of much importance ICRs were left in operational due to the fact that they supplemented the resolving of African conflicts thereby supporting the resolution process.

During the colonial period, there was over-emphasis on the use of modern or colonial-led strategies as compared to the use of indigenous conflict resolution strategies henceforth therein known as ICRs. This was evidenced through various ordinances, and policies that were enacted throughout the colonial period. Such ordinances were meant to reduce this influence, and undermine the ICRs. This was further compounded by the upper hand the colonial-led strategies received as opposed to the informal methods of conflict resolution. Indeed as the theory suggests, as colonialism progressed capitalist modes take root among the African economies. In this case colonialism depicted a period that demonstrated the dominance of colonial led strategies. Boege (2006) argues that indigenous conflict resolution and peace blueprints are seldom recognized and treasured by the governments, and the conflict resolution actors when they finally when do recognize them, there is a lot of manipulation by the state-appointed led officials. Such destruction and preservation of sectors that seem to be

primitive was witnessed through the sustained fight of the operation of CoE as demonstrated by oral and Arthur Phillip report of 1945. This then threw the conflict resolution process into a total mess-making conflict persistent.

Walker (2004) points out that the application of formal methods of conflict resolution is universal and can be applied to all cultures; this perception has been a great hindrance in the issues that surround conflict resolution methods. Murithi (2009) believes that various societies since their evolution had developed their conflict resolution strategies to achieve peace, and such strategies are key to maintaining their social integration among themselves. To this end, the conflict actors, especially in Africa had to choose either to use indigenous processes or combine the two resolution perspectives of conflict resolution. In the same breath, Sen et al (2014) have argued that the combination of indigenous, and Western perspectives of peace, and conflict resolution have proved to be a great task for the conflict actors. To them, this obstruction emerges from the cultural diversion of the two perspectives.

Brigg and Walker (2016) have argued that indigenous societies were affected by colonial exploitations and administration. On the same note, Ajayi and Buhari (2014) have made it clear that the colonizers weakened and interfered traditional African ways of resolution conflicts. To this end the establishment of colonial rule in one way or another impacted the informal methods. To sum up, Breed (2007) gives an example of Rwanda, where he argues that *Gacaca* courts had proved their effectiveness in the reconciliation of the Rwandanise especially after the civil war, but later the state put some interventions that limited the operation of this traditional model of conflict resolution. This alone proves how effective informal strategies can be in conflict resolution.

5.5 The success of Colonial-Led Conflict Resolution Strategies

The table 12 shows the responses on whether the colonial-led strategies indeed successful or not among the Kipsigis and the Abagusii communities. The question was expected to be answered by those who were positive.

The success of colonial-led conflict resolution strategies among the Kipsigis, and the Abagusii

The success of the colonial led conflict resolution was pegged on their response that varied in space and time and influenced by the prevailing conditions like their perception on the colonialists. The two communities' response at first was rebellious but later they got used to the colonial led penetration of new modes (strategies) like headmen, colonial chiefs and police, colonial policies. This came as a result of the interaction with these modes, especially at grass root level.

Table 12: Responses on whether the colonial-led conflict resolution strategies were successful or not among the Kipsigis and the Abagusii.

Responses	Frequency	Percentage %
Successful	13	26
Unsuccessful	32	64
Not sure	2	4
Total	50	100

From Table 12 it's clear that according to the respondent's view the colonial-led conflict resolution was largely unsuccessful in resolving this conflict at 32 (64%). According to Agyeman (2008), the use of formal conflict resolution strategies in African conflicts does not yield good results because these strategies lack the knowledge of the local roots, and dynamics as such their solutions are short-term. A study by Kirby (2006) holds the same view that the influence of the western methods of conflict resolution like courts had failed in resolving conflicts in Northern Ghana. It's worth noting that 13 (26%) of the respondents felt that the colonial led strategies were unsuccessful. This might have been caused harsh nature coupled with the externality of colonial methods largely made these strategies face a lot of opposition from the Africans. On top of this, this alien method seemed to be exploitative, therefore their applicability was underscored.

On the same note, Achankeng (2004) contends that many of the conflict actors in Africa have pursued conflict resolution guided by their purposes, and interests. To this end, some have used policies that have culminated in creating a lot of ambiguities, and contradictions at the expense of peace. This explains why various countries are still in conflict situations because many conflicts are in a state of calmness but in most cases

remain unresolved. The international efforts in conflict resolution in Africa have been ineffective (Zartman, 2000). In conclusion, the colonial government's efforts in resolving this African conflict indeed proved to be a heavy task, especially because indigenous processes were being thrown at the back bent of the conflict resolution agenda.

5.6 Challenges of using Western Conflict Resolution Mechanisms

Though the system is seen as modern it has various hindrances that affect its core mandate. The system has seen the disputants waste a lot of time as they move to and from the centers of the administration of justice. This very waiting is a result of waiting for the process to take its due course a situation that may lead to a delay in the dispensation of justice. This may result from the backlog of cases and corruption of the concerned officers who end up hiding the files and in the process the administration of justice is delayed. Abdul-Rafiu (2015) has keenly observed a lot of attention is shifted to the strict observance of the legal framework and procedures with little regard for the healing of the shattered relationship of the disputants. As well, the motive of declaring the winner-loser verdict worsens the already sorry state. This then might propagate the seeds of a strained relationship. Another challenge of this mechanism is the cost involved this then becomes a great task, especially for the poor masses who find it hard to afford the system. Abdul-Rafiu (2015) again observes that the law breakers from the privileged class have an added advantage over the less privileged especially in seeking justice. The former can use resources like money and their position to assist them to get an upper hand in the case.

In conclusion, the two perspectives, therefore, had divergent views of what a conflict was, and the interpretation of how such a conflict would be resolved. In that connection, the formal systems of conflict resolution considered the African indigenous conflict resolution mechanisms unsatisfactorily, and to a greater extent ineffective in conflict resolution cycles. In the African setting, the conflicts were considered as ongoing developments in the society, and to that extent, they were part, and parcel of a given society. They only needed to be resolved in a manner that will allow disputants to attain social harmony. The introduction of colonialism came with a new system that considered a development of a conflict as dysfunction that was inherently negative, in

that connection needed to be eliminated by those tasked with such responsibility so that the society can progress smoothly. This new approach of showing that conflicts can be as well resolved through western functionaries like courts only served to impair the already existing indigenous resolution mechanisms. This as well brought a shift from the process of the focus of the conflicts to results-orientation, where now the overriding idea of social harmony was not the focus anymore, especially during the colonial period. As well the element of reconciling disputants ceased to be the main agenda of conflict resolution in the African context.

The challenges that faced the colonial-led strategies in conflict resolution among the Kipsigis, and the Abagusii

Table 13 demonstrates various challenges that the colonial government encountered as they tried to resolve the Kipsigis and the Abagusii conflict during the colonial period.

Table 13: Challenges that the colonialists faced in resolving the Kipsigis, and the Abagusii conflict

Challenge	Frequency	Percentage %
Inadequate colonial conflict resolution strategies	25	50
Culture	15	30
Negative attitude from the colonized	5	10
Corruption of government officials	5	10
Total	50	100

Culture was another challenge at 15 (30%) as mentioned early after the Mogori battle against the Abagusii, and the Kipsigis conflict shifted gears to cultural conflict. This cultural aspect was worsened by the introduction of the colonial economic policies that were spearheaded by monetization, and taxation. According to archival sources the release of 'notorious livestock thieves in 1929 and the well-organized raiding activity alongside the alliances of raiders from the two communities increased worsened this vice (DC/KER/1/2/1929; DC/KER/1/12/1942). As well the colonial authority noted that changing nature of raiding activity posed a great challenge in controlling it, as now it was executed by experts (DC/KER/1/25/1953).

As well the inadequacy of colonial conflict resolution strategies colonial conflict resolution strategies served to further the conflict as noted by the respondents at 25 (50%). Equally almost on the same range of 5 (10%) the respondents argued that negative attitude and the corruption of the government was another problem that made the conflict to persist. On the same note, Achankeng (2004) contends that many of the conflict actors in Africa have pursued conflict resolution guided by their purposes, and interests. To this end, some have used policies that have culminated in creating a lot of ambiguities, and contradictions at the expense of peace. Introduction of colonial economic policies like depastoralization, taxation and forced labor largely were meant to achieve the colonial appetite for African exploitation. As such they ended up fueling the conflict at the expense of curbing the same.

The theory of articulation of modes of production was used in this study to demonstrate the relations that prevailed as the indigenous and the colonial led conflict resolution strategies interacted. In this case some of the ICRs strategies like the presence of the *Ebisarate* and *Mumbo* movement among the Abagusii and *Laibonism* among the Kipsigis was destroyed while some social institutions like the use of elders and oaths survived through the colonial era.

CHAPTER SIX

THE SUCCESS OF RESULTANT HYBRID CONFLICT RESOLUTION STRATEGIES BY 1963

6.0 Introduction

This chapter will deal with discussions around the origin of the hybrid conflict resolution strategy, factors that promote the success of the strategy as well as factors that affecting it's success, the resultant conflict resolution strategy, and finally ways that could have facilitated this strategy.

6.1 The origin of the hybrid resolution strategy

The origin of hybrid conflict resolution was the combination of the two approaches to conflict resolution, especially in Africa. Before this, there arose an ever-ending debate between informal and formal conflict resolution strategies, on the premise that which strategy was best suited to handling conflicts in colonial Africa. On one side some scholars argued that indigenous conflict resolution mechanisms had an upper hand in resolving African conflicts so as to ensure that there was peace in Africa. They believed that such conflicts can only be resolved through the indigenous ways that were founded on their culture. (Castro and Ettenger, 1996; Murithi, 2006; Mutisi, 2009.)

Again, there were some scholars that had a contrary opinion that informal strategies of conflict resolution were inadequate in resolving African conflicts. They based their argument on the fact that traditional methods had a lot of limitations; modern ways of conflict resolution were best suited in resolving these conflicts (Boege, 2006; Sansculotte-Greenidge, 2009). The debate did not stop at this juncture, yet another crop of scholars pointed out that the use of the formal method of conflict resolution proved to be ineffective in resolving African conflicts in a compressive manner (Mac-Ginty, 2010; Bellon, 2012, Anam, 2015). These scholars thought that modern perspectives were alien, especially in the application of the African context; therefore, they were bound to fail in addressing the African conflicts.

After this, the debate took another turn, where a new brand of scholars after keenly considering the weakness as well as the strengths of both indigenous, and modern conflict resolution approaches, proposed a new strategy that was considered an

amalgamation of the informal, and formal to form a synergy of the two approaches (Zartman, 2000; Brock-Utne, 2001; Wasonga, 2009; Mutisi, 2011). Thus, the proposed approach came to be known as Hybrid Peace Governance (HPG) or Hybrid Political Order (HPO) or Hybrid Peace Building (HPB) Boege *et al* (2008); Mac-Ginty, 2010; Bellon, 2012; Anan, 2015. This approach creates an environment that enables the interaction between the indigenous and modern institutions of conflict resolution as well as conflict actors.

Boege (2006) argues that the hybrid model was employed in Bougainville in building a new political order, and peace building. The author considers indigenous institutions and customary ways resolving conflicts as pivotal in the reconciliation process. Such institutions played a leading role at the grass root level, where the Council of Elders therein henceforth otherwise known CoE and traditional chiefs helped to reconcile the people. The work these institutions performed made them be included in the formal constitution. As well the building of the Somali state after the collapse in 1991 was possible through an establishment of an effective and legitimate order. This order brought on board the leading role of the council of elders *guurti*, and modern state institutions working hand in hand state-building. The *guurti* was crucial in employing customary laws that were grounded in Somali culture to resolve the Somali conflict. These institutions' contributory duty of finding a solution to the Somali dispute led them to be incorporated into the political systems of Somali land. They have been utilized as one of the strongholds of governance not only as it regards to resolution but also in the border administration.

Tull (2005) gives another successive story from Northern Kivu in the Democratic Republic of Congo. Here the non-state actors like churches and societal entities were crucial in filling a position that was void after the state withdrew. They took the responsibility for state functions and became parastatal centers. In this case, the CoE was established from different tribal groups, and they greatly help in conflict resolution and governance areas. The coordinating structure ended up creating an environment that harmonized the working between the state, and customary. This constructive interaction between the formal and informal proved to be pivotal in-state development.

6.2 Factors that Determine the Success of Hybrid Conflict Resolution Strategy

In their book Uesugi *et al* (2021) they have enumerated various factors that determine the success of a hybrid system as discussed below. The success of the hybrid system greatly depends on the cooperation and interaction of conflict resolution actors. This strategy of conflict resolution brings on board a complex system whose success in resolving the Abagusii, and Kipsigis conflict was determined by the connectedness, and interaction of these actors. These elements were to in a coordinated manner in their wide environment to help them learn the changing behavior of the conflict actors to maximize the outcomes. This adaptive approach is crucial in improving the intervention strategies that will merge with the changing nature of the conflict. For this reason, there was a dire need for developing collaboration between the colonial-led strategies and the indigenous mechanisms of conflict resolution to have a concerted effort toward resolving the Kipsigis, and the Abagusii conflict.

As well the success of the hybrid system is greatly pivoted on the working relationship among the conflict actors, in this case, the authors focus on how these actors are working together, their unity of purpose, and genuineness in resolving the conflict they are supposed to resolve. The Articulation of modes of production emphasizes on the diversification of economy, in line with this research, the involvement of many actors was meant to bring on board different means of resolving the conflict. The pinpoint here is how these actors relate with each other, do they consider each other as equal partners, and as such, accord each other the respect each deserves? Do these actors acknowledge each other's contribution to conflict resolution? If that is the case then they will have clearly defined roles as pertains to conflict resolution. Such a relationship will lead to actors working collaboratively. This system will then broaden the networks of resolving conflict, where there will be the referral of conflicts to other conflict resolution actors; such a system will provide an effective resolution process. This was in line with the theory of articulation of modes of production that holds that there is always a co-existence of various modes of production within a social formation.

> "Not all cases/conflicts that were resolved by the court, there were some that were referred to elders when they realized such conflicts needed the customary approach (Kenyenga, O.I., 2022).

In the same breath, the success of the hybrid resolution strategy rests on how the parties in conflict adjust to the new actors they join the band wagon resolution process. We are

living in a society that is every day changing, and as such it follows that we move along with the positive changes that come along. The methods of conflict resolution are as well changing; therefore, the parties in conflict must as well embrace this dynamism. To this end, the success of the use of hybrid strategy is conditioned on the readiness of the parties in conflict (the Kipsigis, and the Abagusii) in responding to new changes in terms of inventive methods of conflict resolution. The same concept of dynamism extended to how well the conflict actors embrace the changing methods of resolving the conflict.

The hybridity nature of the existence of indigenous and colonial led strategies is one of the key features of the articulation of modes of production. The ICRs, for example, elders and use of oaths among the Kipsigis and the Abagusii managed to co-exist alongside the capitalist systems like courts and colonial chiefs among others regardless of their variations in these two broadened resolution mechanisms

6.3 Factors that affected the success of the hybrid strategy
The study established that there were challenges that affected the collaborative strategy that was set to resolve the two community's conflicts. One of the colonial strategies to deal with the Abagusii, and Kipsigis conflict was the establishment of the police station at Sotik in 1926. The colonial government placed enough police officers whose main duty was to maintain law and order, and above all help to stop the cattle raids. The two communities were supposed to work with the police as well as maintain the station (DC/KER/1/2/1926). However, the police were unable to control the raids as a result, raids increased in the same year. This unfortunate situation was brought about by the relaxed efforts of checks of the European police constable, who were so much more concerned with the implementation of police levy instead of stopping the cattle raids. Again, this was worsened with relaxed police diverting their attention to collection fines, and levies than deal with the raids.

The oral interviews indicate that the local people were not willing to work with the police who had previously terrorized them through punitive expeditions at the initial stages of colonization. Some respondents noted the colonial police acts made them withdraw their support to them, especially in searching for lost animals. They cited one

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interesting scenario where once the colonial police recovered some stolen cattle they took them to colonial authorities for sale, instead of the animals being returned to their rightful owners. Still, those who were found culpable of this act were taken to court for sentencing. Such incidences coupled with the negative attitude the two communities had toward the colonial government impacted their collaborative nature, and this served as one of the reasons why the conflict was not resolved.

Omwoyo (2000) and (Koech, O.I., 2022; Tanui, O.I., 2022) all were in agreement that the *Laibons* among the Kipsigis adopted the survival technique during the colonial period. As already indicated this institution was considered to have a great relationship with cattle stealing in that the colonial government made efforts to demolish it. To protect their office the *Laibons* adopted a survival tactic, the researcher notes that in the year 1929, and 1930 a few *Laibons* were active in campaigning against cattle raids, they were seen accompanying the renowned colonial Chief arap Tengecha to Sotik area that by then was seriously hit by cattle raids to discourage the Kipsigis from engaging in this vice. This collaboration strategy was highly detested by the Kipsigis community who considered the *Laibons* as traitors of their people who were are now working with the colonial government. Such collaboration attracted a lot of resentment from the Kipsigis community to an extent that some of the armed themselves and attacked the *Laibons* who seemingly lost their traditional responsibility. This was further affirmed through archival records "…that the Kipsigis would rather have any plague than *Laibons* in Sotik"(DC/KER/1/4/1931). This collaboration was not genuine on two grounds.

On one hand, the strategy was adaptive, to facilitate the *Laibons* colonial government onslaught while on the other hand, their decision to work with the government was just a demonstration of their support to the colonial government who had threatened their survival. If indeed the *Laibons* were to use their influence, and the religious power they had of cursing those who went against their direction they would have greatly assisted to curb raids. Therefore, the success of this strategy was highly affected leading to the vicious cycle of this conflict.

The study established that there was collaboration among the actors of conflict resolution between the colonial authorities, and elders in resolving the Abagusii, and the Kipsigis conflict. This was, especially witnessed through the border meetings that were held that were attended by elders, and government officials like chiefs, police and even the D.C (DC/KER/3/1/1913). This was a collaborative approach that was based on the fact that each conflict resolution actor can contribute to the resolution of a conflict in multiple chains of actors. First, the colonial government engaged in the use of CoE to resolve the conflict because they were custodians of the customary laws, values, and traditions. These elders were the legal custodians of the African culture. Among the Abagusii the *etureti*, as well as the *abagaka, begesaku* while the Kipsigis had a *boisek ab Kokwet* were widely used by colonial authorities to campaign in their communities against the vice. The oral interviews from the Kipsigis community confirmed that the elders only encouraged the young men not to steal from their fellow Kipsigis, as it was against the customary law but steal from the outside community (Serem, O.I., 2022; Kipkorir, O.I., 2022).

Again, it turned out that it was an offense to fail to attend colonial chiefs' meetings, some respondents claimed that they people attended such meetings because it was compulsory to do so. Based on this they never took seriously the implementation of the colonial government policies, like discouraging raiding activity. It turns out then that the coercive nature that the colonial government used to pass their policies affected its implementation. From the discussion, it is clear that both parties seemingly did not read from the same page of concentrating on resolving the conflict, and as such, the conflict persisted.

Many of the respondents claimed that the 'brutal nature' of the colonial government made them lose confidence and cooperation. The oral interviews confirmed that the local institution on conflict resolution and mechanisms were best suited to deliver order and security. Many confirmed that they had a lot of trust in their leaders, and community mechanisms of conflict resolution like taking oaths, and a curse. Many did not trust the colonial government in resolving their conflict as spearheaded by colonial-led functionaries like police, and courts in handling African matters. The introduction of modern means of resolving conflicts those were different from indigenous ways

resolving African conflicts. Africans were already used to customary laws, and norms that they were comfortable with, and they were ready to obey the rules of their tribe rather than those of the colonial government. To them, the legitimacy rested with their tribal leaders as opposed to the colonial-led strategies.

The colonial government aimed at using the indigenous authorities to achieve their aim of colonization. For example, the colonial chiefs were instrumental in enforcing colonial policies like taxation among the Kipsigis, and Abagusii communities; in this manner, these leaders reinforced the colonial. Critically the traditional leader's contribution to the governance was a genuine partnership. This relationship by extension then affected the local touch; the traditional leaders acquired new roles as opposed to pre-colonial African leaders. The primary sources confirmed that the colonial chiefs served to butter the colonial interests at the expense of the Kipsigis, and the Abagusii communities. This led them to lose the grip of customary authority, as these leaders were perceived as the agents of the colonial state rather than serving their people.

6.4 The Perception of the Kipsigis, and the Abagusii to Conflict Actors

To understand how effective conflict resolution strategies were among the Kipsigis, and the Abagusii, it is important therefore to consider how effective were conflict actors as well as the working relationship of the collaborative nature of the formal and non-informal institutions resolution processes. In the same breath it's crucial to evaluate the attitude of the parties in the conflict towards the third party that engaged in assisting them to resolve their conflict.

The colonial-led conflict resolution strategies were largely alien to the Africans in this case the Abagusii, and the Kipsigis. This made them encounter a protected face because they felt that their African way of resolving the conflict was invaded. In that connection, the intervention strategies of the colonial government for both communities seemed not to be feasible. Faced with circumstances the colonial government set to support the indigenous conflict actors being the gatekeepers to the grass root people. They then appointed the local chiefs, and headmen to help them maintain law, and order by resolving conflicts.

In the hybrid system, both the indigenous and colonial systems of governance must cooperate. The colonial conflict resolution strategies would have allowed the use of indigenous strategies rather than suppressing and displacing them. The two approaches serve to reinforce each other weaknesses in a symbiotic manner. That is the colonial government recognized that the state institutions can have some weaknesses, and as such, this shortfall can be strengthened by indigenous institutions, especially in resolving grassroots conflicts.

6.5 The Resultant Conflict Resolution Strategies by the End of the Colonial Period

Table 14 shows the resultant conflict resolution strategy by the culmination of the colonial period, according to the respondents' responses.

Table 14: Showing the Resultant Conflict Resolution Strategy

Strategy	Frequency	Percentage %
Hybrid (both the colonial, and indigenous combined)	30	60
Indigenous strategies	18	36
Modern/colonial strategies	2	4
Total	50	100

From table 14 it's clear that the major conflict resolution that most respondents believed to resolve the Kipsigis, and the Abagusii conflict was the hybrid strategy that was preferred at 30 (60%). The preference of the hybrid conflict resolution strategy meant that it was possible for the indigenous and colonial led conflict resolution strategies to move side by side without necessarily the colonial strategies subduing the other strategy. This situation resulted to articulation of two modes in the process of destruction and sustentation. As such the whole system of ICRs was not possible to integrate them in summation as such they remained subsidiary to the colonial led resolution strategies. In that the two systems ended up co-existing in a depended relations throughout the colonial period. This was clear indication that either colonial-led or ICRs could exist on their own.

Some still believed that colonial-led strategies were in a better position to resolve this conflict as indicated by 2(4%) while the remaining 18(36%) thought that indigenous strategies still were adequate in resolving this conflict. This finding then denotes that

the hybrid would have been the most preferred strategy for conflict resolution. These findings were supported by the study of Apiyo (2014) which revealed that the Turkana conflict would have been resolved through the use of a hybrid strategy model that was supported by at least 53% of the respondents that participated in the study.

6.6 Ways of Promoting success of Hybrid Conflict Resolution Strategy

The success of this system is dependent on the collaborative strategy. In this case, both systems of conflict resolution require each other support. Going by this the colonial-led strategy was to work in maximum cooperation between them, and the ICR actors of both the Kipsigis and the Abagusii. In an equal measure, the ICR actors of these tribes needed the support of the colonial government to maintain their customs, and assert their authority as they resolved African conflicts. In that connection, they were to get a chance to scrutinize and then discard some unacceptable ways of conflict resolution that suppressed human rights. In such collaboration then the ICR systems would have been supported to incorporate new values and improve some of the primitive values to be in line with the modern manner of resolving conflicts. As one respondent argued;

> "The problem with the colonial did not consider that we had our own ways that were very good in resolving our conflicts, they need to bring us on the table, then will would have helped in a great way to resolve this conflict…though they tried to involve us in some way." (Momanyi, O.I., 2022; Tanui, O.I., 2022).

Trust from both agents of resolution process in this case the indigenous, and the colonial would have been one of the key pillars in the new system. The traditional mechanisms of conflict resolution, and existing programs were to be supported in the effort to modernize them so that they can become more credible for conflict resolution. To achieve this both systems of conflict resolution would have developed a shared management strategy for conflict resolution. Through this, the ICR and colonial-led actors of conflict resolution would have developed shared responsibilities that were to enhance goodwill, and cooperation to achieve the objective of conflict resolution. Such a partnership would have resulted in colonial-led systems of conflict resolution referring to certain forms of conflicts like first time offenders to be resolved by the ICR actors. Such referrals would have been possible if there were an equal partnership between the two systems, which would have led to accepting responsibility. There was

a need to develop a well-structured partnership between the colonial-led, and the ICR actors. De Rosier (2004) gives as the model of this partnership;

> " …the creation of a coregulatory partnership between the state, and the communities local knowledge of the community-based initiatives with structure resources offered by the government".

Clifford (2001) explains more about this partnership when he uses the analogy of "rowing", and "steering". According to him;

> "The correct balance between the state and non-state partnership is achieved when the state government provides the overall direction, and control governance (steering), and provides a regulatory environment to encourage the other party to engage in the "rowing" of governance."

To achieve the above strategy the two communities' goals for conflict resolution were to be in line with that of the colonial-led, and in that context, it would have been easier to resolve the conflict. The recognition that the ICR mechanisms offered a practical solution to African-based conflicts was another string for promoting the effectiveness of the hybrid resolution strategy. As such it scored more if it was genuinely incorporated with the colonial strategies. In this case, indigenous values of social justice would have been incorporated into the new model. This incorporation of traditional means of resolving conflicts would have culminated in the execution of practical, and at the same time observance of the society-oriented view of justice. That incorporates the spirit of compassion and unity where human suffering is reduced using the available resources like mutual sympathy, and friendship. This then proves to be necessary to pave a way for the peaceful utilization of the available limited resources.

This chapter concludes that conflicts can be successful resolved only when conflict resolution actors embrace teamwork, trust, respect for one another and take the interests of the parties in conflict first. The concerned stakeholders should develop well structures to execute this mandate.

CHAPTER SEVEN
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

7.1 Introduction

This chapter presents the summary of the study findings conclusion, conclusion, recommendation, and further research suggestions. As such, the study was carried out on the colonial-led conflict resolution strategies and their impact on indigenous conflict resolution strategies among the Kipsigis, and the Abagusii communities in the period of 1905 to 1963. The study was carried out in Sotik-Borabu border.

7.2 Summary of the Findings of the Study

From the previous chapters, the research study has demonstrated that indeed the colonial-led strategies affected the Indigenous Conflict Resolution strategies henceforth therein known as ICRs, in the chosen study area of Sotik-Borabu border from 1905 -1963. The research study established that the pre-colonial the Kipsigis and Abagusii communities had their ICRs that had proved to be functional in resolving African conflicts when they developed. The study revealed that the governance structure of ICRs among the two communities was based on the principle of upward. In both communities, conflict resolution started at a family level where the father was responsible for settling all conflicts among family members. The next level of conflict resolution involved the input of the extended family after which the clan elders would chip in, and resolve the clan level. The apex of the conflict resolution process rested with the Council of Elders henceforth therein known as CoE whose authority was final.

The study as well revealed that the two communities had invented an effective enforcing mechanism to back up conflict resolution decisions. They used oaths to compel the parties to remain truthful in the conflict resolution process. These oaths were as well meant to reinforce the decisions of the elders because during the pre-colonial colonial periods the elders did not have standing armies. The study as well found that the use of oaths was pivotal in conflict resolution spheres, and as such, these oaths were taken seriously because the effects of taking oaths were almost immediate.

This study has demonstrated that colonization and the eventual introduction of modern strategies of conflict resolution greatly undermined the ICRs, and in that manner, they

were pushed to the periphery. This was based on the ground that the colonial government was eager to modernize the conflict resolution process among the two communities, and in this regard they introduced the use of courts, police appointed chiefs. As well they used economic policies like depastoralization that was geared at discouraging the primitive mode that the two communities were practicing. In place of this, they introduced a new model of capitalism that involved the cultivation of crops to shift the attention of the two communities from animals to the growing of crops as a means of managing their conflict.

The study revealed that there were sustained efforts by the colonial government that culminated in marginalizing ICRs. The 1945 report of Arthur demonstrates this development. Though the tribal courts survived the colonial onslaught their influence was greatly reduced due to the interference of the colonial government. The operations of the CoE were to great extent checked, for example, the reduced number of tribal courts by the colonial period as compared to the number that existed prior to the colonial period serves to justify this claim. This reduced number was a clear indicator of how this institution severed in the hand of the colonialist.

The introduction of courts was an alternative to duties the CoE performed as such this impacted the conflict resolution process. This new development brought on board two centers of conflict resolution. This made some people prefer the use of courts, especially when they wanted to avoid oath-taking that had been as well replaced in courts by the bible. This made the influence of CoE reduce because their decision would be appealed at the court level.

From the researcher's viewpoint, it turned out that indeed the colonial-led strategies affected the traditional conflict resolution mechanisms. The social accord among the communities of Kipsigis and the Abagusii was founded on existing informal conflict resolution systems based on restorative justice. The entry of the formal institutions in resolving these two communities' conflict, was fortunately accorded an upper hand based on their superior nature. This development brought about a new system that was applied to Africans whose social values were different. The indigenous conflict resolution was African based in that it resulted in win-win situations whereas formal

approaches were geared towards establishing who was a winner and a loser. This divergent point made these approaches crush due to their opposing cultural perspectives on conflict resolution, thus making the two communities to be left at a crossroads.

The activities of social institutions like *Laibonism* and *Mumboism* greatly affected the colonial period. Such institutions were considered supporters of the conflict therefore their supporters were deported out of their clans. The colonial government did this without minding the spiritual welfare of its members. This was further worsened by the fact that the newly introduced Christianity had not been accepted by many Africans. These traditional institutions were considered primitive as such they were set to be demolished by exiling their members. As already indicated due to the negative they had with the whites Africans were not ready to accept Christianity.

The study also revealed that some of the colonial economic policies like the abolition of *Ebisarate* among the Abagusii greatly impacted social life. As discussed, these centers were criminalized, and because of this alone warranted their destruction. What followed was the breakdown of economic cooperation in terms of security that ended up putting the Abagusii resources (cattle) at a higher risk. The lack of structured organization on how to immediately engage these idle youths became a source of anti-social behavior in the community. As well the colonial policy of introducing hut tax inwardly interfered with the social life as many people had to pull down some huts and share a few that they were able to pay tax for. As such, this affected social behavior, especially in terms of respect that now was almost thrown away because of sharing the reduced number of houses. In addition, the compulsory paying of taxes forced men to migrate, and seek jobs on European farms leading to the overburdening of the wives with the sole responsibility of controlling the behavior of children.

The study as well established that there was cooperation between the ICRs and colonial-led conflict resolution functionaries. The two strategies worked to resolve the two communities' conflict though they managed to reduce it. It's was revealed that though the cooperation was there the colonial led strategies were more supported by the colonialist, as opposed the ICRs. As well, another challenge that hindered resolving the

conflict was the culture that was engraved in the two communities, and thus it made it hard to resolve this conflict.

The study established that the colonial-led functionaries like police, and colonial chiefs, were not effective in terms of controlling the conflict. They used this opportunity to amass some wealth, at the expense of controlling the conflict. The colonial-led conflict resolution strategies would have harnessed the muscle use of local institutions for conflict resolution. The former was supposed to acknowledge the contribution of the ICRs, and as such strengthen them rather than show their supremacy in the conflict arena. Both mechanisms would have worked together in a harmonious relationship, constructive, interactive manner to achieve their aim. The colonial government's quest to resolve the Kipsigis and the Abagusii conflict should have endeavored to utilize the contribution of the ICRs instead of side-lining them. A situation that would have resulted to a working hybrid of conflict resolution between the colonial-led strategies and indigenous methods for conflict resolution.

Oral interviews for this study as well revealed that the understanding of justice and peoples' quest for fair, and effective conflict resolution strategy greatly changed drastically since the introduction of the formal system of justice. This new change as far as conflict resolution was concerned broadened the two communities' understanding, which in turn enabled them to explore new avenues of conflict resolution thus revolutionizing the conflict resolution cycles.

The study as well revealed that there was a great challenge in terms of excluding women, and youth from conflict resolution. Though the elders were the leading actors in the process no interview showed that youth and women were even allowed to sit listen watch and learn how the decisions have arrived so that they can some experience. Again during this period the art of writing was not developed and embraced as such, therefore becoming conflict resolution process especially in documentation of the process. It's worth noting because the effects of the conflict are widespread; it then follows that every member of society should contribute to the resolution process.

As well the study found that there was a collaborative approach that the colonial government used to resolve the conflict this was revealed through the border meetings that were attended by both the conflict actors. It can be argued that though the colonial government established the formal ways of finding solution to conflicts, the informal means would have been utilized to supplement the western strategies. Consequently, the indigenous conflict resolution was often integrated inside the colonial established institutions that were at the forefront of maintaining order and resolving this conflict. This trend was observed during the colonial times the services of the CoE, and elders were utilized in resolving disputes at the local levels.

In conclusion, this research did establish that the respondents were more comfortable with the application of both formal and informal conflict resolution strategies to resolve their conflicts. Though the colonial authorities did not consider the indigenous conflict resolution mechanisms as equal partners, especially in resolving a conflict that was African based. Though indigenous conflict resolution had its inherent challenges, this mechanism had unique elements that were supposed to be engaged with the colonial-led strategies. The cultural aspect was well key in determining the conflict resolution approach to pick, and utilize. This is based on the ground that the success of any conflict resolution strategy is founded on the people's values, traditions, and beliefs. As such, the Kipsigis, and the Abagusii conflict would have best been resolved from the existing values. Finally, it's worth noting that the desires and interest of the parties in conflict should serve as a guiding factor in choosing a resolution strategy to employ in resolving their conflict. In this case, the colonialist should have considered choosing a conflict resolution mechanism that factored in their culture of the Kipsigis, and the Abagusii instead of imposing their formal way of resolving the conflicts that were completely founded on a different culture.

7.3 Recommendations

After this long discussion this study is of the opinion that the Kipsigis and Abagusii conflict would have been best resolved by the hybrid approach where both indigenous, and colonial-led strategies could have worked hand in hand in finding a solution to the problem. Both formal and informal conflict resolution systems when worked separately their weakness make them ineffective in conflict resolution. Conflicting parties should

be given priority for them to choose a machine that is best suited to serve their purpose of conflict resolution. Therefore, any conflict approach that is designed to resolve a conflict must be guided by the needs it's meant to achieve, especially in terms of conflict resolution.

The dominant approaches to conflict resolution in the world today rest on a clear understanding that the resolution of conflicts needs a broad spectrum of methods of conflict resolution. The reality is that the colonial-led conflict resolution strategies should have coexisted with, and depended on the ICRs as they worked to resolve the two community's conflicts. While the colonial strategies were coercive this alone would not guarantee the use of modern strategies to resolve the Kipsigis and the Abagusii conflict. Better results would have been achieved in the collaborative working of these methods where each strategy would have served to strengthen each other's weaknesses. This study is of the opinion that if there was a well-structured working relationship between the ICRs and the colonial-led strategies such an approach would have been key in resolving this conflict.

In the above connection, it can be argued that due to both indigenous and colonial-led strategies' weaknesses, none of them would have worked alone in resolving the conflict. This fact alone was an indication that there was no one 'fit-in' conflict resolution strategy. As such, neither the colonial-led strategies nor indigenous strategies would work alone to resolve the conflict. Therefore, both strategies were to be employed at the same time in the quest to resolve the conflict based on the uniqueness of this conflict.

In resolving conflicts that seem to be persistent it's crucial to adopt approaches that are flexible and considerate to the needs of the conflict at hand. These approaches should be sensitive in a manner that they can address the social context under which the conflict centers. As such, the conflict resolution actors should be in apposition to understand, and the values, beliefs, attitudes, and actions as well as the networks of the conflict circle.

The need for security, peace and an environment that promotes development remains the central goal for both informal and formal conflict resolution actors. Based on this fact there is a need for the concerned actors in conflict resolution to develop a cooperative approach if at all they are reading from the same page. In this case, the indigenous and colonial-led conflict resolution actors should have developed a proper integration to advance a united front towards confronting the Abagusii and the Kipsigis conflict. In such a cooperative approach both mechanisms' focus should be on the resolution of the conflict, while utilizing each other's strengths, and at the same time covering one another's weaknesses. To achieve this well-structured policy would have been developed to facilitate symbiotic collaboration among the actors to transform the conflict resolution process through a combination of formal and informal strategies. Such an arrangement would have afforded both mechanisms to coexist without undermining each other. To this end, there is a dire need for conflict resolution actors to set their priorities right and declare their interests in any resolution process. Without this many conflicts will remain unresolved because of the hidden agenda the actors have toward the conflict.

As well there is a need for conflict actors in this case the government to liaise with the parties in conflict so as first to establish good relations. This will in turn help the parties to cultivate good relations with the government. This will in turn help the actors to understand the root cause of conflict. When the parties in conflict realize that the third party is meant for their own benefit the can then develop trust with this third party in the quest to search for peace. The colonial government would have therefore developed a genuine integration policy between the colonial-led functionaries, and the ICR actors, this partnership would have worked to strengthen the pitfalls in the conflict resolution cycles, and the long run, provide a solution to the said conflict. To this end, this collaboration would have resulted in the building of a trusted institution of conflict resolution, a socially inclusive society, and transparent resolution process between the two communities. In conclusion, such collaboration would have ended in building a synergic package for conflict resolution.

7.4 Suggestions for further Research Areas

Based on the study findings the prospective researchers can do more research on the changing patterns of traditional religion during the colonial period and its effect on the social lives of Kenyan communities.

Similar study can be done to various communities that were in conflict during the colonial period to ascertain the impact of colonial-led strategies on their ICRs.

As well more research can be done on the effectiveness of the hybridity of the conflict resolution strategies in post-colonial period.

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APPENDICES

Appendix I: Archival Sources

KNA/DC/KSI/1/1/1909 Annual Report South Nyanza

KNA/DC/KSI/1/1/1911 Annual Report South Nyanza

DC/KER/3/1/1913 Political Report Book1912-32

DC/KER/3/1/19214 Political Report Book 1912-32

DC/KER/1/2/1926 Annual Reports Kericho District 1924-1929

DC/KER/1/2/1929 Annual Reports Kericho District 1924-1929

DC/KER/1/4/1931 Annual Reports Kericho District 1937

.DC/KER/1/12/1942 Annual Reports Kericho District 1942

DC/KER/1/119/1943 Annual Reports Kericho District 1943

DC/KER/1/18/1945 Annual Reports Kericho District 1945

DC/KER/1/26/1953 Annual Reports Kericho District 1953

KNA/DP/18/13   Annual Report on Oaths

KNA 1926-1928   Political Report

KNA 1941-1954   Political Report

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Appendix II: List of Informants

Names	Place	Age
1. Pastor Mochama	Manga Igoro	85
2. Daudi Ongiri	Esise	88
3. Ombuki Keragia	Ikorongo	81
4. Nemuel Atemba	Itibo	84
5. Mochama Johnson	Esise	83
6. Omosa Ogutu	Manga igoro	79
7. Peter Maragia	Ikorongo	79
8. Mabiria Ogechi	Metamaywa	75
9. Nyakoe Peter	Metamaywa	76
10. Momanyi Elikana	Metamaywa	78
11. Omindi Francis	Esise	70
12. John Nyaberi	Ekerenyo	74
13. Samuel Omindi	Ikorongo	73
14. Andrew Nyaoma	Metamaywa	72
15. Agetha Shem	Nyagokiani	73
16. Inderea Momanyi	Nyaramba	72
17. Omosa Charles	Raitigo	74
18. Omwenga Nyarangi	Raitigo	68
19. Nyambega Isaac	Raitigo	68
20. Kenedy Nyarora	Mokomoni	69
21. Ochwari Nyambasora	Esise	67
22. Mogusu Meroka	Ikorongo	65
23. Mr. Kenyenga	Esise	71
24. Francis Ombati	Ekerubo	74
25. Ondieki Francis	Ekerubo	73
26. Ezekiel Cherurei	Ndanai	87
27. John Serem	Gelegele	85
28. Langat Patrick	Ndanai	84
29. Ambroce Koech	Sotik	82
30. Kiptanui A. Cheroyoit	Gelegele	80

31. Arap Cheruyot	Borderline	79
32. Samuel Koskei	Sotik	77
33. Charles Kipngeno	Sotik	77
34. Arap Kosgei	Gegegele	77
35. John Too	Border line	76
36. Kipkorir Peter	Ndanai	74
37. Pius Kiprono	Gelegele	73
38. Pius Arap Soi	Borderline	74
39. Kiptanui Tanui	Borderline	73
40. Rono Paul	Borderline	75
41. Arap Mareri	Ndanai	72
42. Daniel Serem	Ndanai	72
43. Alex, ander Mibei	Gelegele	72
44. Wiliam Kipruto	Bordeline	71
45. Stanely Rotich	Borderline	70
46. Francis Bett	Gelegele	69
47. Wesley Korir	Ndanai	69
48. Mathias Ngeno	Gelegele	68
49. Joseph Rono	Ndanai	66
50. Joseph Kipngeno	Gelegele	65

Appendix III: Interview Guide

Instructions

Please answer the questions below by using a tick (√) where it's appropriate and give an explanation where you may be requested to do so.

SECTION A: DEMOGRAPHIC INFORMATION

1. Gender: Male ( ) Female ( )

2. Age bracket ( ) 65-69 years 70-79 Years ( ) 80-89 years ( ) 90-99 ( )100 years and above ( )

3. What is your highest level of education? None () Primary ( ) Secondary ( ) College () University ( )

4. Are you ?   Kipsigis ( ) Abagusii (   ) Any other(   )

5. State whether you are a local Yes ( ) No ( )

6. How long have you stayed along the Sotik/Borabu border?   ( ) 65-70 years ( ) 70-80 years 81 , and above ( )

7. What position do you hold in the society Religious leader (   )

     Political leader ( )

8. Woman   leader   (   )   School   Administrator   (   ) others/specify……………………………

SECTION B: THE INDIGENOUS CONFLICT RESOLUTION STRATEGIES AMONG THE KIPSIGIS AND THE ABAGUSII

1. Who were involved in resolving conflict between Kipsigis and the Abagusii?

2. Did the efforts of the above mentioned group help in resolving the Kipsigis and the Abagusii conflict? Yes ( ) No ( )

    If Yes how……………………………………………………………………

3. What were the traditional methods that were used to resolve conflict between the Kipsigis and the Abagusii.

    Did the methods/ways you have mentioned above face any challenge?

    Yes ( ) No ( ) If Yes explain………………………

4. What challenges do you suppose faced the implementation of indigenous conflict resolution strategies?

SECTION C: The colonial-led conflict resolution strategies and its impact on Indigenous conflict resolution strategies among the Kipsigis and the Abagusii conflict.

1. Was there a major conflict between the Kipsigis and the Abagusii during the colonial period? Yes ( ) No ( )

   If Yes explain……………………………………………………………………

2. Who were involved in resolving the conflict during colonial period?

3. What were the main conflict resolution strategies that were introduced by British colonialists to resolve the Kipsigis and the Abagusii?

4. Did the strategies you have mentioned above affect the indigenous conflict resolution strategies? Yes ( ) No ( )

If yes explain………………………………………………………………….

5. What were the challenges that were faced by the colonialists in resolving the Kipsigis and the Abagusii conflict?

SECTION 4: The success of the hybrid resultant conflict resolution strategies among the Kipsigis and the Abagusii.

1. What was the resultant conflict resolution strategy by 1963?

2. Do you think that the combination of the Indigenous and colonialists' conflict resolution strategies would have resolved the conflict between the Kipsigis and the Abagusii? Yes ( ) No ( )

   If No explain…………………………………………

3. What other method/strategy do you suppose the British colonialists would have used to resolve conflict between the Kipsigis and the Abagusii?

4. Was everybody in the society involved in conflict resolution?

   Yes () No () If no explain……………………………………………………

THANKS FOR YOUR TIME AND CONTRIBUTION

Appendix IV: Nacosti Letter

REPUBLIC OF KENYA

NATIONAL COMMISSION FOR SCIENCE,TECHNOLOGY & INNOVATION

Ref No: 760479

Date of Issue: **16/March/2022**

RESEARCH LICENSE

This is to Certify that Mr.. OGERO WILFRED JOSECK of Chuka University, has been licensed to conduct research in Bomet, Nyamira on the topic: THE COLONIAL CONFLICT RESOLUTION STRATEGIES AND ITS EFFECTS ON INDIGENOUS CONFLICT RESOLUTIONS STRATEGIES AMONG THE KIPSIGIS AND THE ABAGUSII 1905-1963 for the period ending : 16/March/2023.

License No: **NACOSTI/P/22/16344**

760479

Applicant Identification Number

Director General
NATIONAL COMMISSION FOR
SCIENCE,TECHNOLOGY &
INNOVATION

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Appendix V: Letter from Nyamira County Director of Education Office

REPUBLIC OF KENYA

MINISTRY OF EDUCATION

STATE DEPARTMENT of Early Learning and Basic Education

Telegram: "EDUCATION", Nyamira
Telephone: (058) 6144224
E-Mail. cdenyamiracounty@gmail.com
When replying please quote
«

COUNTY DIRECTOR OF EDUCATION
NYAMIRA COUNTY
P.O.BOX 745-40500
NYAMIRA

REF: NCEO/1/25/VOLIII/71

DATE: 20th April, 2022

TO WHOM IT MAY CONCERN

RE: AUTHORITY TO CONDUCT RESEARCH BY – OGERO WILFRED JOSECK

Reference is made to the letter Ref. No. NACOSTI/P/22/16344 dated 16th March 2021 on the above mentioned subject matter. He has been given authority by the National Commission for Science, Technology and Innovation to carry out research on '*THE COLONIAL CONFLICT RESOLUTION STRATEGIES AND ITS EFFECTS ON INDIGENOUS CONFLICT RESOLUTIONS STRATEGIES AMONG THE KIPSIGIS AND THE ABAGUSII 1905-1963.*" The planned research will be conducted in Nyamira County for the period ending 16th March, 2023

Kindly accord him necessary assistance he may require.

DIMBA KENNEDY (Mr.)
For: COUNTY DIRECTOR OF EDUCATION
NYAMIRA COUNTY

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Appendix VI: Letter from Deputy County Commissioner Borabu Sub-County

REPUBLIC OF KENYA

THE PRESIDENCY
MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT

Telegrams: "DISTRICTER" Borabu
Telephone/Fax: 020-2443469

DEPUTY COUNTY COUMMISSIONER
BORABU SUB-COUNTY
P.O.BOX I
NYANSIONGO
21ˢᵗMarch 20

When replying please quote
REF: ED.12/5 VOL.I/101

The Chief
Ekerubo Location
ESISE DIVISION.

The Chief
Esise Location
ESISE DIVISION.

RE: RESEARCH AUTHORIZATION – OGERO WILFRED JOSECK – CHUKA UNIVERSITY.

Reference is made to the county Commissioner's letter Ref NO.NYR/ED.2?Vo.III/146 dated 20th April.2022.

Reference is made to Research No.NACOSTI/P/22/16344 dated 16ᵗʰ March,2021on the above mentioned subject matter from National Commissioner for Science, Technology and Innovation to authorize **OGERO WLLFRED JOSECK** to carry out research on " *THE COLONIAL CONFLICT RESOLUTION SRATEGIES AND ITS EFFECTS ON INDIGENOUS CONFLICT RESOLUTION STRATEGIES AMONG THE KIPSIGIS AND THE ABAGUSII 1905-1963.* "
This is to inform you that the planned research will be conducted in Nyamira County for the period ending 16ᵗʰ March, 2023.

Kindly accord him the necessary assistance

Irene M.Mukanzi
FOR.DEPUTY COUNTY COMMISSIONER
BORABU SUB-COUNTY.
cc

National Commission for Science, Technology
&Innovation
P.O Box 30623
NAIROBI.

The County Director of Education
P.O Box 4
NYAMIRA.

Appendix VII: Letter from Deputy County Commissioner Sotik Sub-County

OFFICE OF THE PRESIDENT

MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT

Telegrams: "Districter" Sotik
Telephone: 052-532172
Fax: 052-532172
e-mail:sotikdcc@gmail.com

Deputy County Commissioner,
Sotik Sub County,
P.O Box 828
SOTIK
Date: 22/4/2022

REF: EDU 12/6 VOLIII (28)

TO WHOM IT MAY CONCERN

RE: RESEARCH AUTHORIZATION – MR. OGERO WILRED JOSECK OF CHUKA UNIVERSITY.

The above student has been authorized to carry out research in Bomet County for a period ending 16th March, 2023 by the National Commission for Science, Technology and Innovation.

Any assistance accorded to the student would be appreciated.

F.J Ngetich,
For: Deputy County Commissioner
SOTIK SUB COUNTY.

Cc
Ogero Wilfred Joseck.

Appendix VIII: Ethics Letter from Chuka University

CHUKA **UNIVERSITY**

Knowledge is Wealth *(Sapientia divitia est)* Akili ni Mali
CHUKA UNIVERSITY INSTITUTION ETHICS COMMITTEE
Telephones: 0612304004   P.O. Box 109 - 60400
Fax line: 020 2310302   .   Chuka
                                                                    1st Marcch 2022

REF: **CUIERC/ NACOSTI 234**
TO: **Ogero Wilfred Joseck**

Dear Sir/madam

RE: The Colonial Conflict Resolution Strategies And Its Effects On Indigenous Conflict Resolutions Strategies Among The Kipsigis And The Abagusii 1905-1963

This is to inform you that *Chuka University IERC* has reviewed and approved your above research proposal. Your application approval number is *NACOSTI/NBC/AC-0812* . The approval period is1st March 2022 to 1st March 2023

This approval is subject to compliance with the following requirements;

i.   Only approved documents including (informed consents, study instruments, MTA) will be used
ii.   All changes including (amendments, deviations, and violations) are submitted for review and approval by *Chuka University IERC*..
iii.   Death and life threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to *Chuka University IERC* within 72 hours of notification
iv.   Any changes, anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to to *Chuka University IERC* within 72 hours
v.   Clearance for export of biological specimens must be obtained from relevant institutions.
vi.   Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal.
vii.   Submission of an executive summary report within 90 days upon completion of the study to *Chuka University IERC*.

Prior to commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology and Innovation (NACOSTI) https://research-portal.nacosti.go.ke and also obtain other clearances needed.

Yours sincerely

Dr.Benjamin Kanga
SECRETARY CHUKA UNIVERSITY

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Field photo work Gallery

Plate 1: Traditional granary where the murderer used to sleep awaiting cleansing ceremony photo taken on 20th April, 2022.

Plate 2: showing the Ekeng'eta mbori used to suffocate the a goat used during the cleansing ceremony photo taken on 20th April, 2022

Plate 3: The omotembe tree used lagerly during every oath taking process among the Abagusii people a photo taken on 25th April, 2022
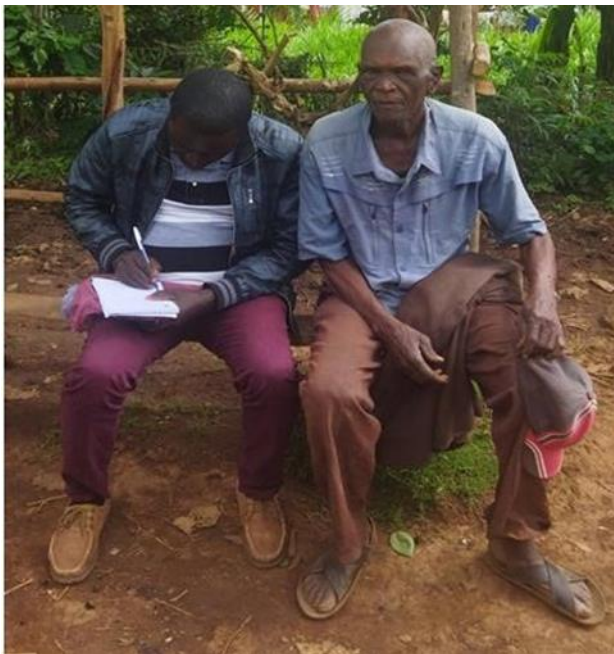

Plate 4: Oral interview with John Too a retired Murenik at borderline photo taken on 2rd May, 2022

Plate 5: Oral interview with Omosa a former member of CoE at Manga Igoro photo taken on 4th May, 2022

Plate 6: Kipng'eno giving information of CoE former member of Kokwet at Gelegele photo taken on 9th May, 2022.

Plate 7: William former member of CoE of Kokwet at borderline photo taken on 10th May, 2022.

Plate 8: Oral interview with Nyaoma giving information on the Abagusii CoE at Metamaywa photo taken of 12th May, 2022

Plate 9: Oral interview with Johnston Kamau a retired teacher, at Esise a photo taken on 14th May, 2022

Plate 10: Oral interview with Pastor Mochama at Manga Igoro photo taken on 20th May, 2022.