

**APPLICABILITY OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN
PEACE BUILDING IN MERU AND KWALE COUNTIES, KENYA**

BY

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NOVEBER, 2021

DECLARATION AND RECOMMENDATIONS

DECLARATION

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

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RECOMMENDATIONS

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DEDICATION

This thesis is dedicated to my ancestors and the living dead especially my late father, mum and son Chris who are the foundation I am cherishing presently. May their spirit live forever. Amen.

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LIST OF ABBREVIATIONS AND ACRONYMS

ACAS :	Advisory, Conciliation and Arbitration Service
ADR:	Alternative Dispute Resolution
CAS:	Court of Arbitration for Sport
ICAS:	International Council of Arbitration for Sport
ICC:	International Charter of Commerce
TAS:	Tribunal Arbitrate du Sport
TDRM:	Traditional Dispute Resolution Mechanisms
UN:	United Nations
US:	United States
WTO:	World Trade Organization
MP:	Member of Parliament
MCA:	Member of County Assembly
FGD:	Focus Group Discussion
PCA:	Permanent Court of Arbitration
NADRAC:	Australian National Alternative Dispute Resolution Advisory Council
NGO:	Non-Governmental Organization
CSO:	Civil Society Organization
UNCTAD:	United Nations Conference on Trade and Development
AUF:	Uruguayan Football Association
FIFA:	Federation of International Football Association
KII:	Key Informant Interview

ABSTRACT

The practice of alternative dispute resolution can be traced from ancient times in many countries. In Meru and Kwale Counties, alternative dispute resolution mechanisms have not been effective and efficient in sustaining peace building despite their being inherent in community cultures. This study assessed the applicability of alternative dispute resolution mechanisms and peace building in Meru and Kwale Counties in Kenya. The objectives of this study were: To examine the composition of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties. to assess the influence of interests of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties. To establish the positions taken by actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties. To achieve these objectives, a descriptive survey research design was employed where a sample of 94 respondents was selected by stratified and random sampling from a target population of 312. Primary data was collected using questionnaires, key informant interviews and Focused Group Discussions (FGDs). Quantitative data collected was analysed using descriptive statistics while qualitative data was analysed thematically. Analysed data were presented in tables and figures. The study found out that council in both counties have structures. Further, the study established that, the structural composition of council in Meru County (Njuri Ncheke) was slightly more established and organized 94.9% than Kwale County (Kaya) 90.9%. Further, the study found out the council has a well-defined structure with clearly spelled out roles. The study established that cultural interests were observed in both Counties during conflict resolution. The study further identified that cultural interests were slightly more applied in Meru County 94.6% as compared to 81.8% in Kwale County. Additionally, the study found out that in both ADR actors do not have self-interest when solving disputes. Further, the study found out that lack of self-interest in disputes resolution was more in Meru 94.6% than in Kwale County 90.9%. The study established that, in both counties the application of ADR in solving conflicts has standards/ codes. Further, the study established that Kwale County had slightly more standards 84.8% as opposed to Meru County 83.8%. The study found out that, in Meru County ADR actors had unanimous positions on 67.6% of the matters before them, while 32.4% had contradictory positions. On the other hand, the study noted that in Kwale, County 72.7% of matters before the Kaya council get a unanimous position. The study concluded that councils in both counties have structures. Further, the study concluded that, the structural composition of the council of elders in Meru County (Njuri Ncheke) was more established and organized than Kwale County (Kaya). Also, the study concluded that in Meru County the council deals mostly with disputes related to domestic disputes/violence, land, miraa farm destruction while Kwale County the Kaya council deals with destruction of Kaya forest among others. Additionally, the study concluded that in Meru County, members of the Njuri Ncheke are men and women of integrity, higher molarity, rich free from any corrupt dealing in the society. Kinyua (1970) said, despite the fact that one could find a poor man in Njuri Ncheke, it was impossible to find a wealthy fool in it. Further, it was concluded that, cultural interests were applied more in Meru County as compared to Kwale County. The study recommends that structure of councils to be more inclusive with well-defined spelled out roles. Further, the study recommended that the Kaya council of elders to include women in their composition.

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CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The history of alternative dispute resolution can be traced back to the 1800 B.C in Mari Kingdom (in modern Syria) where they used mediation and arbitration in dispute resolution with other kingdoms. In 1400 B.C., Ancient Egyptian Amama system of international relations used diplomacy in settling disputes. Also in 1200-900 B.C., the Phoenicians (in the Eastern Mediterranean) applied entrepreneurship and negotiations to settle disputes. In 960 B.C., Israel's King Solomon arbitrated the dispute over baby ownership. In 700 B.C. The Rhodian Sea Law codified traditional rules for determining liability for ship cargo losses and dispute resolution. In 500 B.C., an arbitration system known as Panchayat was used in India. In 400B.C., the Greeks used a public arbitrator in the city-states to settle disputes. Arbitration decisions between city-states were made public by publishing them on temple columns. In 300 B.C., Aristotle praised the use of arbitration on dispute resolution over courts (Barretti, 2009)

The use of alternative disputes resolution mechanisms (ADR)is also evident in many stories in the Bible, for example, in the story of Abraham and Lot negotiating, where Abraham, in order to avoid a fight, offered Lot a deal that Lot could not refuse(Shamir, 2003). Further, he affirmed that negotiation was conducted not only between people, but also between humans and God. He noted that Abraham negotiated with God over the fate of the people of Sodom and Gomorrah.

The use of alternative disputes resolution mechanisms today is quite extensive especially among non-union workplaces where more than 90% of firms with more than 100 employees employ some form of ADR to resolve employment disputes. It is, therefore, important to point out that the use of ADR is flourishing as a better means for fostering peace building and conflict resolution throughout the world and Kenya in particular (Colvin, 2003).

In the United States (US), commercial arbitration existed in the early Dutch and British colonial periods in New York City. Pilgrim colonists, convinced that lawyers threatened Christian harmony, scrupulously avoided lawyers and courts, preferring to use their own mediation process to deal with community conflicts. When disagreements occurred, a body of male members of the community would hear claims, determine fault, assess damages, and ensure that the parties reconciled with one another. For much of the colonial period, these informal arbitrations were the norm. The US has the world's most advanced and successful systems for settlement of disputes outside the formal legal system through mechanisms of mediation and arbitration.

More extensive use of this system internationally and by other countries can dramatically enhance the speed and quality of social justice globally. Usage within the US varies widely. About 11 percent of civil cases in Northern California are settled by mediation, compared to around 2 percent in eastern New York and 0.5 percent of civil cases in Europe. About 10 percent of divorce cases in Germany are submitted for mediation (McManus& Silverstein, 2011).

In the united Kingdom (UK), the government is keeping tabs on the use of ADR, as shown by the inclusion in the Civil Procedure Rules 1998 (CPR) where many means

have been put in place to facilitate ADR. The CPR wanted the adoption of ADR as alternative means of solving disputes before litigation. In preference for ADR, the courts would usually stay their proceedings in the administration of justice. The government promised to apply ADR in all appropriate cases involving government departments. In addition, Lord Justice Jackson's final report on civil litigation costs indicated that all benefits were assigned to alternative disputes resolution mechanisms. In addition, Lord Justice Jackson affirmed that parties must not be forced to mediate; he urged courts to use all means at their disposal to promote mediation. Further, he recommended parties that had unreasonably refused to mediate to be slapped heavy penalties in terms of costs (Hogan & Lovells, 2016).

In Australia, mediation practices have been in use for many years amongst the indigenous People. The ancient ceremony of Mawul Rom practiced by the Yolgnu people in Eastern Arnhem Land is said to be partly resembling western mediation practices. The elders in the community, who have good skills in communication and of neutral status, encourage resolutions centred on a joint decision-making processes. Arbitration and mediation were part of the commercial and social customs that immigrants came with from Britain to Australia. It has commonly been used since the late 1970s (Astor & Chinkin, 2002).

The United Nations (UN) holds the view that, to maintain international peace and security through peaceful means including the settlement of international disputes needs the use of ADR. In resolving disputes, at the global level, Article 33 of the UN

Charter enjoins parties first seek a solution to their dispute by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice (Muigua, 2016).

Africa has experienced the highest number of armed conflicts starting from military coups, civil strife and land clashes since independence. Conflicts in Africa have been witnessed in Sierra Leone, Democratic Republic of Congo, Uganda, Southern Sudan, Somalia, Rwanda, Nigeria and many others. These conflicts have adversely affected access to basic needs.

In Burundi's turmoil of 1990's, access to education was hit hard leading to destruction of educational infrastructure up to a tune of million shillings, displacement of pupils, parents, and teachers to an extent that there was inadequate educational infrastructure, serious understaffing and low enrolment during and after the crisis (Obura & Muiruri, 2019).

In South Africa, Nigeria, Benin and Egypt, the spectrum of ADR efforts are highly advanced. In addition, other countries took over the initiative to develop ADR practices within their commercial industry. Some even enacted legislation to establish ADR methods as a way of minimizing litigation in court. For instance, Tanzania incorporated ADR into its legal system.

Mozambique passed an Arbitration, Conciliation and Mediation Act that is compliant with World Trade Organization (WTO) standards, which legitimized non-court ADR. Their National Assembly approved revisions on commercial code, which allowed for resolution of business disputes through ADR (Phillips, 2012).

Ghana has experienced conflicts and ADR was used to resolve most of them. The use of ADR mechanisms speeded up the resolution processes without incurring additional costs. The presence of the various tools of ADR makes it easy for practitioners to contextualize every dispute so that they can devise a suitable appropriate mechanism for specific disputes. ADR gives parties' involved in a conflict more control over contentious issues between them, facilitates problem-solving mechanisms, and gives more effective settlement for substance and nuance. Further alternative dispute resolution mechanisms promotes co-operation and creates relationships aimed at preventing conflicts. A go between who sits on the fence cannot help overcome barriers to effective settlement of disputes and facilitate its resolution (Affrifah, 2015).

In Nigeria, residents of Calabar have largely embraced indigenous mechanisms to avoid and/or iron out conflicts. Politics and socio-cultural conflicts jeopardize the stability of peace in Calabar. Accordingly, indigenous preventive mechanisms need to be identified and supported by the law to supplement the attempts to resolve disputes in Nigeria (Usang & Eloma, 2014).

In South Sudan, the availability of the traditional organizations used to be strong enough to handle disputes before the current civil war. In the outbreak of the civil war in 1983, the Ngok Dinka population was coerced into exile between 1985 and 1987. This war greatly affected and weakened traditional institutions such ADRs used to settle conflicts amongst communities. This showed that the existence of these institutions had a positive impact on dispute resolution. However, their disintegration has led to increase in disputes among communities (Nyabuga, 2017).

In Kenya, the jurisprudential foundations of ADR are rooted in the different forms of traditional dispute resolution mechanisms .ADR mechanisms find more resonance in African systems which espoused the ideals of reconciliation and pacifism . However, over the years, the traditional justice system which espoused these mechanisms has been ignored and courts have had less reference to it, leading to stagnation (Gakeri, 2020).

Alternative Dispute Resolution was introduced to complement the formal justice system and traditional dispute resolution mechanisms (TDRM) through the 2010 Kenyan Constitution Chapters (159 art. (2) (c) and (3). ADR was introduced with a two-fold view of dealing more effectively with growing caseloads in Kenya and to improve citizens' access to the justice system. Access to justice in Kenya especially for the poor and marginalized groups is still a mirage. This is because access to justice was not just about presence of formal courts in a country but also it entails the opening up of those formal systems and legal structures to the disadvantaged groups in the society. The removal of legal, financial and social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions is the norm (Muigua, 2016).

Alternative dispute resolution mechanisms and traditional dispute resolution mechanisms are now formally recognized in the Kenyan Constitution 2010 and provided for under various statutes. It has led to an increase in the application of these mechanisms by courts and tribunals, amongst other informal forums in Kenya. The judiciary has also since launched and rolled out the Court-Annexed Mediation Project to especially deal with commercial and family matters. Therefore, it was expected that many disputes that

used to end up in court would be managed using these mechanisms. Courts have a constitutional obligation to promote their utilization whether within the formal framework, that is, court- annexed ADR, or as informal mechanisms as envisaged in the various constitutional provisions (Muigua, 2017).

Before the advent of colonialism, most Africa communities, if not all, had their own traditional resolution dispute mechanisms of addressing conflicts. These mechanisms had established structures of governance in their areas of jurisdiction. For instance, in Kenya most communities resolved disputes using traditional techniques like mediation through a council of elders that existed in almost all communities. Between the Pokot and Marakwet, the council of elders, referred to as “Kokwo,” was the highest institution of conflict management and socio-political organization. In the Agikuyu community, the council of elders (Kiama) acted as an arbitral forum or mediator in dispute resolution. The elders and their institutions were accessible to the general populace and their decisions were highly respected. Others were; the Ameru—NjuriNcheke, the Abagusii –Etureti, the Turkana—Ngaisikou Ekitoe, Digo—the Kaya, Giriama—Wazee wa Mtaa, Wajir and Isiolo—Peace and Development Committee (WPDC) and Peace and Reconciliation Committee (IPRC) respectively to name but a few (Kariuki & Muigai, 2016).

A few of the ADR mechanisms like arbitration and mediation, however, gained prominence even under the formal systems, as they were supported by mainly the international business community as forums to address arising commercial disputes. Thus, Kenya, in a bid to be at par with its international business partners, developed

laws on arbitration, which have been revised with time to reflect international best practices. There have been also a few organization training professionals on mainly the two mechanisms and developing codes of conduct for those training or practicing under their umbrella. However, with the recognition of ADR under the current Constitution of Kenya and various statutes, there have been an increased need for more professionals to train and gain expertise in various ADR mechanisms (Muigua, 2017).

The management of Conflict is not new in Kenya. In the Maasai community, detailed traditional conflict management techniques do exist. The responsibility to prevent and manage conflict lies on the individual family, neighbourhood and the community at large. Leaders of such institutions are expected to keep law and order within their jurisdiction. The use of socialization and education is an effective technique among the Maasai to arrest conflicts beforehand in and out of the community. Children are taught what they should do and what they should not do in the community at their tender age. They are taught to respect older people for they belong to the society. Norms, taboos and lifestyle of the society, are incorporated into the minds of the younger people. Gender roles are clearly outlined at this stage, as boys are encouraged to look after the animals and girls help their mothers in household chores. Boys are taught how to fight, while young. This is done to prepare them to be the community soldiers in the future. This spurs inter-community, or family conflict that needs ADR to settle them (Ngaga, 2013).

It has been observed that alternative dispute resolution has been applied in numerous situations in Kenya; the Kenya National Dialogue and Reconciliation process of 2008 is

a perfect example of mediation where a panel of African Eminent Persons from the African Union assisted Kenya to resolve the 2007 Post-Election crisis. The various mechanisms of ADR were applied to resolve disputes among communities and restore peaceful co-existence in Kenya. Truth, Justice and Reconciliation Commission of Kenya (TJRC) was tasked to collect information on how historical injustices and disputes can be resolved. Among others, the commissions recommended on the use ADR and the state to make public apology to offended individuals and communities (Mwagiru, 2008).

The Alternative Dispute Resolution Mechanisms used in Kenya are mediation, negotiation as well as conciliation and inquiry. Negotiation is a mechanism through which two or more parties in dispute agree to reach a joint decision regarding issues that affect both parties in order to avoid further dispute or violent conflict. It also a mechanism through which two or more parties meet to discuss shared like opposing interests that affects both parties (Fisher, Ury & Patton, 2008).

The Alternative dispute resolution systems, however, lack adequate documentations hence leading to inconsistency in rulings and replicable outcomes due to weak points of references especially in most parts of Kenya. When it comes to arbitration women were left out because of the cultural practices, yet ADR calls for participation of all parties involved in the conflict. Not forgetting the challenges of litigation of being costly, time-consuming, not being confidential, intimidating atmosphere and not accessing justice to the poor and women led to the birth of ADR (Muruthi, 2006). Many communities in Kenya, like the Kaya elders among the Digo community, the Njuri

Ncheke of Meru, the Kiama of the Kikuyu community and Ker among the Luo community have council of elders who are community gatekeepers (Muigua, 2017).

According to M'Imanyara (1992), Njuri Ncheke was the institution whose responsibility was to make laws, issue state orders as well as decrees affecting the entire Meru society. Njuri Ncheke acted as the judiciary and also enforced the rules and regulations aimed at conserving the environment. It continues to operate in the Meru community and plays various roles in conflict resolution and maintenance of peace not only within the Meru community but also with its neighbours. The Njuri Ncheke and Luo Council of Elders were reported to be consulting to facilitate a national elders' meeting to discuss the crisis in the Kenya's Grand Coalition government. This indicates that indigenous institutions can play a key role in reconciliation and promoting sustainable peace in Kenya.

According to Njanye (2010), the dominations of the Portuguese in 16th Century, Arabs in the 18th Century and the British in the 20th Century left the majority (71%) of local people in Kwale County marginalized and landless. The land with title deeds like the prime beach plots are owned by foreign investors. Settlement schemes have been fraught with problems, irregularities and disputes (Haki Centre, 2013). Land issues amongst others have led to several uprisings by locals, including Kaya Bombo in 1997 and Mulung'u-Nipa in 2007-2008.

The Mombasa Republican Council (MRC) is a social movement, which arose in 1998 citing marginalization and land injustices against indigenous coastal peoples. The movement made secessionist claims on the coastal strip of land and attracted wide-ranging support amongst coastal peoples. In 2008 the MRC were accused of training youth militia in Mulungu Nipa forest. In 2016, new concerns emerged about the militia training in sacred forests (Kayas) in the coastal areas (Goldsmith, 2011). According to Moyo (2007), land allocation and land tenure security are important issues for contemporary African rural communities due to inequalities in allocation under the colonial regime and the post-colonial administration, population increase, expansion of agriculture, increasing investor interests and resettlement schemes.

According to Haki Centre (2013), Kwale County has 25 settlement schemes for indigenous people, beginning in Diani in 1978. These remain problematic to this day in terms of disputes over ancestral claims, unequal allocations, large-scale allocations to non-indigenous peoples (the government used the schemes to settle landless up-country populations), corruption, lack of participation, double titling and sale of allocated lands at a throw away prices amongst other issues.

According to Ipsos (2013), in Ng'ombeni, which has beach front areas, many land disputes are said to result from 'table titles' where non-local made an agreement without seeing the land, and when they come on the ground they find someone else with a title deed. Chiefs noted that in Mackinnon area, it seemed that outsiders received titles but locals did not. In Diani, outsiders bought land legally, however, the children of those who sold the land are now saying they were paid 'peanuts'. Other

chiefs concurred that elders shared the land and later sold it at a throw away prices and now the young generations are agitating to get the land back.

According to Olaoba (2010), indigenous mechanisms that are used for the prevention and resolution of conflicts are less complex, save time, and give a chance to parties in conflict to actively participate to solve their own problems and to handle their affairs in a relatively more acceptable way. The features of indigenous conflict resolution in African societies included performance stance, resolvability of conflict due to the adopted methods and mechanisms demonstration of the customs and norms, deification of the ethnical framework of the society, and the trust of conflict resolution mechanisms that were widespread throughout the society. All this is leading to the creation of conducive environment for the facilitation of peace and the enhancement of harmony within and between neighbouring communities. In other words, these mechanisms are restorative thus leading to the healing of the communities that had no choice but to live together or next to one another.

Dispute settlement mechanisms only address the issues raised by disputants and aims at resolving the issues without venturing into the root causes of the dispute. Examples of dispute settlement mechanisms are arbitration and adjudication. Traditional justice systems are dispute resolution mechanisms. This is because traditional dispute resolution tools utilize resolution mechanisms such as negotiation, mediation and conciliation to ensure that the root-cause of the disputes are addressed and assist the parties to explore

mutually satisfying and durable solutions. Where these mechanisms have been employed, they have been effective in managing conflicts and the formal institutions (Biko, 2011).

The justice system in Kenya only provides a legal means of alternative dispute resolution. The courts are often used when parties in dispute cannot come to an agreeable outcome. The formal legal system does not provide a solution that fits both parties but in itself is a win-lose situation. One party wins at the cost of the other. This does not help amend or create bonds that would help prevent conflict in the future. Therefore, the punitive nature of the legal system in itself can be said to contribute to conflict. Violent conflict in Africa continues to be persistent indicating that despite the increased attention and improved knowledge about conflict management; modern international methods are also defective in facing these challenges (Zartman & Touval, 1996).

To prevent conflicts, institutions have to be guided by the methods of addressing the underlying causes of the conflict in order to prevent escalation and subsequent violence. In Kenya, members of the civil society, relevant government arms, members of religious organizations and members of the community involved in Alternative Dispute Resolution have to be empowered to guide disputants in conflict. These institutions can provide avenues for conflict prevention that the Court system do not use (Kathambi, 2017).

According to Muigua (2012), Courts have never guaranteed fair administration of justice due to many factors. Litigation process in Kenya and in other parts of the world has faced many shortfalls dealing with access to justice; e.g. high legal fees, geographical location, sophisticated rules and procedure applied in litigation. The functions of the court are hinged on the limitations of civil procedures, and the litigious steps taken by the parties involved. Conflict control by litigation can take several steps before justice can be delivered due to the procedures and resource limitations placed on the legal system by competing fiscal constraints and public. This makes ADRs as the nearly instantaneous way of delivering justice.

Land clashes in Mt Elgon district which started in 1960's, sparked again in the 2006 to 2008 show once again the formation of a rag tag army known as Sabaot Land Defence Force (SLDF) that resisted the settlement of certain people in the controversial Chepyuk phase III settlement scheme. The origin of SLDF was in Chepyuk settlement scheme, a region that learning was severely disrupted to an extent that all the twenty five (25) schools were closed or destroyed and over 250 teachers from the region were displaced (Okumu, 2013).

According to Kenya National Bureau of Statistics—KNBS (2014), intensity of drought affects normal activities of people and leads into a struggle or competition for resources. People in areas heavily hit by drought move to richer zones nearby, but these moves are nearly always not welcome. They face resistance and hence generate further conflict. Oromo from Ethiopia cross border into Kenya to graze when faced with drought in Ethiopia, same to Pokot in Kenya who go to Uganda in times of drought. Pastoralists from Kenya also flock areas of Marsabit, Garissa, Isiolo or Moyale

in order to escape drought in their areas. A national survey report 2014 concluded that, drought and feuds constitute the primary and growing threat to the pastoralists' way of life and survival.

1.2 Statement of the Problem

Meru and Kwale Counties have experienced conflicts that have been approached from the modernistic and traditional perspectives. Peace building efforts in both counties are aimed at forestalling conflicts. The role of traditional mechanisms has been appreciated for a long time in conflict resolution. However, in Meru County, there has been an increase in conflicts, due to the struggle over natural resources like land, which is used in farming especially Miraa, domestic conflicts, and political. Similarly, in Kwale County there has been a rise in land related conflicts and other crimes. According to the Annual Police Report (2015), Kwale is ranked 28th out of Kenya's 47 counties in reported crimes, with 1097 reports (GoK, 2015). Conflict resolution and promotion of sustainable peace and peace building need investigation with a view of strengthening them and infuse best practices of ADR. The ADR mechanisms are quick, efficient, effective, cheap, flexible and confidential. They are geared towards a win-win scenario as a fertile recipe for peace building that is done by the renowned council of elders for both Meru and Kwale Counties to solve conflicts and hence build peace for harmonious co-existence and development. Despite the employment of both modernistic and traditional conflict resolution perspectives, there is a rise of conflicts in both counties. It is against this background that this study sought to assess the applicability of alternative dispute resolution mechanisms (mediation, negotiation and conciliation) to

find out their effectiveness and efficiency in the delivery of justice to the two communities.

1.3 Objectives of the Study

1.3.1 General Objective

The general objective of the study was to assess the applicability of Alternative Dispute Resolution Mechanisms and their implications for peace building in Kwale and Meru Counties.

1.3.2 Specific Objectives

- i. Examine the composition of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties.
- ii. Assess the influence of interests of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties.
- iii. Establish the positions taken by actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties.

1.4 Research Questions

- i. How does the compositions of actors involved in alternative dispute resolution mechanism influence peace building in Kwale and Meru Counties?
- ii. How does interests of actors involved in alternative dispute resolution mechanism influence peace building in Kwale and Meru Counties?
- iii. To what extent do the positions taken by actors involved in alternative dispute resolution mechanism on peace building in Kwale and Meru Counties?

1.5 Significance of the Study

The study assessed the applicability of ADR mechanisms in peace building in Kwale and Meru Counties. In spite of the relevance of ADR, such as reduction of cost and time during the process of the dispute settlement and relatively satisfactory outcome among the conflicting parties after dispute settlement process. It is worth noting that the nature of ADR practices in promoting effective peace building was greatly influenced by the different cultural background and settings in the areas of study. This could be the reason as to why ADR has not adequately promoted peace building in Meru and Kwale. Secondly, this study intended to be useful to the policy makers especially in the area of ADR, Law, Conflict Resolution and Peace Building in formulating effective practical solutions that can help in addressing the challenges of ADR for peace building.

Thirdly, the study intended to contribute to the latest existing literature on ADR and peace building since there is limited literature on ADR and peace building in Kwale and Meru in particular. The findings and conclusions of this study was used to generate recommendations for best practices of mediation to be used by immediate community/society that have been studied and national and international community at large, which may alleviate pressing and perennial case backlogs.

1.6 Scope and Justification of the Study

This study focused on the efficacy of Alternative Dispute Resolution mechanisms and their implications for peace building in Kwale and Meru counties. Specifically, the study wanted to assess how mediation, negotiation and conciliation contributes to peace building in Meru and Kwale counties. The study was carried out in Meru and Kwale

counties among council of elders (Njuri Ncheke and Wazee wa Kaya), religious leaders, and public administrators who take part in peace building. The sample size was 92 respondents from a target population of 312-peace builders in Meru and Kwale counties.

These two counties have experienced an increase in community disputes despite existence of robust ADR mechanisms.

This study was carried out to determine the efficacy of Alternative Dispute Resolution mechanisms and their implications on peace building in Kwale and Meru counties.

1.7 Limitation of the Study

The study was limited by uncooperative respondents who were not ready to fill in the questionnaires due fear of victimization. Additionally, the some respondents were unable to read and write on their own thus slowing down the process of data collection. Some respondents, especially, public administrators had very tight schedules, which could not easily accommodate our activities. This made it difficult to get them to fill in questionnaires.

The researcher informed respondents that all information collected was anonymous, private and confidential and thus, it would not be used against them as it was meant for purely academic purpose. In addition, the researcher used simple and clear questions, used local interpreter to help those respondents who were unable to read and write and this enhanced data collection. Additionally, the researcher booked appointment with public administrators outside working hours to ensure that they got adequate time to fill in questionnaires.

Secondly, it was anticipated that due to the wide use of ADR in the region and distance between the wards, roads, terrain of the place, it would be difficult to find the sampled respondents in time. Meru being a farming zone (especially miraa farming), it was difficult to find respondents who were not engaged in farming. For Kwale County, we had fears of insecurity caused by Al-Shaabab as they could attack a group assembled for research interviews at any time. It was also anticipated that some of the respondents could not see the relevance of this study and therefore refrain from answering the questionnaires, participating in FGD sessions and Key informant sessions. To counter all these limitations, we conducted our research activities in the afternoon when farming activities are low. We also ensured that all our research activities were conducted in relatively safe places.

1.8 Assumptions of the Study

This study assumed that alternative dispute resolution mechanisms were applied in Meru and Kwale Counties. It was also assumed that the government sends court representatives to attend meetings of the councils while solving disputes to get the feel on how the council of elders conduct their affairs.

1.9 Definition of Operational Terms

Alternative Dispute Resolution Mechanisms: A set of approaches and techniques aimed at resolving disputes in non-confrontational way through negotiations, arbitration and adjudication.

Conflict:	A manifestation of divergent interests between at least two or more parties on a given issue.
Conflict Transformation:	A process that focuses on the root causes of the conflict in order to enable the warring parties not to engage in more violence to promote sustainable peace. Conflict Transformation is the deepest level of the conflict resolution tradition.
Conflict Resolution:	A complementary and contingency model of third-party intervention with appropriate and coordinated resolution strategies of conciliation, mediation and peacekeeping.
Compositions :	The range and quality of actors involved in s a process of settling disputes peacefully through a third party's intervention .
interest:	Motivations or drive influencing the actors participation and ability to make decisions arising from the use of ADR techniques.
Positions :	The stand taken by actors during the ADR process.
Peace Building:	The action to solidify peace and avoid relapse into conflict.
Traditional Dispute Resolution Mechanisms-	Refers to all those conflict management mechanisms that African communities have used since time immemorial and passed from one generation to another.

CHAPTER TWO

LITERATURE REVIEW

Introduction

This chapter reviews pertinent literature on the dynamics of ADR mechanisms that influence peacebuilding. It focuses on the nature of ADR composition, interests and positions that underly the practice of mediation, negotiation and conciliation and influence peace building in various contexts. These give way into the identification of gaps in the stock of knowledge with regard to the applicability of ADR and peacebuilding.

2.1 Alternative Dispute Resolution and Peace Building

Alternative Dispute Resolution (ADR) is a set of approaches and techniques aimed at resolving disputes in a non-confrontational way through negotiations, arbitration and adjudication Shamir, (2004)states that it is a set of practices and techniques that aim to resolve legal disputes outside the main stream courts. This is beneficial to all disputants e.g. Court-annexed mediation, to reduce the cost of conventional litigation and the delays to which it is ordinarily subject to, or to present legal disputes that would otherwise go to the courts (Bvumbwe & Thwala, 2011). It is also a range of procedures, which serve as alternatives to the adjudicatory procedures of litigation and arbitration for the resolution of disputes, generally, but not necessarily involving the intercession and assistance of a neutral third party who helps to facilitate such resolution Brown &Marriott, (1993). Alternative Dispute Resolution (ADR) is therefore, an umbrella term encompassing various techniques/practices for resolving conflicts outside of the court and generally classified into: negotiation, mediation, and conciliation.

Alternative dispute resolution has become a key element of the modern justice system. It is able to resolve sensitive issues such as communal, family and inter-personal issues out of formal courts. ADR is restorative in nature and the settlement reached is because of participation as well as consensus between the parties involved. This provides a win-win situation that is satisfactory to the parties in conflict. These provide parties with the impetus to honour their agreements and implement them in order to prevent conflict. A study on various communities in Africa revealed that each community had a unique way of conflict resolution. The common factor about these indigenous methods is that they promoted joint ownership and stake holding in a conflict Bujra &Solomon,(2005).

Alternative dispute resolution mechanism is a dispute resolution process that is informal in nature whereby individuals and parties meet with a third party who helps them to resolve their conflict out of the formal court system. Negotiation, mediation, conciliation are some of the forms of alternative dispute resolution. This means that ADR is used in various conflict situations and is not as rigid as the formal justice system Sprangler, (2003).

Alternative dispute resolution has become a key element of the modern justice system. It is able to resolve sensitive issues such as communal, family and inter-personal issues out of formal courts. ADR being restorative in nature, the settlement reached is because of participation and having consensus between the warring parties. This provides a win-win situation that is satisfactory to the parties in conflict. This also provides parties with the impetus to honour their agreements and implement them in order to prevent

conflict. A study on various communities in Africa revealed that each community had a unique way of conflict resolution. The common factor about these indigenous methods is that they promoted joint ownership and stake holding in a conflict Bujra & Solomon,(2005).

Conflicts are an inevitable part of life in every society due to the differences in interests, goals and values amongst the people. The outcome of the conflicts can be either violence or peace depending on strategies used to resolve the conflicts. However, many societies have frameworks that are used in conflict resolution such as litigation and alternative dispute resolution mechanisms such as collaborative laws, arbitration, mediation, traditional dispute resolution mechanism (TDRM), conciliation and negotiation. The use of alternative dispute resolution mechanisms in resolving disputes is one of the oldest mechanisms in most of the societies. ADR and peace building have a link that promotes justice and social cohesion in many countries of the world. This had manifested in the traditional societies in North America, South America, Austria, Zealand and Africa. Their relevance had witnessed in the role they play in complementing the formal justice system in these countries Odendaal, (2010).

Inadequate political support, human resource, legal foundations and sustainable financing are some of the challenges faced by ADR. ADR would be manipulated by the political class and therefore may provide a fertile ground for revenge and counter revenge. In most cases, institutions do not provide work stations assigned to ADR rather they create room whenever the cases come. This makes the documentation process both insane and

non-versatile and the time allocated for ADR in some institutions is what they call spare time Chong& Zin, (2012).

According to NADRAC, (1997), facilitative ADR is the processes of dispute resolution that depends on a third party's assistance but without advisory or determinative role in the content of the dispute or its resolution. The least interventionist technique in the facilitative category is facilitation itself. Facilitation involves form of negotiation under the facilitator (the third party), who uses least degree of intervention. Facilitation is also an ADR mechanism, which is described as the manner in which a facilitator assists the parties to reach a consensus agreement over the most suitable process to resolve their dispute. A facilitator chairs a meeting and ensures that all the participants get a fair opportunity to air their views. Mediation is often considered slightly more interventionist technique although many practitioners and researchers denote differences between facilitative mediation (non-interventionist) and evaluative mediation. Often facilitation is used to commence the dispute resolution process with the facilitator switching to different roles including that of a mediator or conciliator should the parties wish that to occur.

In advisory ADR, the third party plays a very active role in advising the disputants about the issues and range of possible and desirable results and the ways to achieve these intended outcomes. Some methods like fact-finding, mini-trials and early neutral evaluation are used. Fact-finding is a process of clarifying and determining the root cause in the dispute. The third party-neutral, listens to arguments and evidence

presented by the disputants but makes no determination unless the disputants agree to shift the fact-finding process to mini-trial or advisory-arbitration. At the conclusion of the process, the fact-finder prepares a report showing the salient facts of the case and the circumstances in which the dispute arose. This may include an evaluation of the strengths and weaknesses of the disputants' respective case and how each disputant would fare on if the case were to progress to arbitration Astor & Chinkin,(2002).

Mtukwa, (2015), further points out that ADR practices in most cases introduces a third party neutral to the resolution procedures. For example, one of the studies in Uganda noted that in the Acholi customs when an offender declares that he or she has committed a wrong, the traditional conflict management system is triggered. The dispute resolution process identifies certain behaviours as "kir," or taboo, these may range from the criminal to the anti-social-violent acts, disputes over resources, and sexual misconduct-including behaviour that would prevent the settlement of the dispute. Clans must then cleanse the "kir" through rituals that help to reaffirm communal values. The reconciliation process between two conflicting parties within the Acholi community would apply

According to Shamir ,(2004), ADR covers a broad spectrum of practices, that is, from party to party engagement. Negotiation is the most direct way to reach a mutually accepted resolution to mediation, arbitration, consensus building and adjudication at the end when the external parties impose solutions. Similar to the above scholar Mkutu, and Marani, (2014) argues that ADR entails numerous practices such as negotiation, mediation, arbitration, Med-Arb., conciliation, early neutral evaluation, adjudication,

traditional dispute mechanisms and dispute adjudication board that are used in dispute resolution.

In Kenya, the formal justice system has played a great role in promoting justice and resolving conflicts but there are many challenges faced such as inaccessibility of court, interminable delays, high costs-in terms of court fees, lawyers' fees, emotional costs, restrained relationships and scars of litigation. These challenges have forced Kenyans to resort to Alternative Dispute Resolution as the first resort and not as the last resort because of its advantages over the formal system or litigation Kariuki, (2012). ADR system lacks proper documentations hence leading to inconsistency in rulings and replicable outcomes due to weak points of references especially in most parts of Kenya. In arbitration, women are left out because of the cultural practices yet ADR calls for participation of all parties involved in the conflict Wachira, Muluka, and Wepundi, (2010). The challenges of litigation being costly, time-consuming, non-confidential, intimidating atmosphere, emotional scars left after the case and not accessing justice to the poor and women led to the birth of ADR.

According to Lindblom (2008), ADR is more advantageous compared to litigation in terms of public expenditure and workload of the courts. As ADR is an interests-based process, the settlement out come may not be solely a victory for one party and a defeat for the other as it is for litigation but a win-win situation for both parties. In essence, both parties may feel that they have gained something and at the same time they could avoid the procedural risks, costs and possible negative publicity related to a

hearing. For the business community, for practical reasons, ADR may have an ability to restore the commercial relationship which litigation may not be able to address.

ADR is a collective term for a range of dispute resolution processes and techniques that differ in terms of the degree of intervention and the participation of the third party in the process. However, they all share the flexibility in procedure allowing a quicker resolution, minimal and less cost. They contribute to the maintenance of ongoing business or family relationships; guarantee confidentiality; and, in most cases, greater participation of the parties than in litigation. ADR was taken as another method available to the disputants to end their disputes other than litigation Othman,(2002).

According to Mburugu and Macharia,(2016), conflicts have a long history. From the dawn of human history, communities have been struggling for control over resources and other issues. These competitions have led individuals in social, political, economic, and religious groups into conflicts. It is true that conflict has devastating effects and it is unwanted. In these counties, too, conflicts have been increasing all the time.

2.2 Theoretical Framework

This research was informed by four theories: Mediation theory, Conflict Transformation theory Conflict Functionalism theory and Conflict theory.

2.2.1 Mediation Theory

Mediation is a facilitative process of ADR according to Australian National Alternative Dispute Resolution Advisory Council (NADRAC), (1997). Generally, mediation has been defined as a dispute resolution process where parties agree to voluntarily refer their

disputes to an independent third party acting as a facilitator who encourages the parties to come to their own resolution. Mediation as a process that is over seen by a non-partisan third party, the mediator, whose authority rests on the consent of the disputing parties Nan (2010).

Kressel and Pruitt (1985) define mediation as the assistance by a third party, who has no authority to dictate an agreement to two or more conflicting parties. While Moore's, (2003) definition of mediation emphasizes the third party's impartiality and neutrality in facilitating communication and negotiations between the disputing parties. Ntuli, (2013) observed that mediation in essence requires an intervention of an experienced independent and trusted third party neutral to help parties to settle their conflict. Similarly, Pelsler, (2013) describes mediation as a concept that focuses on the resolution of disputes through consensus.

What is common to all these definitions is that the third-party neutral does not impose a solution on the disputants to end the dispute.

Over the years, many definitions of mediation have been put forward, and many of these purport to prescribe the process of mediation as conducted by the mediator.

Moffitt, (2005) argued that the host of the definitions given to mediation has not been helpful in identifying its boundaries. He found that the definitions are either prescriptive or they conceal an assertion based on empirical research. He concluded that those who offer prescriptive definitions merely put forward their own understanding Moffitt,(2005).Others have expressed similar views.

For instance, Folberg and Taylor, (1984) argued that mediation falls along a spectrum of meanings, which depend on the specific nature of the dispute, the parties who are in dispute, the mediator and the mediation settings. Spencer and Brogan, (2006), who noted that mediation is a fluid concept and far from settled, echoed this years later. Despite the difficulties in constructing a definition, the two most accepted and influential definitions in Australia and the US are respectively those by NADRAC, (2003)

Mediation is a process in which the parties to a dispute with assistance of a neutral third party (the mediator) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role concerning the content of the dispute or the outcome of its resolution. He/she may advise on or determine the process of mediation NADRAC (2003). Mediation is the process by which the participants together with the assistance of a neutral person or persons systematically isolate dispute issues in order to develop options, consider alternatives and reach a consensual settlement, which can accommodate their needs Mouly, (2013).

These definitions assume a theory of mediation based on a process, which is primarily a facilitative and non-evaluative form of supervised negotiations, where the third-party neutral imposes no decision, but encourages the parties to agree on their own solution. A number of other aspects of the theory of mediation have given it a strong support

as dispute settlement mechanisms particularly in place of adversarial litigation explain how mediation has spread worldwide and continues to attract attention Drummond,(2005).

On the other hand,Mtukwa, (2015) argued that ADR processes are facilitative, advisory and determinative or a combination of the above. The author notes that in a facilitation process, ADR practitioners assist parties to identify the issues and reach an agreement about the dispute. The scholar further points out that the advisory processes such as conciliation or expert appraisal employ a practitioner to advise the parties about the issues and possible outcomes and for determination processes such as arbitration involve a decision being made by the third party.

Muigua and Kariuki (2014), argue that ADR emphasizes win-win situation for both parties hence this increases access to justice and improve efficiency and it is expeditious. Furthermore, Pigeon (2005) noted that ADR involves third-party neutrals to help the parties involved in a dispute come to a resolution and ADR tries to downplay confrontation and develop a win-win environment where both parties feel like they have won some concession.

The use of ADR face a number of challenges depending on the society, background and cultural settings. For instance, in Kenya most cultures do not allow women to participate as mediators/ facilitators in certain cases, which may not be the case when litigation is used. This hinders peace building since women round the world are praised to be good peacemakers. In a study conducted by European Commission in 2012

pointed out that mediation is a non-binding procedure which entails that parties have to agree to submit a dispute to a mediator, and they are not obliged to continue with mediation process after the first meeting although decisions cannot be imposed on the parties Mwendwa, (2017).

The Advantages of Mediation

As seen from the definitions of mediation above, its advantages were perceived to lie in the involvement of a third party (Mediator) in assisting the disputants to achieve a mutual settlement. The essence of the mediators' role in their non-alignment with either party in acting as a neutral-third party intermediary to facilitate progress towards settlement Roberts&Palmer,(2005).Although mediation is primarily used to benefit the parties and the courts in resolving disputes quickly, it may also assist in reviewing and narrowing the issues if it fails Schirch, (2014). In addition, the disputants can develop a better appreciation of their own case and that of their opponents Zartman, (2009). Some of the notable major benefits of mediation are as follows.

One advantage of mediation for parties is its aspect of confidentiality. It allows for a restricted sharing with the mediation of the party's case including the revealing of embarrassing and potentiality damaging information. Mediation is done on the basis that nothing is to be disclosed to the other party without express authorization of the confidential receipt of such information from both sides and can help the mediator to facilitate a mutual settlement Armstrong,(2007). This setting is conducive for parties to make concessions without concerns over its divulgence should mediation fail Bingham,(2008).

Mediation is considered beneficial as it said to empower the parties compared to other forms of dispute resolution. It allows various possibilities in the outcomes. It seeks to restore the central decision-making role to the disputants whose problem it is Loong Thye & Boon Leng,(2003).According to Sturrock, (2010), the parties' control in mediation is about the democratization of justice. The extent of the parties' control includes the power to choose their mediator, the procedures that will apply, the venue, and the means to ensure confidentiality Barbee,(2007).It is argued that the greater control that the parties have over their dispute and the greater participation they have in decision-making lead to greater commitment to the resolution Faulkes,(1986).

It is also argued that the outcome of mediation is durable and flexible because it accords the needs of the parties as it arises from their own efforts, freely and without coercion Nicholson,(1991).As the agreement reached is based on mutual consent in an informal and friendlier environment, it helps to preserve and improve the parties' relationships Sussman,(2009).This is particularly so for those people who prefer a less intimidating process where they have some freedom and opportunity to voice their concerns and those who want their disputes to be resolved by them informally without compromising their relationships Fiadjoe, (2004).

2.2.2 Theory of Conflict Transformation

The theory of Conflict Transformation is among the theories that supported this study. The proponents of the theory of Conflict Transformation are John Paul Lederach and Johan Galtung.Conflict Transformation seeks to re-establish the status quo and as well as long-term outcome process and structural orientation with a strong emphasis on justice and social change. The theory stresses the necessity of transforming cultural and

asymmetric power imbalances between the conflicting parties in order to move to sustainable peace Yihun, (2014).

In order to be successful, Conflict Transformation therefore has to happen on all levels of the society simultaneously and independently. Zistel, (2014) argues that conflict transformation builds on culturally appropriate models of conflict mediation aimed at empowerment of the people and recognition. Since many societies like Meru and Kwale have their own mechanisms and techniques for preventing, managing and resolving conflicts, efforts for transforming conflicts need therefore to include respect and promotion of resources from within the society (like the Njuri Ncheke and Kaya expertise) and the peace building initiatives employed to be built on the society's existing cultural frameworks. This is because culture is a critical resource in the management of conflicts. It provides the people with the means to own the process and solve their own disputes.

Lederach,(2003) has provided a substantive and analytical framework that addresses needs for comprehensive and strategic approach to transformation of deep-rooted conflicts as well as integrated frameworks for building peace and sustainable reconciliation. He visualized peace building as a structural process that allows conflict transformation to take place at three tiers of leadership, top, middle and grassroots levels. This actually provides a contextual understanding of the activities and approaches which support the participation and involvement of the population in conflict from “top to bottom and from bottom to top” in building peace.

2.2.3 Conflict Functionalism Theory

The conflict transformation theory further underpins this study as advanced by Lewis Coser in 1956. According to Coser, (1956), the positive function of social conflict allows the expression of hostility and the mending of strained relationships that leads to the elimination of specific sources of conflicts between parties and enables redress of grievances through the establishment of new norms or the affirmation of old ones. Social conflicts lead to new norms, institutions, new coalitions, and alliances. He views conflicts as a process that under certain conditions, functions to maintain the social body or some of its vital parts.

The application of this theory is true especially on pastoralist communities in Kenya where the government, NGOs, FBOs and other stakeholders have in some cases formed joint efforts to look into issues that lead to pastoral conflicts in a bid to respond to the aggression by these communities and to resolve their differences. Examples here could be the various peace committees that have been formed to resolve pastoralist disputes. There is also a strong move currently towards policy and strategy formulation. This has been spear headed by various organizations, like World Vision, religious organisations and Oxfam GB Grahn, (2005).

This theory is relevant for this study because the clash of values and interests, the tension between what is and what some groups feel must be are the conflict between vested interest and new strata groups demanding their share of power, wealth and status have been productive of vitality. Usually, this has been seen among pastoralist communities where leaders have solved disputes e.g. over land, animals and water

through truce, dialogue, return of raided animals, and payment of losses incurred during the conflicts.

2.2.4 Conflict Theory

Karl Marx championed Conflict Theory. He produced a formal theory of conflict and change. His early theory of conflict and change was further developed into the modern contemporary sociological theory. Marx began with simplistic assumption that the economic organization especially the ownership of property determines the organization of the rest of the society. Class structure, institutional arrangement, cultural values, and beliefs, religious dogmas are the ultimate reflection of the economic base of society. According to Marx, class conflict is dialectical. According to Holsten, M et al., (2013), conflict is bipolar with two extremes. When the exploited class becomes aware of their true interest, they form a revolutionary political organization and that stands against the dominant, property, and property owning class. There are many varieties of conflict perspectives within sociology. All conflict perspectives have a model of society, as a whole and the notion that there are groups in society that have different interests and pursuance of different interests is likely to cause clashes that are likely to produce instability in society.

Conflict theorists agree that the existence of groups with diverse interests does not mean they will be in disputes forever. There may be times of truce, however, periods of harmony do not last forever and eventually conflict will return. These observations of conflict theorists are true of pastoral conflicts that occur because of livestock rustling since they do not last for too long (Musambanyi, 1998). Livestock rustling is an established practice, which used to be governed by community's understood rules that

prevented excessive violence. Sometimes elders would negotiate a truce and return of some of the livestock". According to Lockwood (1956), in society there are mechanisms that make conflicts inevitable and inexorable. These include power differentials, which ensure that some groups will exploit others thereby constituting a built in source of tension and conflict in society. Existence of scarce resource and competitive pursuance of different goals ensures that conflicts will ensue.

Karl Marx says that it is difficult sometimes to avoid conflicts, inescapable and ubiquitous force in social system and is motivated by specific conditions.

These conditions are viewed as allowing for the transformation of latent class interests (unconscious class) into manifest class interests (class-consciousness), which under additional conditions lead to the polarization of society with classes joined in conflict. Classes are determined and based on individuals' relation to the means of production. The distribution of resources or property determines the extent of the conflict between the dominant and the subordinates in the society Abraham,(1993).

Marx emphasizes that the degree of inequality in resource distribution influences conflict. The more the subordinates become aware of their true interests, the more they question the social arrangements and legitimacy of those in power. They communicate to one another, raise awareness and develop capacity to build a unifying ideology that codifies their true interests.

Marx further says that factors like ecological concentration or environmental difficulties, lack of educational facilities, emergence of ideological spokesperson who control socialization process greatly contribute towards conflicts. This observation gives a true picture of the pastoralist situation in Kenya where in the face of serial conflicts,

communities feel deprived, alienated and forgotten. The lack of access to basic infrastructure like education, water, transport, health facilities, proper housing, electricity, animal health and good business systems, together with the ecological hardships in these areas, greatly distort many peace efforts and conflict resolution mechanisms. Even when organized by different stakeholders, these factors make the achievement of long-term peace and sustainable development a dream that might never come true. Resource shortage, diverse social interest, norms, and culture among others are what cause unstable peace among border communities. This makes this theory relevant for this study.

2.3 Empirical Review

2.3.1 Compositions of alternative dispute resolution mechanisms and Peace Building in Meru and Kwale Counties.

Composition of ADRs is a global phenomenon that has been approached variously in efforts to address conflicts between or within nation states. The more recent cases of the significance of composition as a factor in ADR has been seen in the process of conflict resolution in members of the African Union. In 2008, the initial composition of the mediation committee of the Panel of Eminent Persons of the African Union selected to mediate the conflict in Kenya was rejected by the Party of National Unity (PNU)-The president of South Africa This forced the AU to appoint an alternative Panel that was agreeable to both parties and headed by a more neutral Chairman-The Kofi Annan group. The politics of composition have further been discerned in other conflict theatres including The Tigray Crisis in Ethiopia, Somalia-Kenya crisis and the role of IGAD, etc. It is noteworthy, that the African Union has

mainstreamed ADR through the Panel of the Wise whose membership is relative to the crisis at hand. There is overall reliance on the use of former Heads of State instead of inclusion of eminent persons in the regions with the right mix of experiences, expertise and the outlook of the crisis in the region (AU,2008)

The Council of elders especially the Njuri Ncheke is formed gradually in a process as *kiama*. It was called *Njuri*, a term that carries connotations of thinning out. The corresponding English word is "Committee of the few" The second word *Ncheke* refers to the *Ncheke* plain which lies roughly equidistant between the Nyambene forests of Igembe and those of North Imenti, thus near the more thickly settled sections of the Tigania. The field within that plain where *Njuri* met was called *Nchiru*, and to date it has remained the council's holy traditional shrine.

The functions of the council remain to this day and have indeed grown in complexity with time. People in the region take land disputes and issues of inheritance to the council before reporting to the police and other authorities. Only cases that cannot be resolved locally and those that involve non-Meru litigants or disputants are exempted. The council is still held in high esteem. However, some of that respect is mixed with awe and fear because of the severe punishments the council gives (Anderson, 2011).

The council of elders have been on the forefront in holding joint prayers for the country. In the recent past, elders from Meru, Kikuyu, Luo, Maasai and Mijikenda communities have been holding "holy" expeditions. One such event was held at Mt. Kenya where elders travelled to and around the mountain in vehicles marked with sky

blue ribbons. The groups drove around the mountain anti-clockwise, making seven stops to pray. The organizers said that the forefathers of the communities living near Mt. Kenya believed God lived on the mountain. The groups asked Kenyans to value and preserve their cultures. The pilgrims prayed for peace in volatile areas within the country and for South Sudan and Somalia (Resnik, 2011.)

Elders, in the context of African traditional religion are categorized among religious specialists and play mediatory roles between the living and the living dead in the invisible spiritual world. As their title suggests, these people are elderly in the society and have acquired immense experience having passed through the various stages of life. They are supposed to be credible and morally upright people. They must have families with grown up children. According to Gichaga, they are heads of families and perform religious functions. Most of their experience is gained through having associated with other people who are more experienced than they are.

Among other responsibilities, the council of elders in various communities are endowed with the responsibilities of promoting law and order. The role of elders is very important in many communities in Kenya and they even receive recognition from the government. They continue to settle family and land disputes and are still the custodians of societal morals and traditions. *Njuri Ncheke* and *kaya* are one such council of elders. Their popularity and influence in contemporary society became the concern of this study (Mukindia & Onyancha , 2013).

Entry into *Njuri Ncheke* was restricted to elders already accepted as spokes persons for some larger group. Every lineage was well represented and a balance was maintained. Large numbers of livestock were required to join, provided as gifts to form the basis of each candidates initiation feast. Entry was therefore restricted to the wealthy men of the land. In Meru terms, this meant that prestigious elders needed equally successful warrior sons, capable raiders who could supply their fathers with the livestock required for *Njuri* fees. Once achieved, however, membership was for life. A special walking stick served to identify its owner as a man of *Njuri* and thus one worthy of respect. However, requirements for membership today have changed greatly and old age is no longer an important factor. Even the younger men from the region such as politicians and achievers in various other fields are initiated into the council and are well recognised as elders (Orina,2018).

In their study (Mukindia and Onyancha, 2013),on integration of African religion and culture in Christian worship inthe Methodist Church of Kenya in Meru County, found out that membership to *Njuri Ncheke* is fashionable even among the Christian converts despite the fact that Methodist Church doctrines do not allow baptized church members to join the council in any capacity. Further, they noted unity between the Church and *Njuri Ncheke* elders when handling issues affecting the Meru community. In addition, they argued that, unity in a case of syncretism where beliefs and practices of two religions are being articulated. This is because *Njuri Ncheke* elders are the custodians of ADR while the Church is the propagator of Christianity (Okharedia, 2011).

The composition of ADR plays a central role in peace building. The Council of elders consists of a house as the smallest unit in the structure. Their composition is key as it assists in peace building. Njuri Ncheke is made up of men, youths and women. Due to lack of enough literature on the compositions of ADR, this study was informed by the following studies that focus on the functions and principles of the ADR. The successful performance of the functions, however, is derived from the nature of the composition of the Councils that are vested with the responsibility to adjudicate cases in the name and on behalf of the communities. It is thus imperative that Council composition remains a moot argument even as the institutions perform their responsibilities in the respective communities.

Shamir, (2004) noted that mediation as a form of ADR became part of the institutional frameworks of labour relations when the national unions came to the forefront in the United States. Furthermore, he also pointed out that in 1974 the United Kingdom set up the Advisory, Conciliation and Arbitration Service (ACAS) to deal with industrial disputes and at the end of the 1980s commercial mediation services also became available. Voluntary mediation which was done at the industrial court has been going on since 2004, but only a small number of cases have gone through this process. This is because of the low level of awareness of the public and lawyers about its advantages. Another ADR process known as 'an early evaluation of the case' was also introduced in 2010 at the pre-hearing stage for matters referred to the Industrial Court pursuant to 20(3) of the *IRA 1967* relating to the unlawful dismissal of workers. Under this process, the Industrial Court Chairman evaluates the merits of the case based on

the pleadings and advises the parties on the probable outcome of the case with a view of encouraging settlement. In 2010, the Industrial Court settled 18 cases by way of mediation (Mohd & Sham, 2011).

According to Segara (2009), Financial Mediation Bureau (FMB) is to promote communication between parties and to facilitate dispute settlement. In practice, the third party-neutral can act as mediator or arbitrator more so when there is a deadlock then the mediator changes his or her role to that of an arbitrator and decision maker. The neutral-third party may also make an award if no settlement is reached between the complainant and the financial or insurance firm. The award is binding on the members of the industry under an 'unwritten gentlemen's agreement'. However, the complainant may either accept or reject the award. If the complainant decide to reject the award, either party may commence litigation. Although members of the industry have so far abided by the above 'gentlemen's agreement', legislation may be necessary to give legal status to the FMB and give certainty to current practices.

Bercovitch and Kadayifci, (2002) did a study on the Relevance and Contribution of Mediation to Peace-Building. The study found out that mediation should be seen as particularly important element of peace-building efforts, and that which may be used at different levels of a conflict. The study further argued that mediation, if used well it can achieve not only a settlement of a conflict, but also facilitate a full transformation of relations, in the longer run. The study concluded that for any successful program of peace building, mediation must be at the centre.

According to MFA, (2017), Finland supports mediation, and especially gender-sensitive mediation and conflict resolution, through many tools. In Finland's mediation profile, the key project concerns the development of a normative and institutional basis for mediation in international organizations. Furthermore, Finland has supported high profile and official Finnish mediators and peacemakers like Martti Ahtisaari, Tarja Halonen, Elisabeth Rehn and Harri Holkeri. They further say that this is the most visible side of Finland's activities; however, a large amount of support is delivered through multilateral mediation tracks, including the Group of Friends of Mediation, whose aim is to enhance a tradition of mediation in members' national policies, like regionally and internationally. The use of many approaches also means that Finland supports and strengthens the mediation capacity and ability of the UN, the EU and regional organizations. In addition, Finland supports regional mediation activities, Finnish and international mediation organizations.

Väyrynen, Lehti, Féron, and Koopman, (2018) conducted a study, on inclusive mediation and conflict prevention; The Finnish model. Its variables were to find out how such organizations contribute to comprehensive, sustainable, inclusive and participatory peace processes. According to the findings of the study, giving support to the work of local women peace actors in conflict zones with innovative and collaborative framework improved the manner in which Finland's comprehensively managed crisis. Further, the study found out that in Finland, there is a productivity, trust-based co-existence and co-operation between the strong Finnish NGO actors that focus on mediation and peace

making and the Finnish state. In addition, the study noted that the ways by which women's engagement is presented in NGOs and the important entry-points to peace processes is crucial. The study concluded that improving usage of mediation in conflict prevention needs comprehensive understanding of mediation as well as investment in preventive mediation capacity. Creating preventive mediation capacity necessitates comprehensive funding instruments where peace building is supported by development interventions.

According to Ngunia, (2014), IGAD as a mediator played a central role towards the achievement of stable peace in Southern Sudan. As a mediator, it has endeavoured to incorporate South Sudan into the regional peace building architecture. Its accord in 1996 contained amicable channels of ironing out conflicts, keeping peace, security of the region to be stable and to protect and keep people's property and rights. Further, she argues that, IGAD was restructured and realigned towards attainment of its new role. They were integral in the signing of the Comprehensive Peace Agreement (CPA) on January 2005 that laid down new protocols aimed at achieving stable peace in S. Sudan. In this CPA, parties to the conflict, agreed across the board to set principles of governance, identify the process of the transitional and the structures of governance and the right to self-governance for the people of South Sudan, and on state and religion. IGAD adopted various mechanisms like: conflict early warning and early response, home based negotiations, crafting of all-inclusive government capabilities, promote capacities of security measures, equitable sharing of natural resources like oil, enjoining communities by clan integration and economic empowerment among others. Nguni

concludes that, although peace stability remain unrealized dream up to-date, the mediation role played by IGAD laid a roadmap towards attainment of stable peace in the region.

Keuleers, Margue and Jenny, (2014), assessed the role of insider mediation in strengthening resilience to conflict and turbulence. They found out that insider mediation has enamours ability to end these conflicts. Actors within countries invested with peace instability needs to be equipped with suitable skills used in mediation, dialogue and whatever is needed to achieve stable peace. They further say that banking on external mediation is not obvious fruitful as it is assumed by many countries. Insider mediation counts on the tremendous strengths of institutions and individuals taken and seen as 'insiders' within a certain conflict. The capabilities of organs like civic, political, and governmental leaders have immeasurable advantages of earning respect and trust hence facilitating attainment of stable peace. Insider mediation has been successful in achieving peaceful elections; facilitating dialogue, unlocking political deadlocks and establishing the groundwork for formal peace negotiations in a number of countries.

Turnuklu, Kacmaz, Sunbul and Ergul, (2015), did a study on the effects of conflict resolution and peer mediation training in a Turkish High School. In this study, a target population of 830 students received training, and following the training, and their friends elected 12 peer mediator students from each classroom. Data were collected through the peer mediation with forms filled by the mediator and students. 253 mediation sessions were held. The study found out that CRPM training is effective in

resolving high school students' conflicts. Peer-mediation programs have become a widely accepted student-centred intervention respond to increasing student violence in schools. One of the reasons for this acceptance is the perceived ineffectiveness of adult-imposed models in warranting the desired positive change in students' behaviour. Despite the widespread use of such peer-mediation models, especially in developed countries, limited data exist on the effectiveness of these programs in developing countries. In today's globalized world, more research to test the effectiveness of similar models in different cultures are needed.

Turnuklu,et *al.*, (2015) further argued that peer-mediation process focus on bringing to the end the aggression and calming the students; making sure that both sides are ready to seek mediation, facilitating the negotiation process(as explained above)and contracting the agreement(win-win). Negotiation process dwelled on the following issues; determining the demands of each side and their reasons, determining the emotions of each side and their reasons. Others include assuring the other side that their demands, emotions, and reasons are understood through empathy and active listening techniques, producing and evaluating resolution alternatives that reflect mutual interests, creating a just, fair and logical wise-agreement (win-win).

Mediationis key facilitator of peace processes through negotiations and transforming conflicts with the support of unacceptable third party. Facilitation is similar to mediation more so facilitative mediation, yet, less directive. Mediation unlike facilitation donot focus much on decision-making, but on enhancing the mutual understanding of

perceptions, interests and needs or preparing for joint action. It generally leads to a five-fold greater probability of reaching an agreement compared to a non-mediated 1, and a 2.4 times greater probability of longer-term tension reduction. The high acceptance from the side of the conflict parties, and low cost from the side of the third parties, are some of the reasons for the method's wide use. Besides mediation and facilitation, other approaches like sanctions, arbitration, civilian peacebuilding and military peace support operations can be used in a complementary Saliternik, (2016).

Klein, (2012), did a study on the role of women in mediation and conflict resolution: Lessons for UN Security Council Resolution. This study was based on the following objectives; to find out the effects of an increase in the participation of women at decision-making levels in conflict resolution and peace processes, to find out measures adopted that support local women's peace initiatives and indigenous processes for conflict resolution. To measures that involve women in all of their implementation mechanisms of the peace agreements, to carry out a study on the role of women in peace building and the gender dimensions of peace processes and conflict resolution. The study found out that in an armed conflict, women and children often are the overwhelming victims. Rape, sexual slavery, and other forms of sexual violence are used as weapons of war in international conflicts and the flexibility of mediation allows practitioners to move between cultures, explore differences, and create a forum culturally acceptable to a variety of participants. The study further found out that if the parties do not reach an agreement, it is generally accepted amongst practitioners that engaging in the mediation process itself is a learning experience.

Wahab, (2013) did a study on court-annexed mediation and judge-led mediation in civil cases: the Malaysian experience. This study investigated factors that impact the success of mediation in other jurisdictions, identifies the barriers and the enablers to the uptake of court-connected mediation in Malaysia and to examines theories of mediation, justice and change management and to trace, explore the development and growth of court-annexed mediation and judge-led mediation in Malaysia. The study found out that the use of mediation has been driven by; it's utility in reducing court backlogs; increasing knowledge of the benefits of mediation; leadership by the judiciary, professional associations and government; training and exposure; and traditional practices of mediation. The study also identified that their three key stakeholders who have resisted mediation: judges, lawyers, and the public. This is because of their attitudes and prevailing professional cultures. The study found out that Judges fear a loss of judicial authority, lawyers fear losing income and the public lack awareness about ADR. The public lack knowledge of mediation and see judges as the appropriate decision makers to decide their disputes. The study further reveals that a sizeable minority of lawyers feel they do not have a significant role in advising their clients to mediate. This is identified as a key barrier to the greater use of mediation in other jurisdictions. They concluded that if mediation is to play a greater role in the Malaysian civil court system then a greater emphasis on education and awareness of the importance of mediation and its benefits amongst stakeholders is required. It makes a number of recommendations for the more effective use of court-connected or court-Annexed mediation including consideration of mandatory mediation.

According to Regan, (2010), types of interventions, military or economic interventions have been found to increase the duration of conflict. This lead to escalation effect which are attributed to a sub-set of interventions, where interveners pursue an 'independent agenda. The results for diplomatic interventions, normally considered neutral interventions, are unequivocal. He further found out that diplomacy facilitates the termination of civil war Regan et al., (2009), even when used in with other forms of interventions .The study concluded that the manipulation of information, as in negotiations by third parties a more effective tool for conflict management than the manipulation of fighting capabilities.

According to Pettersson, Högladh, and Oberg, (2019), mediation has become one of the most prevalent alternative dispute resolution (ADR) processes in recent years.

It is considered a dispute resolution mechanism based on the *interests* of the parties (their underlying needs) rather than the *rights* of the parties (their legal entitlements). An interest-based' solution is also said to be much more desirable if the parties have an on-going relationship.

This is attributed in part to dispute being resolved in confidence and with mutuality and thereby reducing ill will or animosity as sometimes occurs, in litigation. Further, the focus in mediation on joint problem solving turns the disputants' attention towards a costless process of integrative bargaining rather than an adversarial attack. It is now appearing as an alternative to litigation in the courts through referral either to a private mediator or by mediation performed by the officers of the court (the registrars or the judges themselves).

Mediation is one of the most extensively utilized conflict resolution tool. Although the underlying assumptions and values that inform the process may differ significantly from place to place, various communities with different cultural traditions have resorted to mediation in their efforts of building peace between them Bercovitch, (1992). This cross-cultural application of mediation makes it an acceptable and familiar peace-building tool and adds to its strength as an effective mechanism to lay the foundations for peaceful relations. Mediation is clearly affected by the context and characteristics of each conflict situation. The specific rules and strategies of each context, the beliefs, attitudes, behaviours, and symbols that make up an international conflict affect the mode of behaviour adopted by a mediator, and to a large extent explain the success or failure of mediation. There is a contingent, reciprocal relation between the nature of conflict, the performance of mediators, and conflict outcomes. Each influences, and is in turn, influenced by, the other. Contingency approaches take into consideration these aspects of the conflict resolution process and attempt to identify factors that influence the success of mediation under particular conditions. This approach treats the outcomes of mediation efforts (be they successful or not) as dependent, or contingent Bercovitch & Houston, (1993).

According to Drummond,(2005), mediation, compared to traditional litigation is cheaper, quicker, more informal, and flexible and can lead to creative and long lasting settlements. It is no surprise that mediation has been increasingly focussed on in the legal systems of many countries for its ability to resolve conflicts between parties, thus reducing backlogs of court cases as well as reducing overall legal uncertainties. Its

acceptance and uptake in the Malaysian courts, however, has been mixed. It is in this context that this thesis outlines a research strategy to investigate the attitudes of stakeholders in Malaysian court-annexed and judge-led mediation in light of the development of the theory and practice internationally. This study examines the challenges to mediation as an alternative to civil litigation in Malaysia in light of its history of mediation and compares it with similar movements in United States, Australia and the United Kingdom.

Othman, (2002) stated that lawyers have proved resistant to the move to mediation and often failed to recommend it to their clients. The general attitude among the lay members of the public is that lawyers know what is best for their cases and their advice to litigate (rather than to mediate) is completely justified. This was justified by lawyers in Malaysia who were said to be the obstacle to mediation for the fear that their income might be affected. These concerns about court-annexed and judge-led mediation are not unique to Malaysians. When court-annexed mediation was introduced in Virginia in the United States, lawyers and judges opposed it, fearing a drop in legal fees and loss of authority Shamir, (2004).

He further argued that it could be confusing for parties who may see judge mediators as providing an evaluative form of mediation rather than facilitating a resolution to their dispute. It may also not be compatible with the traditional role of the judge with the possibility that judicial dispute resolution or mediation has the potential to threaten public confidence in the integrity and impartiality of the court and the judge.

Wernicke and Franke, (2010) did a study on sustainable conflict transformation an analytical model for assessing the contribution of development activities to peace building. The study found out that despite the fact that mediation is widely recognized, the link between security and development has not been analysed systematically. Reducing overt conflict needs reduction in levels of underdevelopment. Groups that seek to satisfy their identity and security needs through conflict are in effect seeking change in the structure of their society. The study concluded that peace is development in the broadest sense.

According to United Nation,(2009), women hold ten out of seventy-four senior UN mediation positions. They further said that this low proportion means slow pace of progress when it comes to realizing the UN's promises in practice. However, 14% represents an increase unlike in the 1990s or early 2000s. By 2005, just four women (6.5%) occupied senior peace-related positions two as SRSGs and two as deputy SRSGs. On the other hand, a woman heads 1 in 3 peacekeeping operations. This is a big step made by UN in her history and a testament to the former Secretary- General Ban Ki-moon's efforts on women's empowerment. Nonetheless, the trend has not increased. Outside the UN system, a small number of women have served as track-one mediators in peace talks sponsored by the African Union (AU) and other institutions.

For example, the Mozambican politician and humanitarian Graça Machel was one of three mediators for the post-election crisis in Kenya in 2008. In the same year, Liberata Mulamula was one of five international facilitators in the peace conference for the

Kivus in Goma, eastern Democratic Republic of the Congo, as the Executive Secretary of the International Conference on the Great Lakes.

According to Organization for Security and Co-operation in Europe (OSCE), (2013), the European Union appointed 11 representatives in different countries, regions, some of whom perform mediation roles, two of whom are women. In July 2013, the Organization for Security, and Co-operation in Europe (OSCE) appointed a woman as high commissioner on national minorities. While not strictly a track-one mediating position, the role of the high commissioner is close to that as it was conceived as an instrument for conflict prevention to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States.

A study by Maxwell (1992) noted that on average, women might also come with diverse styles or experiences of mediating talks, at time when fresh perspectives and approaches are badly needed. The study further found out that the effectiveness of mediators more broadly shows that both the style of the mediator and his or her gender can matter. In addition, the study established that male and female mediators are equally effective at reaching an initial settlement, but female mediators are more effective at mediating binding settlements. The study concluded that differences at individual level, style or approach might not affect the outcome.

Othman (2002) states that mediation has its own history in Malaysia. Another form of ADR, arbitration, has been frequently resorted to especially in commercial disputes. He

further said that it was governed by the Arbitration Act, 1952(Act 93) and later the new Arbitration Act 2005 (Act 646), which came into effect on the 15 March 2006. The Arbitration Act 2005 adopts most of the broad principles of the United Nations Commission on International Trade Law (UNCITRAL) Model Law. Certain provisions in the Arbitration Act 1952 were either reformed or removed. For example s 6 of the Arbitration Act 1952, which gave the court a discretionary power to stay court proceedings in favour of arbitration, has been removed. Under the Arbitration Act 2005, the court must stay the proceedings arising from a matter that is the subject of an arbitration agreement unless if it finds that the agreement is null and void, inoperative or incapable of being performed or, if there is in fact no dispute between parties over the matters. The special provisions of s 34 of the Arbitration Act 1952, which left out the jurisdiction of the High Court to supervise over arbitration held under the Kuala Lumpur Regional Centre for Arbitration (KLRCA) Rules, the UNCITRAL Rules 1976 and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 have also been removed.

Bercovitch and Jackson, (2017), wanted to determine the factors that affect the selection of either negotiation or mediation on the management of the international conflict. Secondary data obtained from Keesings Record of World events were used. 1154 events of formal negotiation and 1,858 formal mediation efforts in these disputes were used for analysis in this study. The findings of their study indicates that a reasonable amount of factors like moderate levels of disputes, simple structure ,homogeneity of parties and the willingness of the involved parties affects the choice of either

negotiation or mediation. They further indicates that, in situations where issues are complex, parties are similar, a conflict is protracted, and low levels of achieving agreements, mediation is the most preferred .on the hand where issues are of low intense and simplified, parties chose to solve them using bilateral negotiations.

Komakech, (2008) noticed that the underlying issue remains whether the same principles of traditional justice mechanisms can be extrapolated to be the core of a national reconciliation process with the aim of addressing the legacy of violence left by Uganda's many conflicts. Some traditional practices may be viable and desirable in a local setting, but may not be easily incorporated into national system like the *Mato Oput* of Acholiland. The Acholi traditional justice mechanisms was to be incorporated into the national legal system. This would currently be less relevant to some of the people to whom these mechanisms were expected to be applicable; young people who have been born and have grown up during wartime, with restricted opportunity to experience or participate in such restorative practices.

According to Shamir,(2004), mediation is composed of a neutral person who facilitates the negotiation between the parties with an effort to reach a mutually accepted resolution Mediation has become a very important and viable alternative to adjudication and arbitration in the legal system (labour disputes, family, business, and commercial disputes). In some countries and states, we find laws of mandatory mediation, as a way to encourage the parties to the dispute to use the mediation process as a preferred way to resolve disputes. Unlike the process of facilitation, where the third party merely

hosts the parties and encourages them to continue negotiating in a neutral, welcoming environment, the mediator plays a more active role.

The mediator not only facilitates but also designs the process, and assists and helps the parties to get to the root of their conflict, to understand their interests, and reach a resolution agreed by all concerned.

A mediator should study the substance of the dispute, and try to identify the issues in conflict, using tools such as re-framing, active listening, open-ended questions, and his/her analytical skills. Mediation is a voluntary process except where there is a law of mandatory mediation in place). The parties agree to the process, the content is presented through the mediation, and the parties control the resolution of the dispute. Because the participation of the parties and the mediator is voluntary, the parties and/or the mediator have the freedom to leave the process at any time. The mediator may decide to stop the process for ethical or other reasons, and the parties may decide that they are not satisfied with the process. The agreement that was reached between the parties is voluntary; the parties own it and are responsible for implementing it. The agreement is validated and ratified by the courts Zakaria,(2010).

Composition of Mediation has not been embraced in any significant manner in the construction industry as only PAM 2006 and CIDB, (2000) Standard Form of Building Contracts provides for this process. Under the CIDB contract (2000), the disputing parties must attempt to resolve their dispute by mediation first before arbitration but mediation is voluntary in the PAM contract 2006 .Mediation has made little progress in

the construction industry due to an acute shortage of experienced mediatorsMouly, (2013).

According to Berg and Sven, (2006), mediation done by judges is very successful than mediation done at the MMC because parties are more confident when judges become their mediators.

They further argued that referral of cases to the MMC by the court was unpopular among the disputants resulting in the court to reconsider its practice. According to the former Chief Justice of Malaysia, the Rt Hon Tun Zaki Azmi, mediation by independent third party who is a trained mediator and judge mediators, the latter is preferred by the courts, as it is more economical and time saving. Legal commentators have also argued that independent mediation outside the supervision of a court does not work well Anbalagan, (2008).

According to Griffiths andWhitfield, (2010),in their study on the challenges and opportunities for peace making through mediation indicates that the top brass like former UN Secretary-General Kofi Annan and President Olusegun Obasanjo of Nigeria played a critical role of mediation in Kenya and Democratic Republic of Congo respectively. They further say that the increases in the need for peace keeping speaks by itself as the patterns of conflict and the growth in supply purported by this broad range of mediators is most preferably to cause a trend toward achieving more 'hybrid' mediation efforts. Mediation has played a big role in disputes like in Darfur joint effort between AU and UN, Kofi Annan in Kenya.

According to the report issued by AU on enhancing AU mediation in 2009, from 1997 to 2002, nearly half of the world's armed conflicts occurred in Africa. Between 1990 and 2005, 23 countries in Africa witnessed violent conflict in African. This calls for immediate action to combat such high and worrying numbers of conflicts in Africa. The effectiveness of AU was anchored on the successful collaboration between African and international actors are to fortify its role in preventing conflicts and mediation in Africa.

International mediation is a process that looks into future hence there is a need of creating relationship between internal and external actors for easy and faster determination of disputes. The report further indicates that, it has been a challenge for AU to build modern mediation strategy thanks to its turgidity. To be most effective, the report indicates that mediation ought to be flexible using all available and diverse strategies to respond to various situations. In addition, the report shows that mediation is more effective when disputes are of greater intense and mistrust amongst the parties involved in the conflict. The report concluded that international community need to take steps aimed at professionalizing mediation practices. On the other hand, AU needs to pursue more suitable strategies of mediation in order to prevent arrests and solve conflicts beforehand.

Hagg *et al.*, (2007) found out that most emerging conflicts in Africa are hard to mediate because they lack ideological goals and are largely internal civil wars. Tonegotiate around political power sharing, complete control of a country that includes

the overthrow of the political and economic systems is very difficult. They further noted that, men without women come to the negotiating table to carve up a country's military, political and financial pie, then, proclaim the resulting deal peace. Even when the United Nations Security Council resolution calls for women participation equally and fully at decision making levels in all processes of conflict resolution, peace-making and reconstruction, African women have shown little interest in handling the mediation role, leaving it to men who always look for one side to win over the opponent. There is need to find out why women are not interested in the mediation role in resolving armed conflict (Barnett, Michael; Kim, Hunjoon; O'Donnell, Madalene; Sitea, & Laura, (2007).

Bercovitch *et al.*, (2009) states that the character of the mediator is very important in influencing the warring parties to agree on important issues that formed the background causes of the armed conflict. Peace negotiations processes are very difficult, stormy and stony requiring a lot of mediation patience especially if the conflict has been ongoing for a long time, averaging more than ten years. This is partly due to mediation being less developed in African institutions, and the resources devoted to its advancement are meagre. The mediator must be knowledgeable and keen about the conflict, educated enough on the underlying causes, conversant with the characters of the warring parties, and should be aware of all those with other varying interests in the conflict. The mediator's integrity and humility are essential in the middle of negotiations, especially personal qualities of tact, intelligence, persuasiveness, humility, and patience. The mediator guides the negotiating teams to distinguish between issues, positions, and

interests that are likely to affect the outcome of the negotiations process. This requires him/her to be impartial during the peace negotiations process with known ethics, integrity and being very forthright. This is the main challenge for most mediators in African conflicts.

The challenge of financing mediation and peace building reflects these political shortcomings. Most UN funds for mediation support come from ever-shrinking extra-budgetary resources. Currently normative advances in mediation have matched not financial commitments. This trend is somehow offset by some regional and national bids that set aside more time and resources to promoting mediation as a function of governance and conflict prevention. However, financing for peace building activities is greatly overshadowed by budgets for peacekeeping and peace enforcement, on the one hand, and development, on the other. In the case of peacekeeping, the limited funds dedicated to peace building components tend to dry up when the mission exits or morphs into another type of presence. The HIPPO report made a number of recommendations to help address financing gaps Bryman, (2010).

The mediator acts as the midwife to the peace negotiations process and intervenes in a conflict as a third-party diplomat. The mediator should also possess a clear mandate to intervene, with interests and stakes in the conflict such as political or military stability, and invited by both parties to intervene. Mediators should be individuals with a great deal of influence in the international community, with some relevant power and authority or legitimacy in the eyes of the warring parties due to their personal skills as

go-betweens, and with abilities to provide a voice for victims of the armed conflict Bagshaw,(2008).

Nunlist, (2017) asserts that mediation is an effective way of controlling violent conflict. Nonetheless, determining its precise impact is a nightmare. The most common method of evaluating mediation is according to its ability to produce an agreement that ends the violence. However, this logic has immersed shortfalls. It assumes the context and nature of the conflict, as not all conflicts are complex and difficult to find solutions .In complex situations, they consider the start of a process that will be a success, especially where it leads to other important outcomes like creating space for humanitarian assistance or developing a format for future negotiations. In addition, it emphasizes that, not all agreements have an equal impact on the conflict, meaning that the nature and quality of the agreement attained must be considered.

According to Segara,(2009), FMB was established to resolve disputes between the financial services providers and insurance companies, which are members of the FMB and their customers. It deals with consumers issues related to banking, other financial or insurance matters including *Takaful* (Islamic insurance) (FMB 2011). Prior to the establishment of the FMB there existed two Bureaus: the Insurance Mediation Bureau (IMB) established in August 1991 and, following its perceived success, the Banking Mediation Bureau (BMB) was established by the banking industry in June 1996. The two Bureaus were merged in 2004 into FMB, a company limited by guarantee, to

provide as a one-stop centre for the public to seek formal redress as an alternative to litigation against the financial institutions and insurance companies

The role of a third party in FMB is to encourage communication between parties and to facilitate settlement. In practice, the third party may act either as mediator or arbitrator especially when there is deadlock, the mediator changes his or her role to that of an arbitrator or decision maker. The neutral third party may also make an award if no settlement is reached between the complainant and the financial or insurance firm. The award is binding on the members of industry under an 'unwritten gentlemen's agreement'. However, the complainant may either accept or reject the award. If the complainant decides to reject the award, either party may commence litigation. Although members of the industry have so far abided by the above 'gentlemen's agreement', legislation may be necessary to give legal status to the FMB and give certainty to current practices Segara (2009).

Barnes, (1997), stated that OAU/AU firstly took part as a mediator in conflict that occurred in Comoros between 1995 and 2007. This involvement was aimed at uprooting the illegal regime, the reinstate constitutional rule and the restoration of ousted President Said Mohamed Djohar. AU successfully achieved their mission but was compelled to become more involved following various island secessionist demands beginning from Anjouan. This led to the second phase of mediation due the collapse of the first diplomatic efforts. This led to involvement of the military as other efforts like economic sanction against President Mohamad Bacar's regime in Anjouan bore no

fruits. To restore central governance in the island of Anjuoan AU involved international community to facilitate successful mediation.

Abboud, (2014) assessed the effects of alternative disputes resolution and mediation in Morocco. The main of this paper was to find out the contemporary and Islamic approaches have been used as an alternative disputes resolution in and mediation to unite and enhance co-existence in Morocco. The findings of the study reveal that Islamic principles allow persons to find means of attaining neutral ground and solutions. Further, the study shows that the practice of *Islah/ Solh* cannot itself work alone. He concluded that though great efforts have been made to legalize and institutionalize the utilization of ADR and conflict resolution in Morocco, much more efforts are needed to support the achievement of large-scale implementations of the proposed model.

Midodzi and Jaha, (2011) did a study on the suitability of tools in dispute resolution in the alavanyo-nkonya conflict in the Volta region of Ghana. The study focused on the need for the application of ADR in this long conflict case, also to find out the strengths and weaknesses of the method. The study revealed that the method of alternative dispute resolution mechanisms is widely chosen by the two communities as opposed to litigation that is protracted. It also established that the use of ADR works under a three-pronged structure the mediation committee, the consultative committee and the community pacesetters. All these structures operate under various conditions leading to the desired peace for the parties involved. They concluded that, awareness need to be created there on the suitability of ADR in Ghana by creating of alternative dispute resolution units in all districts and regional capitals.

According to Nathan (2009), on the challenges facing mediation in Africa shows that, mediation is no walk in the park. This is because of difficult procedures and or strict mediation timelines given. The Darfur peace talks that were supervised by the AU in Abuja in 2005/06 were guided by 'deadline diplomacy' with a steady stream of unfeasible deadlines coming from AU headquarters, the UN and the foreign donors. During the last days of the mediation, African and foreign leaders put tremendous pressure on the rebel movements to sign the DPA, threatening them with sanctions.

The manipulation and threats from the international partners overshadowed the AU's mandate, compromised Minawi and intensified popular suspicion of the DPA in Darfur. He further argues that to achieve successful mediation, antagonistic parties in a civil war must have confidence so that to attain a negotiated settlement, which contain compromises and mutual accommodation by the parties, and this was not to happen while they cling to extreme positions. He concludes that, for mediation to be successful, the AU and the regional organisations need to come up with mediation units.

It's functions is to give pieces of advice and support to senior mediators and decision-makers. It also takes mediation and preventive diplomacy in situations where there are actual and potential conflict, provide early warning for peace making. It also recognize and kick start involvement in mediation training sessions, come and keep an information repository, undertake research on mediation, identify lessons from peace-making endeavours and ways of institutionalising the lessons, and keep a database of experts who could be called on to play various roles in peace making initiatives.

Mediation is a very important key in resolving complex, difficult and asymmetric international conflicts, suited to a heterogeneous environment, with multiple actors, wide disparities, and insistence on some formalized rules of interaction. In Africa, civil wars are complex to mediate because the protagonists share the same geographical area, community and are quite difficult to

Separate since boundaries between them are very difficult to draw. Mediation in sub-Saharan Africa has been used to resolve conflicts in Angola, Burundi, DRC, Somalia, Rwanda, Sudan, and Uganda with mixed results. This is because warring parties cannot peacefully negotiate by themselves without a third party assisting them in breaking the deadlock. This implies that every peace negotiations process requires mediation. In mediation, the decision and agreement of the conflicting parties determines how the conflict is resolved Barsky, (2007).

Walter, (2002) argued that the ability of a mediator to overcome bargaining problems and assist the disputants to reach an agreement is critical. The role of the mediators; to assist the warring parties find solution to their problems, develop a shared understanding of the conflict, and working toward a practical and lasting resolution during the process of negotiation of peace. The mediator is also the facilitator and a third party to the conflict, whose first priority is to broker a cease-fire agreement between the warring parties, help in giving unavailable information, transmitting messages, highlighting common interests, and encouraging meaningful communication amongst warring parties.

Alexandra, (2009) affirmed that, the flexibility of the mediation process allows it to address different cultures, relationships and interest and puts it in a better position to design a process, which is acceptable to all participants.

The accommodation of cultural diversity, mediation leads to higher satisfaction of parties with the process and the results, higher compliance of mediated agreement and the whole process is more likely to improve the relationship between the disputants than is adjudication. Mediation has led to the resolution of much intractable armed conflict in Africa in the past two decades because of negotiated settlements, which were achieved through mediation. On the other hand, mediation is a good tool for conflict resolution, it helps rebuild relationships that have been destroyed by conflicts, and since women have proven to be good mediators, it will benefit societal development, if women are more actively incorporated in conflict resolution process.

Teitel, (2000) argued that preparation has been having a strong dimension of prospective justice, which responds to the past precisely in order to place the descendants of the original victims in a better position today. The payment if necessary is earnest in order to emphasize the seriousness of an apology, to overcome the impression that words are cheap. *Mato Oput* is inapplicable where a third party (the LRA rebels) did the killing it is culturally impossible to conduct the reconciliatory performance of *Mato Oput*. Traditionally, *Mato Oput* can only take place where a person from clan (A) killed a person from clan (B) with direct means, such killing warrants the performance of *Mato Oput* which may reconcile and restore the previously broken relation caused by evil.

Lynch, (2001), and Alexander, (2009) argued that due to the inevitability of conflicts in society, formal conflict resolution mediums like courts were developed and have been in use till date. However, due to increasing challenges of delay, high cost amongst others, society began to utilize alternative dispute resolutions methods outside of litigation.

Mediation is one of the informal methods of conflict resolutions, used in conflict prevention, management, resolution and peace building. They further posit that mediation as a facilitative form of conflict resolution focuses on the parties' commercial, financial, social and personal interest, with the aim of reaching a mutually acceptable agreement while promoting the principles of confidentiality, autonomy, and informed consent in decision-making. In mediation, there is a third party, a mediator, who facilitates the resolution process, and may even suggest a resolution, but does not impose a resolution on the parties. Conflict resolution is one major goal of all alternative dispute resolution processes. If a process leads to a resolution, it is a conflict resolution process. Thus, mediation is a conflict resolution process. In some countries, mediation is equated to alternative dispute resolution.

According to Annika *et al.*, (2008), African conflicts need African chief mediators because of their first-hand experience, having a keen sense of the African political, cultural and military realities at hand but reinforced with possible experts in mediation irrespective of their nationality. This may be relevant, but is not a guarantee for successful negotiations. He further argued that mediation efforts has often averted several

undesirable first track outcomes that direct pressure on the warring parties to resolve the conflict. Africa in general lacks homegrown mediators with critical skills international influence, and experience in mediation to be trusted as neutral parties during the negotiations process. The Juba peace talks between the Government of Uganda (GoU) and the Lord's Resistance Army (LRA), mediated by Government of Southern Sudan (GoSS) failed because the mediator largely did not have international influence Nyormoi, (2007).

Bartol, et.al.,(2008),stated that traditional and religious leaders in northern Uganda have emphatically argued for the many benefits of the *Acholi* traditional justice mechanisms as the best alternative means of criminal accountability for the past evil deeds by offenders. He further found out that "*Mato Oput* is one of the best justice systems in the world because it forgives, and restores broken relationship and creates the process of healing in the hearts of those who have been wounded by violence and death. On the other hand, many of the victims of the two-decade long turmoil in northern Uganda region are young people and that today some *Acholi* Christian believers tend to reject traditional practices outright as being pagan and /or satanic, the *Mato Oput* tradition as well as other *Acholi* rituals for restorative justice remain culture-specific and not flexible.

Sugh and Ikwuba, (2017) did a study on women in mediation and conflict resolutions Lessons, challenges, and prospects for Africa. The study found out that many decades, women have been involved in mediation and conflict resolution processes. However,

their roles remain largely undervalued and unrecognized in these processes. They further indicated that, women come up with all manner of methods within their reach to resolve conflicts and bring about peaceful co-existence. The study also found out that the use of poetry and the 'spitting' initiatives were important strategies and processes used by these women to effectively mediate and return their disputant societies back to peace. The study recommended that others, aggressive sensitization of stakeholders at all levels to appreciate women's involvement in conflict resolution processes, increased training of women mediators and negotiators to help strengthen women's involvement at all levels of mediation and conflict resolution processes.

As they go between, a peacemaker and an impartial third party, "the mediator acts as a buffer and bridge connecting the parties in a conflict at the same time. He endeavours to quench anger and eliminate suspicion that bars them from striking a cooperative way of handling big issues in dispute. Accordingly, the key function of the mediator or mediation teams is to eliminate mutual mistrust between rival parties and hence increase their trust and confidence in negotiations, consequently they facilitate the parties to reach agreements they find binding to them all and ready to implement Baruch & Brook, (2009).

Peace is not achieved only when parties in a conflict sign an agreement but also when it is successfully put into action. To achieve total commitment and full support of the mediator and /or mediation need to be available for a reasonable amount of time. He further argues that, mediation should be taken as the heart of implementation and

thereafter post war reconstructions and building of the state. There is a failure to view international mediation as a field and develop units that are specifically meant to boost mediation in international multilateral organisations. Further, he says that this unit has led to a sub-optimal approach to peace making and has given rise to five specific problems Baruch, & Brook, (2009).

Nathan, (2016) wanted to determine how and why African mediators compromise democracy. This study, focused on the ways in which African mediators compromise democracy as they iron it out. According to the findings of this study, proposing or endorsing undemocratic power-sharing arrangement; endorsing an undemocratic election; annulling a democratic election; accepting the overthrow of an elected government and leader; and legitimizing a coup leader. A general explanation for this tendency is that the mediating team prioritize peace and stability above democracy. Their motivation is based on a collective political and economic interest in regional stability, humanitarian concerns about the destructive effects of violence and volatility in the country in crisis, and the obstacles that fighting and instability pose to restoring democracy through free and fair elections.

Uwazie, (2011) argues that the practice of mediation involves third party neutrals facilitating negotiation between disputing parties. In addition, the focus of mediation is usually on the interests of the parties themselves as it provides an opportunity for claimants to have their views heard and undertake a process that satisfies all sides in a way that a court proceedings cannot. The study points out that mediation revolves

around the help of an independent facilitator or mediator who has developed finely honed counselling and resolution skills through training and life experience. In most cases, the mediator makes sure that the parties understand the process, that it is voluntary and resolution seeking, agree to participate, acknowledge their wrongdoing, and the future behaviour is emphasized.

According to SADC, (2012), a conflict broke out in Madagascar in 2009 when Andry Rajoelina ousted President Marc Ravalomanana, who later ran away. The SADC Summit called for the no delay reinstatement of the status quo ante, including the unconditional restoration of Ravalomanana, and threatened to use force if this was not done. After three months of no progress, SADC departed from military stand to mediation. The first threat democracy arose when the SADC mediator, former President Joaquim Chissano of Mozambique, that led to negotiations in which power sharing agreement was reached.

Under this agreement, Ravalomanana was to be reinstated to oversee a government for 15-month of a transitional period and elections. This was a departure from the agreement attained in SADC summit.

According to SADC,(2012), Summit adopted the 'win-win' solution, in which neither Ravalomanana nor Rajoelina would run for president. The two politicians finally agreed to this. The Summit's decision to back down was motivated by a mixture of pragmatic and ethical considerations. The junta was implacably opposed to Ravalomanana's return and SADC lacked the power to change its mind. The Summit was deeply concerned,

by the army's warning that Ravalomanana's return would provoke violence. This concern is reinforced by a UN report that observed that 'the potential for violence would probably be highest if the two principal political actors, Presidents Rajoelina and Ravalomanana, were both candidates. In these circumstances, the mediators' priority was to prevent a slide into civil war and construct a smooth passage to constitutional normalcy. The compromise of democracy can thus be interpreted as the 'price of peace.

According to Rashid, (2010), mediation has been used since 1600s or earlier. Disputes were brought to respected members of the community, normally the elders or the *Penghulus* (village heads) in the capacity of a 'middleman. They were consulted due to their perceived wisdom, standing in society and experience as mediators. Normally, the village head handled community disputes and the *Imam* (a person who leads the Muslim prayer) was in charge of family related disputes. Although traditional-based mediators may have had no technical expertise, their status and persuasive presence gave them the authority to lead the disputants to an outcome consistent with the community norms. According to Alexander,(2008), the role of traditional mediators is more interventionist and authoritative rather than to facilitate and develop options. Cultural norms embedded in the society are a powerful force motivating the disputing parties to mediate where third party's role in dispute settlement is sanctioned by the society.

Ingiri,(2012) found out that women in Somalia during the civil war were crucial mediators and peacemakers. For instance, when the war was at its peak, and fierce,

warfare raged between rival clans in the 1990's, warlords failed to reach an agreement during a reconciliation meeting. At this time, Somali women were managed to play the role of peace envoy and messengers. They employed a mediation strategy of using poetry as a method to promote peace and tranquillity. They recited their '*buraambur*' to humble the men and compelled them to accept the messages portrayed in the female poetry, they also recited poems with messages of 'male power grabbing and selfishness' which left many men in tears and afterwards, the elders agreed to allocate women 12 percent seats in the administration. The study concluded that the functions of Somali women in helping to sustain dialogue in times of conflict were unrecognized and women were only allowed as observers at the formal conferences and were denied voting rights.

According to McGhien and Wamai, (2011), Kenyan women were able to identify early warning and signs of the conflict very differently from men. For example, the women were more sensitive to indicators and changes such as abduction, trafficking, hoarding of goods, sale of jewellery and weapons and increased propaganda etc. before a conflict in-fact, many women leaders in Kenya were raising warnings in the months leading to the elections in 2007.

All indicators showing warnings were not taken seriously. This naturally predictive asset of women can be used to their advantage in enhancing their participation in mediation and conflict resolution at all levels.

Mburugu, (2016), did a study on the resolution of disputes using indigenous institutions .The study wanted to find out the role-played by indigenous institutions in enhancing peace stability in Kenya. He focused on indigenous techniques applied by institutions in conflict resolutions, their achievements and constraints, andways of enhancing the role of promoting sustainable peace in the country. The objectives of his study were to determine the role of Njuri Ncheke council in conflict resolution, to examine goals of Njuri Ncheke council of elders' initiatives in keeping peace and to find out the challenges facing Njuri Ncheke in keeping peace in Meru.To attain its target, descriptive design was used. Primary data were collected from Njuri Ncheke members using questionnaires. These data was analysed using descriptive statistics. The study found out that Njuri Ncheke actively is involved in solving disputes and enhancing promotion of peace and stability in Meru community. Further, findings show that most of the disputes were well handled and resolved at Njuri Ncheke headquarters. He found out that, determination of cases, oathing, counseling, peace crusades, dialogues and instilling discipline amongst members of the Njuri Ncheke elders.

Imanyara (1992), states that Njuri Ncheke has been in place for long time whose chief aim is to make laws, issue state orders as well as decrees affecting the entire Meru society. Njuri Ncheke acts as judiciary and enforcers of the rules and regulations aimed at conserving the environment.

Njuri Ncheke continues to operate in the Meru community and plays various roles in conflict resolution and maintenance of peace not only within the Meru community but also with its neighbours. On this latter account, for example, that Njuri Ncheke was

reaching out to their colleagues from other communities to unite President Kibaki and Prime Minister Raila Odinga, the two political rivals who were persuaded to form The Grand Coalition government after the 2007/08 ethnic clashes in Kenya. The Njuri Ncheke and Luo Council of Elders were reported to be consulting to facilitate a national elders meeting to discuss the crisis in the Grand Coalition government.

2.3.2 Interests of alternative dispute resolution mechanisms and Peace Building in Meru and Kwale Counties

During peacebuilding processes, different parties tend to portray overtly or covertly different preferences based on the personal and social interests at hand. The mix of personal and social interests therefore do influence the quality of expected peace building efforts in a particular situations. The varied composition of the peace building Councils or committees imply the existing of a multiplicity of interests. This will influence the decision making process unless socialization interventions are included. This requires capacity building not only for members of ADR councils but also for locals, create awareness. This will avoid the preponderance of vested interests in the adjudication of cases that come before the councils. There is needed therefore to help to train ADR personnel as professional mediators to mediate cases at the grass root level.

Re-orienting the perspectives of mediators or negotiators helps in building their capacity, creating a lasting relationships and building structures that enhance objectivity when sorting out disputes. Interests will also be addressed through collaboration with local partners to help solve cases in order to bring peace in the community. Addressing interest facilitates change of mindsets of institutions, which offer help to sort out

conflict through transformative theory. This will encompass educating the masses at grass root level and assisting vulnerable groups and the poor access justice through ADR (Bvumbwe & Thwala, 2011). The interest of ADR plays a central role in peace building. Councils of elders is consists of a house as the smallest unit in the structure. Their interests are key understanding the impact and success of peace building. Interests, however, can be discerned through the process of negotiations especially the ability to exclude personal interest from the social or communal interest.

Kansas, (2011) did a study on the factors affecting peace negotiations in resolving armed conflicts in sub-Saharan Africa. The study wanted to determine indicators that can be used to ensure that the peace negotiation succeeds. The findings of this study showed that top leaders of the parties in conflict fight hard to ensure that financial resources used in negotiation process doesn't bore fruits on the negotiation of peace. The study concludes that there is no one main factor that contributes to the failure or success as opposed. They just but affect the process of negotiation on equal terms.

According to UNU, (2007), soon after the Cold War, the United Nations (UN) begun applying negotiations as core tool to attain peace by resolving armed conflicts in Africa. This was achieved by encouraging protagonists in a conflict to negotiate and to take active roles in supporting peace negotiation processes like the one which took place in Angola, South Africa, Sudan, Mozambique, Uganda, and Democratic Republic of Congo (DRC), Rwanda a few but to mention. Nevertheless, negotiation achieved

either success or failure due to the inability of negotiation to fully address the underlying issue, but successful in combating conflicts for short while.

According to Lederach, (2003), negotiation is a process where people who have both shared and opposed interests and wish to reach an agreement, attempt to work out a settlement. He goes on to say that, conflict encourages greater understanding of underlying relational and structural patterns while building creative solution that improve relationships. Therefore, it is an essential educational function of schools to help students acquire conflict resolution skills necessary to maintain interpersonal relationships throughout their lives. Managing conflicts constructively, emerges as one of the most important competencies that children, adolescents, and young adults need to master as part of their schooling. Exposure to conflict resolution and peer mediation reduces personal conflict and increases the tendency to help others with their conflicts, increases pro-social values, decreases aggressiveness, and increases perspective taking and conflict resolution competences.

According to Sousa,(2012), negotiation process is ongoing, whereas neutral intervention can facilitate the process, through the efforts of international mediation teams in brokering information between the parties. These efforts can may increase the ability of parties in dealing with the political process and find more solutions that are agreeable. In such cases, the intervention would affect the utility function of the parties by at least making a settlement more attainable, hence the likelihood of the benefits of an agreement by the costs in continuing fighting. If an agreement is obtained, neutral interventions can guarantee its implementation, like the establishment of a third-party

peacekeeping mission. This greatly reduces the risk function that a fighting party might have not to think being betrayed during the implementation of the agreement. Neutral interventions affect the balance of capabilities in the sense that they increase the benefits of settling by signalling the existence of potential neutral third parties to mediate, monitor and implement a peace process. On the other hand, biased partisan interventions affect the balance of capabilities, either by giving an advantage to one party or, if there are countering interventions (interventions in support of both sides), by raising the level of capabilities of both parties to a new level.

Ahtisaari, (2008) argued that the negotiations approach is the best for African elites like politicians, academicians, and policy makers as the most civilized, cost effective and efficient way of resolving conflicts and securing peace in the long term since not all conflicts can be mitigated militarily. The study further found out that peoples should not accept conflicts to continue forever and in consequence making people suffer. One of the lessons from previous peace negotiations effort in mitigating conflicts is that in the end you have to find a politically negotiated solution to any armed conflict. The study concluded that negotiations provide a political blueprint for the future by involving compromise, consensus building, developing a level of mutual trust, and seeking to successfully resolve protracted conflicts. The successful negotiations provide a new vision for inter-group and interstate stability at the regional, national, and local level.

According to PILPG, (2006), to resolve armed conflicts, peace negotiations have been preferred as the way out. But instead the conduct of peace negotiations in Africa confirms the long held view that African politics is the domain of the international

actors, the domestic political elite and armed movements, to the exclusion of civil communities because they are the main parties to negotiated agreements.

They further argue that when conflict breaks out, it often ends by a negotiated settlement between the belligerents usually after a military stalemate has been reached. For conflicts where military victory worked, the cost was high in terms of lives lost and often led the defeated party to plan for more conflicts because the root causes of the conflict were often not addressed Toft, (2010).

Negotiation in Africa are pursued by international, regional, state and non-state-actors fashioned by the standard formula of ceasefire agreements, transitional governments, demilitarization, constitutional reform, and democratic elections. These have at times produced peace agreements but without peace due to many interested mediators. They noted that the proliferation of mediators during peace negotiations has been instrumental in delaying agreement among protagonists because they bring a lot of considerable confusion regarding the role of international community and create opportunities for extremists to play one intermediary off against the other. This was true during the Angolan peace negotiations. They in particular misunderstood conditions on the ground and ended up drawing an unrealistic negotiations timetable Brooker, & Wilkinson, (2010).

The ineffectiveness of post-independence peace negotiations in Africa is partly attributed to the principles of the defunct Organization of African Unity (OAU) 1969 Charter of non-interference in the internal affairs of member states and respect for the territorial integrity .As a result, the OAU did not resolve internal conflicts within member states.

Peace negotiations assumed a prime role after 1990 due to the end of Cold War that deprived the United States and Soviet Union the incentives to provide arms to warring combatants in their proxy wars. In addition, OAU was replaced with the African Union (AU), which set up the African Peace and Security Council in 2002. It recognized the right to intervene in a member state in cases of grave circumstances of war crimes, and genocide. The United States, as the sole remaining superpower came under increasing national and international pressure to take moral responsibility to intervene diplomatically, economically and militarily to end some of the long-standing African civil wars Toft,(2010).

According to Bercovitch et *al.*, (2009), negotiations have managed to contain most civil wars and are increasingly accepted as the preferred way of ending civil wars despite some negotiated settlements having a poor record of success. Negotiations needed effective mediation, which is important in minimizing obstacles during the negotiations process through arranging interactions between warring parties, controlling formal negotiations and structuring the agenda for the negotiations. The study further noted that, despite the lack of knowledge about negotiations, there is no question about the big need for it to resolve conflicts. For peace, negotiations to be successful, warring parties must show true commitment to peace, build trust and show goodwill of trust, involve all parties to the conflict, and keep the spirit of change alive with genuine help from outside supporters. For peace, agreements to be effective, agreements should contain provisions of extensive power sharing arrangements and international intervention for implementation to the light of the day.

According to IANSA,(2007), during peace negotiations, the source of weapons that sustain armed conflicts is what that is mostly ignored. There are claims that attempts to peacefully resolve conflicts in sub-Saharan Africa have not been successful partly due to the availability of assault weapons that are easily recycled from one conflict to another.

The abundance of Kalashnikov assault rifles which come from outside Africa encourage warring parties to only pursue peace negotiations as a military strategy to attain political power

Similarly,Mankerios,(2003)found out that peace negotiations is a civilized means of resolving conflicts, the process of reaching an agreed negotiated settlement is very problematic. The peace processes are often lengthy and difficult with many cease-fires negotiated to end civil wars resulting at times in a return to violence, sometimes worse than before. Nobody appears to know the right approach to secure a negotiated peace agreement leading to long term stability. For any peace, negotiation to be successful, all warring parties must possess an inherent and direct stake in the use of non-violent means offending the conflict. The mediators should have a skilful intervention approach to persuade the warring parties to continue the peaceful process of non-violence in order to resolve the conflict Gray,(2009).

Klopp, (2004) indicated that peace negotiations, efforts have often paid off after a series of failed protracted negotiations involving national and international mediators leading to long term political settlements Examples include South Africa (1990), Mozambique

(1992), Burundi (2000), and Sudan (2005). Generally, for any peace negotiation to be regarded successful, it should have been able to reduce armed violence for not less than five years, and the root causes of the conflict addressed. This is possible only when negotiations are held at the ripe moment of the conflict.

Lynos *etal.*, (2008) stated that in organizing peace negotiation, the international community, individuals, institutions, governments and civil society play various roles to ensure warring parties agree on amicable solution to the armed conflict.

He further argued that they get involved in setting the peace negotiations' agenda, acting as official third party mediators, facilitators, and trusted brokers, sponsoring and hosting peace negotiations, offering support and encouraging warring parties to negotiate, and establishing verification mechanisms for the implementation of the accord Toft, (2010). However, some external actors use the peace negotiations process to pursue their own interests that are not always constructive to the overall peace negotiations process.

According Nitze, (2010), there are many factors that may determine the results of the peace negotiations process. They include the nature of the conflict, the quality of negotiating parties, the mediators, the context of peace negotiations, external influence, pre negotiating conditions (timing), resources, leadership, and the processes that facilitate the holding of peace negotiations. What is hard to comprehend is the impact of each factor on the success or failure of the peace negotiation processes in resolving a conflict. The challenge is identifying the key factors that enable successful peace

negotiations to resolve an armed conflict. This thesis attempts to identify key factors or conditions that, when available and applied at an appropriate time and level, enable peace negotiations to resolve armed conflicts leading to long-term political settlement in sub-Saharan Africa.

According to Zartman,(2008), negotiating parties must contribute to a successful outcome of peace process, majority need to be key political actors in their own right with influence, strong interests in resolving the conflict, and contribute substantially in terms of financial resources to the negotiation process. Negotiating teams are very influential in furthering their party's interests, influencing the mediators, and the international community during the negotiations process. He further noted that negotiators come into play when the conflict is ripe for negotiation after warring parties have reached the deadlock and the unilateral means of achieving a satisfactory result are blocked. When the solution is lacking, negotiations will not start. This is what makes probably the most important aspect of getting negotiations started. The study further found out that the main problem in peace negotiations is that the negotiating parties are not inclusive enough, not carefully but , often very weak, and lack the capacity to make decisions on core issues at the negotiating table.

According to Nyormoi,(2007), outsiders financially facilitate the negotiation process;they sometimes put a lot of pressure on the negotiation process to ensure success. They fail to recognize and appreciate that negotiating peace is a very difficult task and requires a lot of patience to allow for any impasse that may develop to be resolved until a final agreement is reached. In Africa, peace negotiations historically take between two to five

years to complete. There are outsiders who are spoilers of the peace negotiation process, interested in fuelling conflicts through trafficking in precious resources (minerals) to supply arms to the warring parties they favour a section of the disputants thereby making conflicts more difficult to resolve through negotiations

Similarly, Kutesa, (2009) found out those permeable borders of most African countries fuel external support from neighbouring countries by providing logistical and military support. In addition, the study identified that neighbouring countries to the warring parties are crucial to the negotiation processes. The study, further argued that the Great Lakes Region (GLR) of Africa exhibited one of the most complicated situations in the history of conflicts in Africa because none of the conflicts in the region can be resolved without reference to the other(s), because they are intertwined. The study noted that, that neighbouring countries should be treated as interested parties to the conflict as a means of getting them involved in the peace process because civil wars in Africa are linked to complex wars taking place in neighbouring countries. The civil war in Somalia has come to be linked to the long-standing conflict between Ethiopia and Eritrea, with both protagonists underwriting and backing rival forces within the country.

According to Daley,(2006), Mozambique civil conflict, Zimbabwe supported the government of Mozambique, while South Africa supported the rebels of Mozambican National Resistance (RENAMO).The Catholic Church played a key role by the organization of Sant'Egidio in enabling warring parties in Mozambique to negotiate. Nevertheless, lack of unity within the international community during peace negotiation

in Africa makes the process extra difficult. Peace negotiations and agreements should therefore promise sufficient harm to the leaders of either side in the event of violating conditions of the agreement. Because leaders pursue peace negotiations for different reasons amidst high levels of mistrust with each other, efforts to resolve conflicts through negotiations, no matter what, remain largely cosmetic. Leaders of warring parties use negotiations to trade-off time for re-organization of forces and mobilizing needed logistics to continue the conflict to achieve political power Toft,(2010).

According Bercovitch, (2008), During the peace process, the people who were affected by the burdens of war should be mobilized and encouraged to participate .This strategy means that negotiating teams would be pressured to avoid using delaying tactics to buy time, and approach the peace negotiating process from a compromise position. The international community should always create conditions for the leaders of warring parties to meet during the negotiation process to check and ensure all warring parties agree on the progress of negotiations.

This will avoid any discrepancy between the progress of negotiating teams and the position or perception of the warring leaders. Conflicting parties should continuously see no possibility of imposing a military solution on the political conflict as the viable means of resolving the conflict if the negotiations process is to resolve the conflict.

Similarly,Nyormoi,(2007) argued that negotiation process needs huge financial resources to support the whole negotiation process. Many African countries have financial challenges to cater for the peace process in form of allowances and facilitations for all negotiating parties. Lack of reliable funding for the peace negotiation process, especially when the interests of rich countries are not threatened, have led to the adjournment of

negotiations, hence increasing chances of negotiation failing. There is no country in Africa, which can with ease, estimate and handle the expenses of peace negotiations without external support. The problem of inadequate funding is constantly raised by negotiating teams who demand many allowances for transport, consultations and other logistical support. At times, the problem encountered is when members of negotiating teams have no interest in ending peace negotiations because of the easy and handsome payments often given during the negotiation period. This explains the rationale for having time limitations for any peace negotiations.

The success of peace building not only depends on the effective negotiation of peace agreements, but essentially also, on how negotiations fare during the practical implementation of peace-building policies on the ground. Negotiations are thus a central part of the daily business of United Nations (UN) peace building operations. International actors play an important part in these negotiations, not only as facilitators between conflict parties, but also as an on party with the political agenda to promote peace and democracy. Yet the impact of negotiations between international actors and domestic elites on the success of peace-building has only received limited attention so far. Given the mixed success of UN peace-building operations in promoting peace and democracy in post-conflict contexts, this neglect is a missed opportunity to search for avenues that could make peace building more sustainable Annika *et al.*,(2008).

Similarly, Toft, (2010), found out occasionally, peace achieved by negotiation considers the pre-negotiation. These agreements deal with the manner in which parties in a conflict manifest the regulation or resolve their minor diversity aimed at resolving

conflicts by settling in an agreement. Up to now, negotiation remains the most preferred way of solving conflicts because it gives valuable and a unanimously agreed upon result for parties involved in a conflict Bercovitch *et.,al.*,(2009).

Anderlini, (2000) notes that negotiation gives a political roadmap for the coming days by taking into account compromises, building consensus, developing the extent of mutual trust, and hence, seeking to successfully bring to an indefinite end long lasting conflicts. The success of negotiations hatch a new vision at various degrees like inter-group and inter-state stability for regional, national, and local level. International, regional, state and non-state actors tailored by the standard way of ceasefire agreements, transitional governments, disarmament, and reforms in the constitution not mentioning, democratic elections undertake negotiations in Africa.

Creswell &Clark, (2007) affirms that the involvement of mediators when negotiating for peace is pivotal in reaching the agreement among parties in a conflict since they bring on board considerable confusion about the function of international community and create opportunities for extremists to play one intermediary off against the other. Negotiations has been successful in combating many civil wars and it is gaining global acceptance as the most chosen way of ending civil wars. Nonetheless, some negotiated conflicts have poor record of success. Negotiation needs effective mediation, which is great in mitigating deadlocks observed during the negotiations process organizing for interactions involving warring parties, control formal negotiations, and structuring the agenda for the negotiations Bercovitch *et al.*,(2009).

Shamir (2004),stated that “consensus building” relates to a decision and agreement reached by all the identified parties who have a stake in the outcome and decision. Through this process, the stakeholders create new and more efficient options to resolve the issue at hand. Special approaches to deal with emergency conditions such as floods, and droughts, were tobe developed to encourage cooperation, and avoid potential conflicts. Consensus building is a process that seeks a unanimous agreement over one or more disputed subjects. It is an effort to bring together groups who are stakeholders in an open controversy on a basic policy issue and priorities. It is an effort to arrive at decisions in which the interests (or part of them) of all the parties involved are met. All the interested parties have to participate on a voluntarily basis, be supportive of the process, and make it work. The desire to reach a resolution to the dispute is an important starting point, an attitude vital for the progression of a process so complex. It manifests the willingness of all the participants to make efforts towards reaching a resolution, even though the parties know that at a later stage there may arose the need for some compromise. Parties who are interested or affected by the outcome should choose the representatives who was participate in the process.

Conflict is a process that begins when one party perceives that another party has negatively affected or is about to negatively affect something the first party cares about. Briefly, conflict does not surface until one or the other party’s actions are influenced by these perceptions.

A considerable amount of conflict remains latent and may be suppressed by the inability of the first party to articulate their perceptions to the second party. Disputes then need

to be resolved in accordance with the best practices. ADR is composed of a number of practices depending on the nature of dispute and parties involved Collier& Sambanis, (2005).

Ocran, (1985) did a study on the process and outcome of negotiations with multinational corporations: it was guided by the following objectives; to find out the philosophy of the host country and environment, determine the strength of MNCs and related factors and nature of commodity involved. The findings of the study found out that the nature of distribution of benefits to the parties in this benefit affects the background and behavioural factors affecting bargaining skills. He further said that parties in a conflict decide to use negotiations when they have different variance of power but not complete power over one another to force decision. The study concludes that if parties consider the merits of resolving conflicts by negotiation are much more and it was the most preferred tools of conflict resolution it will embrace it.

According to Tache and Irwin,(2003), conflict over scarce resources like water and pasture is a common phenomenon among pastoralist communities since time immemorial. However, they have their own traditional systems of conflict resolution and management mechanisms. For instance, among the Borana, the Gadaa system, a complex traditional governance system, has the capacity to resolve and manage conflicts among the Borana as well as with other groups.

Westendorf, (2015) assessed the reason why Peace Processes Fail: Negotiating insecurity After Civil War. This study was anchored on the following objectives; to determine whether or peace is an essential condition for a success of the society and to establish peace or even basic levels of security and stability to explore the challenges to peace-building successes. The investigation shows that negotiated peace process is done to bring to an end violent conflict hence settlement is put in place and peace is consolidated.

According to UN Women, (2012), over 10 years since the adoption of UNSC Resolution 1325 (2000), many women still do not take part in peace negotiations. Its only 4-9% of involved parties in negotiation are women. It further states that since 2000, it is only a minimal number of women that takes active roles in formal peace negotiation progress or the design and carry out peace talks in ways that give them more voice in the civil society. Nevertheless, the number of women in active politics and security sector is bigger, awareness diverse effects of war on women, girls and the role they undertake in conflict resolution. Elsewhere Shamir (2003) argued that during mediation, the focus is on the future, but the process does not ignore the past, which provides the information about the issues and the causes of the conflict. Mediators elicit ideas from each side for possible resolution, and assist the parties to develop a negotiated settlement, an agreement, which is usually put into writing, and which can be ratified by the court.

Anderlini, (2007) did a comparative study of women's involvement in five important elements of international peace and security, including prevention of conflict, peace negotiations, post-conflict disarmament, demobilization and reintegration, governance, and transitional justice. She posits that women are not represented well in the formal negotiations because of social and institutional biases, when they present the voices of victims to the table and expand the talks' agenda to encompass economic, social and cultural roots of the conflict.

Also the study argues that "corridor lobbying" of Liberian women during the 1994, Accra conference illustrates informal ways by which women have since in memorial influenced peace negotiations.

The study concludes that gender sensitiveness in programming important and sophisticated issues for sustainable peace matters.

Wilkes, Zotova, Kuburić, Andrejč, Brkić, Jusić, Momčinović and Marko, (2013), investigated the factors affecting reconciliation in religion, local conditions, people and trust. This study was guided by the following objectives; to determine a gap between popular interest in reconciliation and the interest shown by the religious groups, political leadership and the media, to find out if reconciliation process is crystal clearly understood and to find out the most preferred frameworks for charting a way forward for a better tomorrow of the nation. Primary data were obtained using questionnaires from a sample size of 13 cities. The findings of the study show reconciliation is largely accepted and used as a means of attaining peace between warring parties.

In addition, the study found out that the public play a vital role towards the building of reconciliation and trust in a country. Factors like religion, local conditions, people and trust affect reconciliation.

Albin and Druckman ,(2012), did a study on how equality is important when negotiating an End to Civil Wars. The study wanted to determine the relationships that exist between procedural justice negotiation process, distributive justice in the negotiated agreements, and the durability of civil war cases .The findings of this study show that following the principles of procedural justice was found to relate more with agreements anchored on the principle of distributed justice of equality. In addition, the study revealed that agreements are meant to be more durable when founded on equity, but not when based on other DJ principles. The principle of equity counted for the relationship between PJ and durability regardless of diversity between the parties in power. Further findings show that two types of equality exist equal treatment and equal shares. These equities are associated with the look into future agreements with high durability. The study concludes that durability includes equality in the terms of agreements, and that PJ helps but does not warranted achieving such agreements.

According to Muigua and Kariuki, (2012), negotiation involves two or more people of either equal or unequal power meeting to discuss shared or opposed interests in relation to a particular area of mutual concern. With negotiation the goal is mainly to avoid the over emphasis of how the dispute arose but to create options that satisfy both the mutual and individual interest. Shamir, (2004) further elaborates that the practice of

negotiation in ADR has three approaches of resolving disputes and each practice has different orientation and focus. These practices include; i) interest- based which focus on the discussion from positions to a discussion based on interests, which opens up a range of possibilities, and creative options where positions very often cannot be reconciled and may therefore lead to dead end. ii) right -based approach is when negotiations between parties fail, the parties may then attempt to resort to what they consider to be their right through appealing to the courts either local, national or international court. iii) power -based approach is where resorting to threat or even violence as a way of communication for purposes of persuasion. Kihara ,(2016) also pointed out that, negotiation is a voluntary process which is designed to reach an agreement when the disputants have some interest that are shared and the other that are opposed.

2.3.3 Positions of alternative dispute resolution mechanisms and Peace Building in Meru and Kwale Counties

The positions taken by ADR actors play a central role in peace building. The different actors have either predetermined interests or may adopt positions those backed by evidence. However, their positions on certain issues that demand mores and character have escaped scrutiny in the process of ADR. Positions tend to define the character or bearing of the actors and in most cases may offend or facilitate the ADR process. For example, the current Tigrayan conflict in Ethiopia has been protracted due to the positions taken by the belligerent parties. Ethiopia considers Tigrayan conflict an internal political challenge that does not require external intervention. This led to the withdrawal of the Panel of the Wise deployed by the African Union. However, the

regional countries consider it a regional problem due to the regional ramifications that it has already caused, for example, refugee influx, humanitarian crisis, exchange market for small arms, etc. Positioning is therefore a crucial element in the ADR process. This has also been witnessed in the conflicts in Western Sahara. However, this has not attracted incisive analysis in the literature.

Mahapa and Christopher, (2015) did a study on the dark side of arbitration and conciliation. They wanted to find out the challenges of conciliation and arbitration faced in Zimbabwe. According to the findings of this study, it is no walk in the park when carrying out these methods. They further say that all stakeholders must understand fully the components, challenges before they consider them as best alternatives to dispute resolution.

According to Wahab (2013) on his study on court-annexed and judge-led mediation in civil cases: the Malaysian experience, found out that the provision for conciliation as a mode of settling disputes can be found in the Law Reform (Marriage and Divorce) Act 1976 (Act 164)

LRA (1976). According to this act 106 (1) parties must refer their disputes to a conciliatory body known as a Reconciliation Tribunal before submitting a petition for divorce in court. The process of reconciliation in the Reconciliation Tribunal is not entirely satisfactory largely due to the lack of experience and training of the members of the tribunal as marriage counsellors or mediators. The *Industrial Relation Act 1967* (IRA 1967) also provides for conciliation proceedings by the officers of the Industrial Relations Department (s 18 of the *IRA 1967*). The conciliation process by the officers

of the Industrial Relations Department has not been very effective and is in need of reform partly because these officers are civil servants and their number is limited compared to the high volume of disputes referred to the department. Conciliation and mediation are often regarded as the same. Some writers considered the distinction between these processes as a continuum depending on the degree of intervention and authority exercised by the third party.

Similarly, Brooker, (2007), found out that there is a misunderstanding between mediation and conciliation in the UK, where they have sometimes been used 'interchangeably'. Whilst, the general usage of the terms mediation and conciliation covers a huge and overlapping range of processes. Generally, conciliators have more roles than a mediator does, as they are required to actively encourage the disputants to reach a settlement and make recommendations on the settlement terms. Due to the many functions done by third party in conciliation, some commentators feel that this process does not fit under the facilitative category of ADR NADRAC,(2002a). The Australian National Mediation Standards describes mediation as primarily facilitative but acknowledges that mediators may use a 'blended' process involving mediation and other advisory processes.

Madhuku (2010), carried out a study on the Labour legislation, regulating conciliation and arbitration in Zimbabwe. According to him, there are no given minimum qualifications for those who take part in conciliation. This factor overshadows the success of conciliation. He further says that many academicians are of the view that

the failure of the dispute resolution tools is caused by the incompetence of actors who preside over them.

Similarly, Matsikidze (2013), found out that the dishonouring of conciliation agreements is very much common. He further said that there is no provision stating the impacts and punishment for breaking the agreements of conciliation. This leads to the situation where other part is left with a pledge that cannot materialize. Conciliation as a tool for dispute resolution is criticised because of it is over reliance on the goodwill and total faith which actors cannot give a binding decision.

Reif, (1990) did as study on the application of conciliation on resolving international economic and business disputes. According to the findings of this study, conciliation provides the go between an opportunity to resolve a conflict while keeping the flexibility of procedures and the final freedom of the protagonists to select whether or not to accept the conciliator's recommendations. He further says that more often than not conciliation is part of other treaty relationships and is used to resolve private conflicts. It is remotely applied in any of these sectors when international economic or business disputes are involved. This is caused by the infancy of many provisions with the conciliation option.

Billings, (2008) studied on the Conflict, Conciliation and Computer-Mediated Communication: using online dispute resolution to explain the impact of media properties on relational communication. The findings of this study show that various

structures put in place affects communication by extent of certainty possessed by interlocutors, availability and efficiency of interlocutors to manage information in the air and inter subjective experience of presence affects the success of conciliation.

Morgan (2005), stated that the safety of humans either personal, institutional and structural-cultural levels can be effectively attained while building peace if a cultural identity and an interpretive bottom-up approach to peace building is used to address the problems of marginalized groups of people, and communities, material and socio-cultural are at the centre of human security and peace building. He concludes that efforts must be made to go past short-term goals of keeping a ceasefire, demobilization, disarmament, and monitoring competitive elections among former adversaries.

The United Nations Operation in Mozambique (ONUMOZ) was sent between 1992 and 1994 With the aim of implementing the General Peace Agreement, that was signed in Rome by the Frente de Libertação de Moçambique (FRELIMO), government and Resistência Nacional Moçambicana(RENAMO). The process of peace building managed to combat disputes .While in the process, RENAMO lost kingpin in the process. Nevertheless, confidence between the parties was still very weak and ONUMOZ's slow deployment led to instability. Nonetheless, RENAMO continued to cooperate with ONUMOZ. This largely is due to the diplomatic skills of the ONUMOZ leadership UN,(2012).

Kassem (2014), carried out a study on Conciliation as an amicable mechanism to settle business disputes advantages and disadvantages. This study focused on conciliation as a diplomatic method of settling foreign disputes directly. It was anchored on the following objectives; to find out the nature and elements of conciliation compared to other mechanisms that engage a third party, mainly mediation, to identify the main merits of conciliation and identifies cautions that accompany resorting to conciliation as a dispute resolution mechanism. The findings of the study show ADR play a great role in promoting economic and political relationships between the involved states, investors or states where investments are set up. Conciliation is taken as the most suitable because of its advantages. There are many merits of using of conciliation, as compared to litigation or arbitration. Conciliation is cheaper than adjudicative techniques, because it is a fairly informal and swift process. Moreover, in case a small problem is involved, conciliation should be preferred because it is cheaper as opposed to than litigation.

Conciliation comes from the agreement of parties' on who was their conciliator to take part in settling the disputes. Although the legislator controls the rules of the peaceful settlement, using this technique relies on the willingness of parties' at its start. Conciliation begins with the application by one of the parties informing the other party to take his view whether or not to accept Talip, (2010).

Schreur, (2001) stated that since its foundation in 1965 up to date, five conciliation cases have been reported. Two of them were successfully resolved, a third led to a

resolution proposal that parties in the conflict did not accept but later served as the basis of a solution, and the final two were withdrawn during the process. Among those disputes settled, include the most recent one of a Canadian business, TG World, and the Nigerian government concerning an oil exploration contract. After one year of conciliation process started in 2004, the Parties stroked an agreement deal allowing TG World to continue its operations in Niger.

According to PSC, (2014),the conciliator is expected to lower tension, enhance communication, interpret issues, offer technical assistance, explore potential solutions and bring a negotiated settlement. They further say that he/she should assists parties in a conflict to understand the aim and needs of all who are involved. The conciliation process do not sort to get a solutions at all, or a conciliator impose a solution on the parties, but instead, the conciliator was to work to achieve neutral grounds upon which the parties may build an agreement acceptable to all involved.

According to OAS, (2002), conciliation is mostly used in dispute resolution. Disputes like the involving Guatemala and Belize that was territorial nature was solved through conciliation.

After 3 years of work, the territorial disputes conciliation process ended in 2002. The UN Secretary General then and the European Union, and a publicly celebrated in Washington on September 30, 2002 praised the event, with officials from Guatemala, Belize, Honduras, and the OAS. They further say that up to now the proposed

agreement was not fully implemented. They conclude that this dispute cannot be said to be fully settled, though the governments continues to build mutual trust.

2.3.4 Peace Building in Meru and Kwale Counties

Bartlet ,(2009) however, pointed out that anthropologists remain divided about its significance. In many of his arguments about contemporary application of transitional justice mechanisms, outlining the dangers of exceptionalism in presenting the Acholi as “other” and outside the Uganda cultural mainstream. He suggests that an “Obsession of so many concerned about the suffering in northern Uganda with “traditional justice” inadvertently reinforces a tendency to demonize the people of the region.

Peace building is the process of creating self-supporting structures that removes the causes of war and offer alternatives to war in situations where wars might occur therefore peace building goes beyond that conflict transformation. The use of ADR in promoting peace building has recently been institutionalized as part of many court systems and systems for justice as a whole throughout the world. For example, the international UN organizations, which arbitrate international institutions for the benefit of humankind, include: Focus on peace building in pre-conflict phases as well as post-conflict phase. This example illustrates clearly the nature of ADR used in peace building that involves participation of both victim and the offender and a voluntary process that mainly targets promoting a win -win situation for both parties Galtung, (2003).

Border Conflicts since time in memorial have been common phenomena in many regions of the world, especially in dry lands, that are endowed with scarce natural resources. Border conflict is manifested in structural inequity and unequal distribution of power. It is a situation with at least two identifiable groups in conscious opposition to each other as they pursue incompatible goals. Global environmental change coupled with population increases has led to unprecedented demand for resources Hassan, (2014). The consequences have been competition over control of and access to the meagre resources, which in turn trigger conflicts. Climate related environmental changes have been observed to be among the major causes of the conflicts Huho, (2012).

According to Messiant,(2004), the availability of resources makes it easy to sustain the conflict through financing operations and is always in the economic interests of the warring party leaders not to support the peace process. Most actors get a lot of money through plundering, looting and engaging in the illegal businesses of drugs, arms, and cigarettes through supportive neighbouring states and available commercial networks.

According to Connable *et al.*, (2010), where a conflict has become primarily economical in nature and attractive, any effort of using peace negotiations to resolve conflicts will often be spoiled or sabotaged. This was true with the many failed peace negotiation attempts to resolve the conflicts in Angola, the DRC, Somalia, and Liberia. What should be noted is that those who benefit from long-term conflicts include the neighbouring countries, international arms merchants and dealers exploiting minerals from the countries in conflict UNOSAA,(2005). The resources provide financing to the

warring parties to sustain and prolong the conflict. On average, it is estimated that African armed conflicts median length is ten years due to the effect of natural resources.

Doyle and Sambanis, (1999) aver peace building has become one of the central themes in conflict studies, so defining it is an important first step.

Based on an analysis of UN experience in conflicts in Namibia, El Salvador, and Cambodia. Peace building as the fourth phase in the United Nations strategy for conflict resolution following conflict prevention, peace making and peacekeeping. Peacebuilding involves identifying and supporting those structures that can strengthen and solidify peace in the aftermath of peace making and peacekeeping. Galtung (1975), who emphasized conflict prevention and resolution at grass root and global levels, first made the difference between peace building, peacekeeping, and peace making. He is critical of so-called “elitist” peace-building efforts that take place at the official level and suggests instead that peace-building efforts are necessary at the grass roots level if the community at large is going to accept them.

According to Gibson (2001), ADR processes are voluntary to all parties. Moreover, the parties themselves choose the scope of ADR, degree of privacy involved and the amount of control over the process. In ADR process the parties agree to participate in the process, the parties or their representatives directly participate, a third party neutral helps the parties reach agreement but has no authority to impose a solution, parties must be able to agree on the outcome and any participant may withdraw and seek a resolution elsewhere. It is imperative to note that Alternative Dispute Resolution

Mechanisms are clearly voluntary and permits parties to actively participant with more chances of telling their side of the story depending on the method that one chooses.

Abdulrahman (2016), did a study on non-governmental organizations (NGOs) and peace building in Darfur: a socio-economic analysis. The objective of the study was to identify the functions of NGOs in peace building from economic and social point of view.

In this study, a descriptive method was applied. Primary data was collected using questionnaire from a sample size 66 respondents. Collected data was analyzed using descriptive methods. The study established that NGOs play a pivotal role in peace building, and put tremendous efforts in ensuring stability in social peace and politics .He further found out that these organizations contribute immensely to developmental processes by building schools, hospitals and youth centers.

United Nations Children’s Fund-UNICEF, (2014), conducted a study on the role of education on peace building. The study found out that education plays key role in promoting peace by supporting transformation dealing with changes in security, political institutions, economic regeneration and social development within post conflict societies.Agbalajobi, (2010) states that through networks, women in Africa have positioned themselves strategically so that they can air their views to the highest levels of government and international agents. Women’s peace-building programs that have transformed Rwanda, Somalia, Liberia, South Sudan and Uganda show this.

Muema, (2014) argues that nearly 40% of communities coming from conflict go to war in a period of five years. He further states that inclusion of women in peace processes is good since it avoids relapse to conflict. In fact, studies conducted in Sudan and Uganda suggest that peace agreements and post-conflict reconstructions are more effective when women are involved Crisis Group, (2006).

According to the UN, (2012)in a study on the effects of administrative and social services on peace building; delivery of public administration and social services fairly and equitably can lead to attainability and sustainability of peace.This can be achieved by looking at the grievances that underpin violent conflict and give ways by which the government can reach out to a society, to build its legitimacy and systems of accountability. They further indicate that communities take access to social services in different ways; some form can lead to stability, ease tension, diffusing and calming aggressions hence build peace. The study concludes that the immense contributions made by administrative and social services notwithstanding, they tend to keep low profile in security sector and politics in areas affected by conflicts.

Human Rights Watch, (2002), states that sometimes, refugees in camps may have difficulty in finding enough firewood for cooking and for other needs. When they get out of their camps in search of firewood, they are confronted with hostile local community who resent them for cutting trees and hence damaging the environment. Occasionally, when women and young refugee girls travel long distances in search of firewood, they are exposed to vices such as rape and sexual violence.

Human depend on environment and natural resources for survival. Although environmental factors are not the only cause of conflict but instead diverse political ideology, ethnicity, and economic factors are all connected to violent conflict studies reveals that shows that environmental stress and the exploitation of natural resources can lead to increased severity and duration of conflict, and hence make it complex and difficult to resolve. Efforts to control or gain access to remote or extractive natural resources can lead to the outbreak of conflict.

If access to the direct use of scarce land, forest, water or wildlife resources leads to marginalization or exclusion of certain groups, they become easy targets for political manipulation UNEP, (2016).

Cheptile ,(2015) studied the role of women in peace building in Kenya. This study used snowball sampling to select the target population of 100 individuals, made up of local women and men peace builders. In addition, 13 chief informants were interviewed to supplement the data obtained from individual peace builders. Qualitative and quantitative methods were used to collect and analysis data. This study found out women are critical in peace building. Further findings show that knowledge and skills in peace building, financial and physical resources, cultural factors, and their perceptions and attitudes are key factors that affect women involvement in peace building. Similarly, this study noted that many women who take in peace building lack enough knowledge, support, financial resources and skills because of dearth of training opportunities. The study concludes that culture bars women in the participation of peace building as opposed to men.

Wakhungu, (2016) did a study on the factors influencing peaceful co-existence among the communities in Kiminini sub-county in Bungoma County, Kenya. The findings of the study show that political fuelling escalates conflicts. Illiberal and illiterate becomes a soft target for politicians to influence for their own gains leaving many injured and dead. Further, the study found out those high levels of poverty, unequal and marginalization are the main causes of violence. The study concludes that starting sustainable livelihoods like small-scale business was totake many idle and unemployed youth hence mitigating the number of youth who can be incited. It also assists in combating unemployment and idleness, which underpins conflict between communities. Also religious societies, self-help groups and poverty reduction programs are main factor that enhance peaceful co-existence among communities in Kiminini Sub-County.

Njeri, (2014) did a study on the factors influencing the role of civil society on peace building in Kenya: a case of Nairobi County. They found that media plays a central role which helps. The role taken by civil society organizations in peace building process hence supports CSOs in disseminating peace information to the societies in conflict however; they also affect peace building through disseminating politicized and biased information during and after conflict.

According to Muigua and Francis,(2014), there has been a shift towards informal mechanisms for conflict management, including alternative dispute resolution (ADR) and traditional dispute resolution mechanisms (TDRM). ADR and TDRM processes

contribute to enhanced access to justice by all, and in particular among the poor people. Enhanced access to justice strengthens the Rule of Law. Existing literature in development studies has shown a correlation between the Rule of Law and levels of development. ADR and TDRMs are thus quintessential from a developmental perspective. In this paper, the authors argue that the recognition of ADR and TDRMs within the legal framework in Kenya was to contribute towards economic, social, cultural and political development. This recognition expands the array of mechanisms that parties to a dispute can employ in ventilating their disputes.

Further, Muigua and Francis,(2014)established that ADR enhanced access to justice and was to contribute to respect for the rule of law, which is an essential pre-condition to development. ADR is also becoming a lucrative economic venture with many professionals now working as full-time or part-time ADR practitioners. In addition, a number of organisations have established ADR centres. Some of these centres are expected to be major attractions for foreign investments in the country as they were to handle international arbitrations. ADR is also being taught in schools and in universities, and is thus expected to contribute to social development.

Kumssa, Jones and Williams, (2009) did a study on conflict and human security in the North Rift and North Eastern Kenya. The findings of the study found out that in the search for water and green pastures, the nomads generally follow their cattle across the region, and their movement is not confined to Kenya alone. They cross and re-cross international boundaries to and from Ethiopia, Sudan, Somalia and Uganda resulting in

conflicts over water and pasture. Resource competition in a fragile economy has had grave consequences for the economic security of families and internally displaced people.

Gómez, (2013) did a study on the role of women in peace building in Colombia. This study was guided by the following hypotheses include: a gender perspective at the high level of the negotiation table would have a positive effect in developing peace and a more stable Colombia in the future. Inclusion of women in the negotiating table would help to empower women in Colombia and would thus help to generate a more inclusive society in the future, woman have been unequally affected by the Colombian conflict. Thus including woman in the negotiation table would help to better address justice issues and involving women in the negotiation table and listening to their claims for peace would help in developing a more successful post-conflict reconstruction. The study found out that in Colombia, looking down upon and exclusion of women is a historical constant.

Ranging from land cases to political issues, it is clear that women in Colombia are highly discriminated, and more inhuman crimes are committed against them is an impunity. The study also found out that being, victims, perpetrators, and peace builders. Women have taken part in all areas of the Colombian conflict. The study concludes that including women in discussing issues that will affect their lives in the future will enhance peace building.

Wanyonyi, (2012), studied on the role of non-governmental organizations in conflict resolution: the case of west Pokot region. The objectives of this study were; to find out how NGOs' humanitarian roles affects conflict resolution in west Pokot. To determine how NGOs apply scarce resources management methods to solve conflicts in West Pokot, to examine how NGOs gives forums for conflicting communities to sort out their differences as an effort in conflict resolution in West Pokot and to identify ways through which the NGOs can make to create public awareness in conflict resolution in West Pokot. This study adopted survey research design. Primary data were collected directly from a sample of 210 respondents who were selected by simple random sampling using questionnaires and interview. Collected data were scrutinized using descriptive methods like frequencies and percentages. The study found out that NGOs take a central role in conflict resolution in West Pokot. Further, the study identified that NGOs give food, clothing, water and tents in case of calamity. Basic needs and health services are basic for the survival of every community. Also the study identified that the manner in which NGO's handle conflicts like managing well natural resource leads to conflict resolution and minimized conflicts.

Hassan, (2014) stated that, at the regional level, conflicts act as a disincentive to inter-state integration and economic co-operation, making sustainable management of shared resources unattainable. Exploitation of minerals in the Horn of Africa has suffered the greatest blow. Moreover, by introducing violence as a way of solving issues, it becomes ingrained as a way of solving problems and the vicious cycle continues. A large number of human lives and animals are lost during raids masterminded by

opposing tribes/clans. The result is the creation of a community of, destitute people that end up in settlement centres to depend on relief food.

2.3.5 Culture and Peace Building in Meru and Kwale Counties

According to Huh, (2012), the culture of cattle rustling among pastoralist's communities for long time has been and is still the main cause of conflicts like in Pokot and other pastoral community members. Cattle rustling in West Pokot County involved the Turkana, Sabaot, Samburu, Marakwet, Sabinu and Karamajong communities. He further argues that cattle rustling among these communities is the order of the day where organized raids which were executed by the Morans as a symbol of dominance. These planned raids were guided and moderated by the community elders. After the raid, retaliatory attacks were organized by the rival at the most appropriate time and community elders ensured no fatalities occurred. Culture and tradition put specific forms of behaviours in place which could be destructive to certain groups of people tradition adds a unique contribution of values and norms that with rare exceptions to home tradition, religion beliefs, myths and folks do manifest in homes. Culture sets man at a higher status than women and children thus being subjected to Gender violence.

Changes in characters lead to conflicts Cultural violence is the prevailing attitudes and beliefs that we have been taught since childhood and that surround us in daily life about the power and necessity of violence. The history that uplifts, records reports wars and military victories rather than peoples' nonviolent agitation, movements, rebellions or the triumphs of connections and collaborations. Almost all cultures recognize that killing a person is murder, but killing tens, hundreds or thousands during a declared conflict is

called war or killing of innocent people by the security forces are often declared as caught in the crossfire Kibiti,(2015).

Cultural factors such as belief that their husbands should beat women when they have done wrong are serious contributors to the problem of violence. The majority of women have very little control in sexual contact, with husbands exposing them to HIV and AIDS. Upon their husband's death, in-laws force women out of the home since they have no right to inherit the husband's property Connable, Ben, Martin & Libicki, (2010).

Many efforts have been put forth to end conflicts. The Tegla Lorupe Peace Race Foundation, which was founded in 2003, is aimed at achieving stable peace among warring communities in west Pokot County. This peace initiative engaged in sporting activities between the rival communities and educating people on the importance of peaceful coexistence. The rival communities, through the help of the foundation, organize annual cultural fashion shows and peace races, which bring together the Pokot, Turkana, Samburu, Sabaot, and Sabiny Karamajong. The foundation holds peace races annually in West Pokot, Kapenguria, Tana River and Moroto in Uganda Huho,(2012).

According to the study done by Pkalya *et al.*, (2003) on the conflict in Northern Kenya found out that in Turkana district one of the main or leading aggressors is raiding and killing of people by the Toposa community from Sudan. In the same study, further findings that illicit arms come from Sudan. Similarly, Coning, (2013), found out that in

the north-west of Turkana district, communities from often undertake large-scale raiding across the border, mainly the Karamojong of Uganda, the Toposa and Nyang'atom of Sudan, and the Merille of Ethiopia.

Mwaura, (2005), stated that the culture of livestock rustling is an old practice among the cattle rearing communities in Kenya. However, in post-modern Kenya, cattle rustling have changed from being a customary means of livestock stocking in which traditional weapon like bows, arrows and spears are used to a commercial practice where sophisticated weaponry is used. Technological advancement has come with it a more deadly form of cattle rustling, and has raised concern because of its sophistication. Raids are well organized and carried out by military precision featured by the use of modern and destructive weapons.

Wamuyu, (2014) carried out a study on the effects of livestock rustling on livelihoods of pastoral communities in the Turkwell River belt along the Turkana/Pokot border. This study focused on the following objectives: causes and extent of livestock rustling in Turkwell River belt, effects of livestock rustling on pastoralist livelihood and conflict resolution mechanism used in the management of livestock rustling in the area and their effectiveness. The study adopted a survey research design. Primary data was collected from a sample that was random sampled. The study established that livestock raids in the Turkwell River belt are a major occurrence and are caused by many factors such as unwillingness to share grazing land, rampant drought and famine in the area and rivalry among others. Further, the study found out that livestock raids has

majorly effected the Turkana and the Pokot communities living in the Turkwell River belt. The raids have led to deaths, high dependency on food relief, environmental degradation, large numbers of people contracting HIV/Aids and a large number of IDPs in the area.

2.3.6 Government Policies and Peace Building in Meru and Kwale Counties

Various policies have been put forward to enhance peace. According to Galtung, (2013), education is at the centre of promotion of the cultural understanding, changes in points of view, interpersonal cooperation and enhances skills of future disengagement from conflicts. He further argues that education has the ability to revolutionize the thinking process of a generation in areas of inter-ethnic conflict. A new generation in which various ethnic groups take one another as members of one society and share and stay in peace with one another. He also asserts that education is the key in introducing new culture where people shift from a culture of conflict to a culture of peaceful interaction between members of different ethnic groups.

Mwanzia, (2015) did a study on the role of peace education in conflict transformation in Kenya. This study wanted to determine the role played by peace education in school's curriculum in transforming conflict and establish ways by which peace education is influencing peace in Kenyan schools. The objectives of this study were; to critically assess the significance of peace education in conflict prevention and to analyze the impact of peace education taught within a subject in the school curriculum for conflict transformation. This study used qualitative approach in the study and data collected from both primary and secondary sources.

Purposive sampling method was applied to obtain sample respondents for the study. They established that peace education is the key and has direct influence on conflict transformation. The study further found out that peace education creates a bigger picture by bringing together diverse varying elements of conflict. By looking at the immediate situation by looking at the previous problems and having the relationship hence giving quick solutions for present and envisioning the same to come up with a platform to address the content, context and the structure of the relationship.

According to Lisa and Manjrika, (2005), women take a key role in building peace. They acts as activities, peace advocates, use non-violent means to pursue democracy and human rights. In addition,when women are peacekeepers and relief aid workers, they play a vital role in reducing direct violence. They further say that women also act as mediators, trauma healing counsellors, and policymakers, and work to ‘transform relationships’ and address the root of violence. They take active role in educating and participating developmental programs, building the capacity of their communities and nations to prevent violent conflict. Socialization processes and the historical experience of unequal relations and values brought about by women leads to peace builds peace.

NGOs have been used widely to bring peace in conflicts prone areas like in West Pokot County. Many steps have been put in place in order to prevent, mitigate resolve conflicts. Peace building in the county consisted of both peace negotiations conducted by the government, political leaders, and sometimes by external parties such as the nongovernmental organizations (NGOs) and through grass-roots initiatives. Because of

numerous peace-building initiatives, the county has experienced an overall reduction in the number of conflicts save for conflicts related to competition over natural resources. Conflicts arising from historical rivalry and socio-cultural practices had greatly reduced. On contrary, conflicts over control of and access to water and pasture in the county and in the neighbouring counties still persisted and were associated with extreme climatic events Huhó, (2012).

According, IOM,(2011), World Vision, Kenya (WVK) and the Kenya Red Cross Society (KRCS) came up with peace building initiatives in West Pokot County. The World Vision started peace initiative operations in 1997 with an aim of educating the rival communities on the advantages of peaceful coexistence, provide formal education, provide water through drilling boreholes and water piping from highlands to lowlands and provided drought resilient Sahiwal cattle breed. In addition, in 2010 the WVK launched a water project that provided safe water to more than 68,000 people in Chepareria, West Pokot, and Kenya. The major contribution of the Kenya Red cross was the distribution of food and non-food items to the affected communities. Provision of food led to the decline in the rates and levels of conflicts. The IOM, through the Japan funded project, focused on conflict prevention, protection of victims of conflicts, building and strengthening policies that promote peaceful co-existence, promote partnerships with formal, and grass root structures like peace committees in West Pokot County.

Pokot Education and Development Programme (PEDP) undertook various community development initiatives that largely dealt with conflict resolution among other issues. PEDP organized inter-community peace dialogue between the warring communities. PEDP successfully organized a Pokot – Marakwet peace dialogue on March 28th2003 (ITDG Practical Action, 2003). Other NGOs like Daima Initiative for Peace and Development (DiPaP) and women peace crusader focus on participatory collective approach in the attainment of peace and non-violent coexistence Dak, (2011).

Mulu, (2008) stated that conflict has destroyed the physical and social infrastructure, human capital, and local economic institutions Killings or forced conscription can mean insufficient labour for productive work deliberately disrupting trade and economic activity thereby reducing investment by the government, aid agencies and domestic and foreign entrepreneurs. This has reduced the possibilities for recovery by frightening away foreign investment, reorientation of resources from socio-economic development to the military, promoting arms trade to support armies of warring communities thus diverting resources for gainful means.

2.4 Research Gap

The foregoing literature review indicated that a substantial amount of research has been done on the process and outcome of ADR in peace building. This is evidenced by the focus on the processes of mediation, negotiation and conciliation that have adequately been approached through theory building and expansion of knowledge content. There is, however, scanty literature on the dynamics underpinning the processes of ADR and in particular the politics of actors' composition, interests and positioning. These emerge and are discernible only through a keen incisive analysis that conspicuously lacks in

the literature. This study, consequently, delved into the underlying dynamics of mediation, negotiation and conciliation to help in understanding the processes of peacebuilding in Meru and Kwale.

2.5 Conceptual Framework

According to Mugenda andMugenda, (2006) a conceptual framework is a hypothesized model that identifies the model to be used in a study and hence the relationships between the dependent variable and the independent variables. A framework conceptualizes the relationship between variables in the study and it can be represented either graphically or diagrammatically. A conceptual framework is made up of independent, and dependent variables. Kothari, (2003) states that a variable is a concept, which have qualities of quantitative values. A dependent variable is the predicated outcome variable.

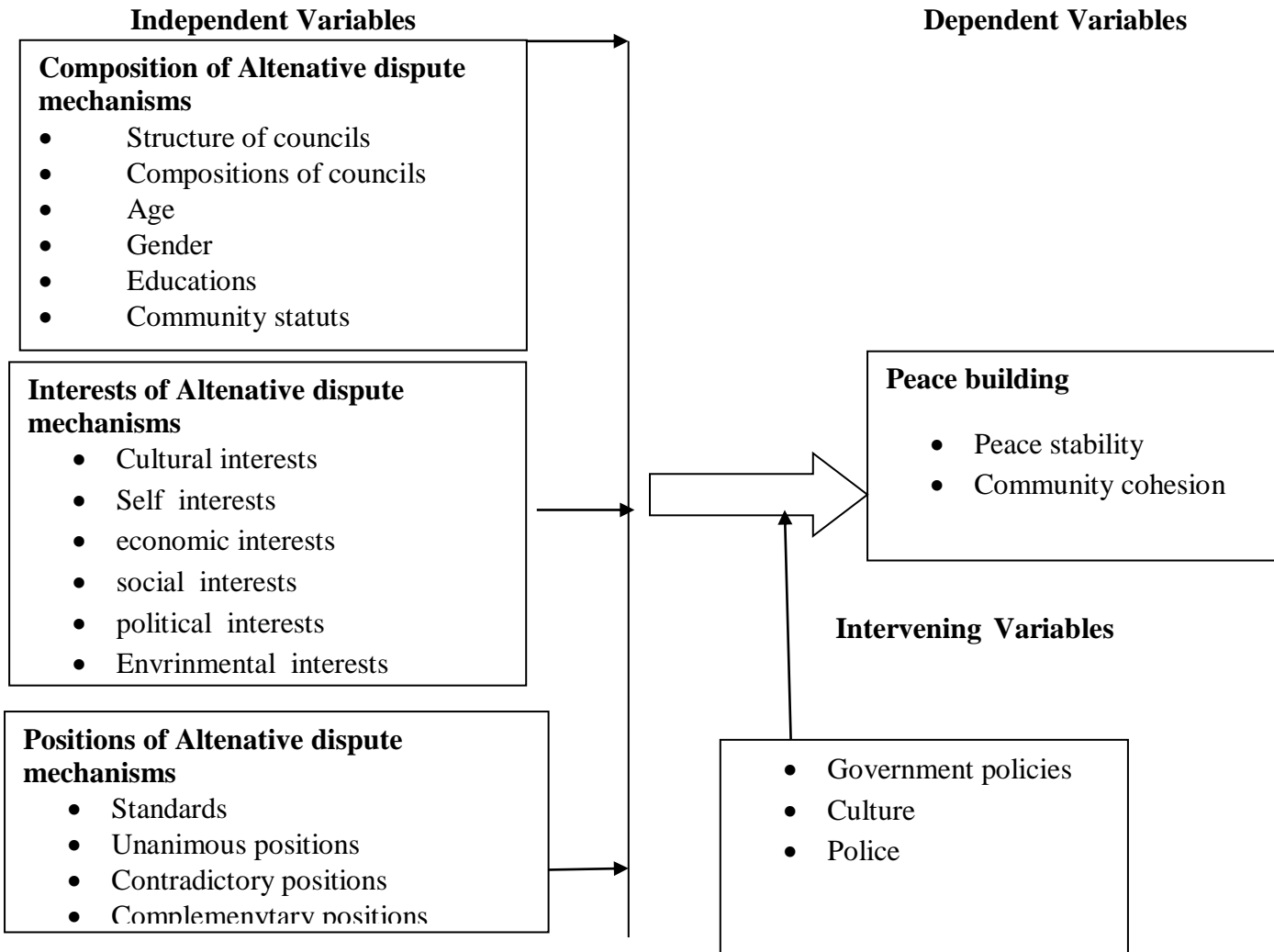


Figure 2.1: Conceptual Framework

Source: Researcher (2018)

This study focused on actors' composition, interests and positioning as attributes of the independent variables while peace building in Meru and Kwale Counties was the dependent variable. It considered the intervening variables like government policies that influence peace building in Meru and Kwale Counties. The study focused on the use of ADR mechanisms in the

building of peace in the two counties. **The variables of the study were anchored on the mediation theory and theory of conflict transformation and conflict functionalism theory.**

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter focused on research design, study area, target population, sample size, sampling technique, data collection, data analysis, presentation, and ethical issues.

3.2 Research Design

This study adopted a descriptive research design that helped in the collection of data by interviews and administering of questionnaires to a sample of individuals Orodho, (2003). The design helped collect information about the applicability of mediation, negotiation and conciliation and how disputes were solved at the grassroots level. This helped the researcher to have the insights on how mediation, negotiation and conciliation were applied to bring peace as a first resort than litigation. Through this research, design questionnaires and interview schedules solicited the desired information, which was analysed for the study area.

3.3 Study Area

The study was conducted in Meru and Kwale Counties in Kenya. Meru is located in the eastern region of Kenya and it is made up of nine constituencies namely; Igembe South, Igembe North, Igembe Central, Tigania West, Tigania East, North Imenti, Buuri, Central Imenti and South Imenti. Whereas Kwale is located in the south, coast of Kenya and has four constituencies namely; Msambweni, Matuga, Kinango and Lunga Lunga. In these Counties, ADR is practiced in a very special way and in abundance through structured and organized settings.

According to Mburugu and Macharia, (2016), Meru has the Council of Elders known as Njuri Ncheke that has structured hierarchy with a strong committee headed by the chairman and other members. The Njuri Ncheke hears and determines cases affecting the community especially

quarrels between community members, wife/husband, marriages, and misbehaviours within the community, boundary conflicts, land conflicts and theft cases. Similarly, in Kwale County, there is also well-structured council of elders called “The Wazee wa Kaya” who resolve disputes at the grassroots level. The two counties were chosen because the use of ADR mechanisms have not been fully embraced and best practices utilised to fully foster peace building.

3.4 Target Population

According to Mugenda and Mugenda, (2003), a population is a well-defined set of people, services, elements, and events, group of things or households that are being investigated. The target population for this study was 312 respondents (members of Njuri Ncheke, Wazee wa Kaya, police, youth, religious leaders and government officials) who are involved in various ways in conflict resolution and peace building in the two counties.

Table 3.1 Target Population

	Kwale	Meru	Total
Administrators(chiefs,DOs,DCs, the police)	31	33	64
Religious leaders(Sheikhs,Priests,Pastors)	10	10	20
NGO representatives	9	6	15
CSO representatives	6	4	10
Local leaders(opinion shapers)	60	80	140
Peace and conflict committees	8	12	20
Women leaders	12	13	25
Youth leaders	10	8	18
Totals	146	166	312

Source:Njuri Ncheke, Kaya 2018

3.4.1 Sampling Techniques and Sampling Procedures

A sampling design refers to the definite technique, method or plan to be used in obtaining a sample from a certain population. According to Denscombe, (2007), convenience sampling is built upon selections which suit the convenience of the researcher and which are first at hand. This study adopted stratified simple random sampling techniques.Mugenda and Mugenda (2003), state that if well selected, a sample size of 10% to 30% of the target population is adequate for generalization of the findings to the whole population provided the target population is highly homogeneous. For this study, sample size is equal to 30% of the target population. The target population was organized into strata such that those with similar features are in one strata.

From each stratum, 30% of the target population was selected for the study. Simple random sampling was used to obtain specific representatives from each stratum.

3.4.2 Sample Size

The sample size for this study was 94 respondents from both Counties. Simple random sampling was employed to select the two Counties. The Counties that were covered were Meru and Kwale. According to Gallardo, (2009), simple random sampling is a basic sampling method where a group of subjects (sample) are selected for study from a larger group (population), and each member of the population has an equal chance of being chosen at any point during the sampling process.

$$\underline{30 \times 312 = 94}$$

100

Table 3.2 Sample Size

Strata	Population		Sample size	Meru	Sampling method	(30%)	Grand Sample size
	Kwale	Sampling method (30%)					
Administrators (CC,DCC,ACC,Chiefs,Nyumba kumi)	31	Stratified and simple random	9	33	Stratified & simple random	10	19
Religious leaders	10	Stratified and simple random	3	10	Stratified & simple random	3	6
NGOs	9	Stratified and simple random	3	6	Stratified and simple random	2	5
CSO	6	Stratified and simple random	2	4	Stratified and simple random	1	3
Local Leaders	60	Stratified and simple random	18	80	Stratified and simple random	24	42
Peace and conflict committee	8	Stratified and simple random	2	12	Stratified and simple random	4	6
Women leaders	12	Stratified and simple random	4	13	Stratified and simple random	4	8
Youths	10	Stratified and simple random	3	8	Stratified and simple random	2	5
Totals	146		44	166		50	94

Source: Researcher, 2018

3.5 Data Collection

The study used both primary and secondary methods of data collection. Secondary data was obtained from documentations such as books, written reports and internet articles that were vital for the study. Primary data was obtained using questionnaires and interviewing Key informants, and holding discussions with focused groups.

3.5.1 Validity of the instruments

Mugenda and Mugenda, (2003) define validity as the degree of quality assigned to proposition or measure of the degree to which they conform to establish the truth. The determination of the reliability perspective of the data collection instrument was achieved through the application of internal consistency method and reduction of random error, which use opinion experts to determine the achievement of consistency and similarity in the scores. The internal consistency of data was determined from the scores that were obtained from a single test administered by the researcher to a sample of subjects who were in the target population. In this approach, the score obtained in one item was to be correlated with the scores obtained from other items in the instruments. The instruments applied in collecting the data should be valid, reliable, and free from bias (error) and practical.

3.5.2 Reliability of the Instruments

Reliability is the extent to which results are considered to be consistent over time and accurately represent total population under study Damis, (2007). Pre-testing of questionnaires was to be carried out to enable the researcher ascertain the clarity of the instruments and their ease to use. All the domains of the study were reflected in both the general and specific objectives. They were to be adequately addressed by the instruments of choice to ensure high chances of validity among the instruments. Questionnaires were randomly distributed during data collection and selected samples and information evaluated to assess their reliability.

3.6 Data Presentation and Analysis.

The collected data was analysed using descriptive statistics. Under descriptive statistics, the study applied frequency tables and percentages. Additionally, the study applied thematic analysis to analyse qualitative data. The study findings were represented in tables and figures.

3.7 Ethical Consideration

Permission to conduct the study was sought from Kisii University and other offices, officers and leaders in the Meru and Kwale Counties and using an introductory letter from the university a research authorization permit which authorizes this research to be conducted. Also the researcher sought permission from NACOSTI to conduct this study. Furthermore, Yates (2004) argues that quite often, most studies involve touching peoples' personal and sensitive issues that raise emotions. This requires that those involved in the study feel comfortable to talk about them. Considering this, consideration was made to seek for informal consent and ensure voluntary participation of the respondents in this study. Moreover, in order to ensure informal consent from the respondents, explanations to all the respondents about the nature, objectives and purpose of the research was clearly made. The respondents were also assured that the data gathered from them was to be treated with strict confidentiality. Throughout the time of the research, particular attention was paid to sensitivity and respect of the respondents feelings. This was done with the hope that it would promote trust between the researcher and the respondent. Attempts were made to get respondents and responses from both male and female respondents and gender sensitive issues were to be observed. The gender consideration is important because it generates information, which is objective and more reliable.

CHAPTER FOUR

DATA ANALYSIS, INTERPRETATION AND PRESENTATION

4.1 Introduction

The chapter covers the demographic information and the findings based on the objectives. The findings were then presented in tables with explanations being given in prose thereafter. This chapter covered disputes in the area of study, nature of disputes, use of mediation, actors of mediation in Meru and Kwale Counties, effectiveness of mediation. Role of the government in conflict resolution in the two Counties, what makes mediation successful in both Counties and challenges of mediation in both Counties.

The aim of this study was to assess the applicability of alternative resolution mechanisms on peace building in Meru and Kwale Counties. The study was guided the following specific objective. To examine the composition of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties, to assess the influence of interests of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties and to evaluate the impact of positions of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties.

4.1.2 Response Rate

The study targeted 94 respondents 50 in Meru County and 44 in Kwale County out of whom 74 filled and returned their questionnaires. This represents a response rate of 74% in Meru County and 83% in Kwale County. This return rate was sufficient representation for generalization of findings. According to Mugenda and Mugenda (2003), a response rate of 50% is adequate for analysis and statistical reporting; a response rate of 60% is good while a response rate of 70% and over is excellent. This recommendable response rate was due to extra efforts made via

follow-up visits to remind the respondents to fill-in and return the questionnaires. The response rate is as shown in Table 4.1.

Table 4.1: Response Rate

Questionnaires	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Issued				
Returned	37	74.0	37	83
Not -returned	13	24.0	7	17
Total	50	100	44	100

Source: Field data (2018)

4.2 Composition of Actors in Alternative Dispute Resolutions Mechanism (Njuri Ncheke and Kaya) in Meru and Kwale Counties

4.2.1 Structures of councils (Njuri Ncheke and Kaya) in Meru and Kwale Counties

In order to determine whether Structures of councils in Njuri Ncheke and Kaya exist in both counties, the study issued questionnaires that were filled in and returned by the respondents in both counties. The findings were as shown in Table 4.2.

Table 4.2: Structures of Alternative dispute resolutions mechanism (Njuri Ncheke and Kaya) in Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Disputes				
Yes	35	94.6	30	90.9
No	2	5.4	3	9.1
Total	37	100	33	100

Source: Field Data (2018)

Based on the findings in table 4.2, the study found out that structure of councils exists in both counties. Further, the study established that, the structural composition of council in Meru County (Njuri Ncheke) was slightly more established and organized 94.9% than Kwale County (Kaya) 90.9 %. In Meru County, the councils deals mostly with disputes related to domestic disputes/violence, land, miraa farm destruction while Kwale County the Kaya council deals with destruction of Kaya forest in Kwale among others.

Njuri Ncheke Chairman one of the FGDs, *“the council has a well-defined structure with clearly spelled out roles. The council is composed of the chairman, the secretary and the treasurer, religious leaders, government officials. It is headed by the chariman who must be a man of high integrity, rich, sound family of more one wife. The aim is to eliminate chances of him being manipulated to defeat justice through either corruption, sexual enticement or political gain. He further, said that the council consist of women of integrity who must be a wife of the chairman to assist in the affairs of women considered too confidential. The secretary keeps records of the councils and takes minutes while Njuri Ncheke is running a session, writing, and dispatching summon letters. Additionally, the council is made up of other members who mostly are men, religious leaders, and government officials with high integrity and morality who must be present when the council is having a session”*. Each council siting must consist of the chairman, secretary, treasurer and other members who must add up to an odd number either 9 or 11. This is a requirement for decision making” (Njuri Ncheke Chairman, 25/5/2018).

Similarly, in Kwale the study found out that the Kaya has a council that consist the chairman, secretary, treasure and other members. Unlike in Meru County, the Kaya council only made up of men. According to the key informants in Kwale council secretary,

“The kaya council has a structure. Its headed by the chairman who must be a man of integrity and high morals values in the society. It also consists of other members representing the nine sub-tribes. Each representatives are chosen through competitive processes that is free of fraud, malice corruption on external interference. All members in the council are men. Like In Njuri Ncheke, each sitting must consist of the chairman secretary, treasurer and others members who will be an odd number.” (Key Informants 6/6/2018).

4.2.2 Composition of actors in Alternative dispute resolutions mechanism in Meru (Njuri ncheke) and (the Kaya) Kwale Counties

This study sought to determine the composition of the councils both Meru and Kwale Counties. The findings are presented in the Table 4.3.

Table 4.3: Composition of the Councils of Elders (Njuri Ncheke) in Meru and (the Kaya) Kwale Counties

Composition	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Men	30	81.1	30	90.9
Women	2	5.4	0	0
Youths	3	8.1	2	6.1
Government official	2	5.4	1	3.0
Total	37	100	33	100

Source: Field Data (2018)

From the findings in Table 4.3, the study found out that 81.1% of the council members in Meru were men, 8.1% were youths, women and government officials 5.4. in Kwale County, the study found out that 90.9 of the council members were men, 6.1 % were youths while 3.0 % were government official while the council did not consist of women at all. These findings meant that

the Kaya councils of elders consisted more men than in Meru County. Further, the study established that the councils of elders in Meru County consisted more women members unlike Kwale County. Additionally, the study found out that Meru County had more youth and government official as members of the council in Kwale County.

According to one key informant (secretary to Njuri Ncheke),

“the council is made up of the chairman, the secretary and the treasure, religious leaders, youths and are government officials. It is headed by the chairman who must a man of high morality, rich, sound family of more than one wife. This is the requirement to ensure that he can deliver justice while sitting on the fence. He further argued that, the council consist of women of integrity who must be a wife to the chair of the council. Her roles include; assisting in the affairs of women considered very private. The secretary keeps records of the councils and takes minutes while Njuri Ncheke is running a session, writing, and dispatching summon letters. Additionally, the council is made up of other members who mostly are men, youths, and government officials with high integrity and morality who must be present when the council is having a session”. Each council siting must consist of the chairman, secretary, treasurer and other members who must add up to an odd number either 9 or 11. This is a requirement for decision making.” (Secretary to Njuri Ncheke,25/5/2018)

FGD discussions in Kwale reported that:

“In our County unlike in Meru County, council of elders is highly patriarchal in nature. It consists of men only youths and government officials. They further argued that the exclusion of women from the council is a cultural requirement. Youths are included the council to cater for the needs of youths while government official like chiefs are included to strengthen and enforce their ruling where necessary.”(FGD discussions,6/6/2018).

4.2.3 Age of Alternative dispute resolutions mechanisms members in both Meru and Kwale Counties

This study sought to find out the age of council members in both Meru and Kwale Counties. The findings on this area were represented shown in Table 4.4.

Table 4.4: Age of council members in both Meru and Kwale Counties

County	Meru	Kwale
---------------	-------------	--------------

Age	Frequency	Percentage	Frequency	percentage
30-35	4	10.8	2	6.1
35-40	5	13.5	5	15.1
40-45	6	16.2	8	24.2
45-50	7	18.9	7	21.2
Over 50	15	40.5	11	33.3
Total	37	100	33	100

Source: Field Data(2018)

Based on the findings in Table 4.4, the study identified that the 40.5% of the council members in Njuri Ncheke were over 50-year-old, 18.9% of council members were aged between 45-50 years old, 16.2% were aged between 40-45%, 13.5% while 10.8% were aged between 30-35 years. Further, the study noted that, in Kwale County 33.33% of members in Kaya council were over 50 years old, 24.2% were aged between 40-45 years old, 21.2% were aged between 45-50 years old 15.1% were aged between 35-40 and 6.1 % were aged between 30-35 years old. According to these findings, the study established most of members in Njuri Ncheke and the Kaya councils were over 50 years. Additionally, the study found out that Njuri Ncheke had more members in their council who were over 50 years old than in the Kaya council. In addition, the study noted that the Kaya council of elders consisted more members aged between 40-45 years old than Meru county. Meru County had more members aged between 30-35 years old than in Kwale County.

One key informant in Meru County (council Chairman) said that:

“We prefer older people in the council of mediation, reconciliation and negotiation in ADR. Before the sitting of the council, we (The council) send one of us to go and talk with disputants first. If he manages to bring them together, he only reports to the council. If he fails, he too reports to the council and the two parties are summoned to appear before the council. This is what makes ADR more successful”. Additionally, he argued that, older people are preferred because they are full of wisdom, no rush for selfish gains or other things unlike young people”. (One key informant in Meru County -council Chairman, 26/5/2018).

One FGD in Kwale County indicated that:

“We prefer older people as members of the council because they are full of experience, skills, non-baisness, and wisdom to solve disputes amicably using ADR. Further, they argued that, older people are too interested in nothing less than peaceful co-existence.” (FGD 6/6/2018).

These findings are similar to Keuleers, Margue and Jenny, (2014) who found out that insider mediation has enormous ability to end conflicts. They further argue that actors within countries invested in peace stability, needs to be equipped with suitable skills used in mediation and dialogue. They further said that banking on external mediation is not obviously fruitful as it is assumed by many countries. Insider mediation counts on the tremendous strength of institutions and individuals taken seen as ‘insiders’ within a certain conflict zone. The capabilities of organs like civic, political, and governmental leaders have immeasurable advantages of earning respect and trust hence facilitating attainment of stable peace. Insider mediation has been successful in achieving peaceful elections; facilitating dialogue, unlocking political deadlocks and establishing the groundwork for formal peace negotiations in a number of countries.

4.2.4 Gender of Alternative dispute resolutions mechanism members councils in Meru and Kwale Counties

This wanted to find out the gender of members of councils mostly involved in conflict resolution in both Counties. The findings were presented in Table 4.5.

Table 4.5: Gender of members of councils in Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Male	35	94.6	33	100
Female	2	5.4	0	0
Total	37	100	33	100

Source: Field Data (2018)

Based on the findings in Table 4.5, the study established that 94.6% of the members in the Njuri Ncheke were males while only 5.4% were females. Further, the study noted that in Kwale County all members in The Kaya councils of elders were males.

An FGD discussant in Meru indicated that,

One FGD discussant in Meru indicated that:

“In our council, all members are men of 30 years and above who listen and determine cases. The composition of the councils is mainly of mature men. They further argued that, for gender parity, they have allowed a few women mostly, the wife of the chairman into the council. Her work is majorly to deal with pertinent issues of women. She is used to extract information from women especially on matters considered private that men cannot be told. Only mature men and older enough are allowed into the council. This is because of their experience, wisdom and skills in using ADR in solving disputes locally”.
(One FGD discussant, 26/5/2018)

While in Kwale County, one key informant agreed with the sentiments of others that:

“In our council we’re majorly men of mature age. We also have others like church leaders. They further, indicated that, women are not allowed into council membership due to cultural ties. They help us solve cases locally”.(key informant,6/6/2018).

These findings are similar to Mburugu’s,(2016) who found out those indigenous institutions like Njuri Ncheke and the Kaya are involved in conflict resolution and promotion of peace in Meru and Kwale communities. Most of the conflicts are resolved at Njuri Ncheke houses with only intra Njuri Ncheke disputes and appeals being handled at Njuri Ncheke headquarters. The conflict resolution methods used by Njuri Ncheke council of elders included determination of cases, oathing, counselling, peace crusades, dialogue and instilling discipline among community members.



Figure4.1: Researcher attending Njuri Ncheke case session on 28/5/2018

Source: Research Assistant(2018)

4.2.5 Education of council members in both Meru and Kwale Counties

This study wanted to determine whether mediation is effective in conflict resolution. The findings were presented in Table 4.6.

Table 4.6: Education of council members in both Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Level of education				
Primary education	4	10.8	5	15.2
Secondary education	10	27.0	10	30.3
Tertiary education	3	8.1	2	6.1
Informal education	20	54.1	16	48.5
Total	37	100	33	100

Source: Field Data(2018)

According to the findings in Table 4.6, the study found out that 54.1% of councils in Njuri Ncheke had informal education, 27% had secondary education, 10.8% had primary education and 8.1% had tertiary education. On the other hand, the study established that, 48.5% of the members in Kaya council had informational education, 30.3% had secondary education, and 15.2% had primary education while 6.1% had tertiary education. Accordingly, the study found out that in both counties most members in the council of elders in both the Njuri Ncheke and the Kaya councils of elders had information that has been passed down the generations. However, more members of Njuri Ncheke had informal education than their counter-parts in Kaya council. Additionally, the study noted that Kaya council members had more primary secondary education than Njuri Ncheke. In addition, the study noted and tertiary education than the members of the Kaya council.

A council chair in Meru county one of the key Informant said that,

A council chair in Meru County, one of the key Informant, said that:

“Educational in key in the current era. In our council, we have many members who has gone through informal education than formal education. Formation education especially on how the Njuri operates on its delivery of justice has been passed on to us from our fathers as an inheritance. We old tightly and cherish informal education. We, as the council, normally have installed institution where those willing can be trained. In addition, we uphold formation education. That is why we have introduced youths and other expertise who have trained in various areas like law, computer, land surveying among other that help in decision making”.(Council chair in Meru county,25/5/2018).

A council secretary argued that:

Formal education is equally good. As a secretary, I have gone up to secondary education and trained in computer applications. This training has helped me to write summon letters and dispatch them”. (Council secretary,25/5/2018).

In Kwale County, Key informants (Council Secretary) indicated that,

“Informal education has been passed down to by their parents. Informal education has assisted us to solve disputes.It anchored on wisdom and experience over time. Equally, formal educational education is key in our decision-making. In some matters where technical expertise is required to solve a dispute, we turn to formal education”.(Council Secretary,7/6/2018).

Margue and Jenny (2014) who found out that insider mediation has enamours ability to end conflicts. Actors within countries invested with peace instability needs to be equipped with suitable skills used in mediation; dialogue is needed to achieve stable peace. They further say that banking on external mediation is not obvious fruitful as it is assumed by many countries. Insider mediation counts on the tremendous strength of institutions and individuals taken seen as ‘insiders’ within a certain conflict. The capabilities of organs like civic, political, and governmental leaders have immeasurable advantages of earning respect and trust hence facilitating attainment of stable peace .Insider mediation has been successful in achieving peaceful elections; facilitating dialogue, unlocking political deadlocks and establishing the groundwork for formal peace negotiations in a number of countries.

4.2.6 Community status of council members in Meru and Kwale Counties

The study determined community status of council members in both Meru and Kwale counties. The study held discussions with FGDs and Key informants in both Counties. According to key informants in Meru County indicated members of the Njuri Ncheke are men and women of integrity, higher molarity, rich free from any corrupt dealing.

Key informants in Meru County:

“Our council is composed of men and women of greater moral value in the society. They must be free from any form of mischievous act. Like the chairman of the council, he must be man of moral value, rich man, have more than one wife. This required so that they do not indulge themselves in action that diminishes their integrity and hence, defeat justice through corruption, sexual enticement among others. Additionally, her wife must have high moral values, as she is part of council handling private members of women.”Key informants in Meru County, 26/5/2018).

Similarly, in Kwale County, Key informants showed that members in the council in the Kaya hold higher status in the society. They are like role models. Moral integrity is paramount in their daily lives. They are expected to uphold molarity in public and private lives.

“In the Kaya council, members have must be men of high moral values and integrity. All members are free of any corrupt deals that can harm justice delivery. Members of the council are people who are self-contented. Contentment allows members to focus on justice delivery instead of using Kaya to extort money from disputants for self-gain.” (FGDs,7/6/2018)



Figure 4.2: Researcher with Key Informants and FGDS in Meru County 26/06/2018

Source: Researcher (2018)



Figure 4.3: There searcher and Key Informants and FGDS at Kaya HQ 5/06/2018

Source: Researcher (2018)

4.2.7 How composition of council makes ADR successful in Meru and Kwale Counties

This study sought to find out how the composition of councils makes ADR very successful in both Meru and Kwale Counties. The researcher interviewed FGDS and Key informant in both Counties. During the KII session held on 25/05/2018, the Njuri Ncheke chairman noted that:

“In Meru County, the success of various forms of ADR (mediation, negotiation and conciliation) is anchored on oathing and honesty. If there is conflict between two parties, then complainant reports the issue to the council”.

“Upon receiving the case, council of elders through their secretary issues a letter summoning the defendant(s) to appear before it on a set date, time and place. Prior to this, one member of the council was sent to the disputants’ homes to talk with them and report to the council. If the defendants deny the allegations and the truth is a public knowledge, they will both be required to take an oath. Many fear the repercussions of the oath and they prefer ironing out their disputes at an earlier stage. When defendant(s) fails to appear before the council of elders (Njuri Ncheke) he/she is summoned three times’.(The Njuri Ncheke chairman, 25/05/2018).

The Njuri Ncheke Secretary, on the other hand, added that:

“If he/she fails to appear before the council of elders, a determination of the matter before hand is determined in his/her absence. At this point a complainant is required to give "Zenge" a grown up he goat to the council of elders to be used in the ceremony of the

oathing process. After receiving the goat,oathing process starts”.The Njuri Ncheke secretary,25/5/2018).

Largely, the success of *ADR (mediation, negotiation and conciliation)*is anchored in the oathing in Meru County. According to other *Njuri Ncheke*FGDs,

“Apart from oathing, the success of ADR in Njuri Ncheke is based on the willingness of protagonists to solve their disputes amicably, saying the plain truth, un-biased to the council of elders. In addition, the process takes the shortest time to be determined unlike in courts. This is why many people prefer the Njuri Ncheke to the traditional courts. Also it’s cheaper to launch a petition in the council unlike in court” (Njuri Ncheke Discussant, 5/06/2018).



Figure4.4: The Researcher with the officials from left, Njuri Ncheke secretary, a worker in the museum, Njuri Ncheke Chairman at the Njuri Ncheke shrine HQs Opposite Meru University.

Source: Researcher (2018)

In Kwale County, the success of *ADR (mediation, negotiation and conciliation)*According to key informants (Chairman and other members of the Kaya);

“Our success is hinged in the willingness of the disputants to end the argument. It also depends on the truth said concerning the matter in contestation”.Chairman of the Council,5/6/2018)

Like in Meru County, once there are conflicts between two parties, any of them can launch a petition before the Wazee wa Kaya. A summoning letter is issued to the defendant.

“Everyone is given time to give his/her side of the story. If the solution is found the case is determined at that stage. If the defendants deny the allegation advanced against him/her, they are taken to the Kaya forest where after some rituals are performed he/she is allowed to hold the big tree. It is the belief that after holding the tree and nothing happens to him /she, the claims was false or otherwise. This is what makes ADR successful in Kwale County”. (Chairman of the Council, 5/6/2018)

A member of the Kaya Council added,

“ADR (mediation, negotiation and conciliation) is faster, cheaper, and do not take sides making it the most preferred among the Kaya people. ADR (mediation, negotiation and conciliation) is more successful in Meru County than in Kwale County because of oathing”. (Member of the Kaya Council, 5/6/2018)



Figure 4.5: Researcher with key informants in the Kaya HQs at Kinondo

Source: Research (2018)

4.2.8 Challenges of composition ADR councils in both Meru and Kwale Counties

This study sought to find out what are the challenges of ADR (mediation, negotiation and conciliation) in Meru and Kwale Counties. According to the Njuri Ncheke Selected FGDs:

“The main challenges affecting our workings are financial challenges, lack of facilities where we conduct our ‘court proceedings’ spread in the entire Meru and Tharaka Nithi Counties. We also lack travelling allowances, and sometime complainants fail to adhere to

decisions made by the Njuri Ncheke council of elders.” (Njuri Ncheke Key informants, 28/5/2018).



Figure 4.6: Researcher at Njuri Ncheke HQ with the secretary, chairman and council member

Source: Researcher (2018)

In Kwale County, key informants from the Wazee wa Kaya also indicated that:

“The major challenges we face include financial challenges, diverse culture among the coastal communities, lack of facilities, political interference, travelling allowance as a challenge because of the terrains of the coastal landscape” (KII from Wazee wa Kaya,6/6/2018).

These findings are similar to the findings by Mburugu (2016) among the Njuri Ncheke. Financial problems are the main challenges experienced by the Council and its Houses. This is so because Njuri Ncheke has only registration fee for new members and the very low legal fees that are charged to those seeking its services as the sources of its income. Political interference, especially from the community power elites as they compete for influence of the Meru community, is another challenge to the Council especially as this goes against the Council’s mandate of uniting the community. Njuri Ncheke also lacks the legal mandate for its peace promotion activities, as the institution is not registered as a movement to source money

externally. Therefore it has no legal backing in resolving disputes and its resolutions are not enforceable meaning they lack enforceability powers as the courts do. Other challenges include disregard of Njuri Ncheke by the youth and the elite in the community who, in spite of indications otherwise, still consider the institution as “primitive” and out of step with modern ways of operation. Hostility from some religious groups and lack of commitment by some of community leaders and members are also identified as challenges.

According to Rimita (1988), the indigenous institutions experience challenges from the state-based institutions such as the judiciary and the police department who, especially in criminal cases, over-rule the decisions or rulings by traditional institutions. Another major challenge of most indigenous institutions is the exclusion of women from policy and decision-making, thereby excluding about half the adult population. For example, Njuri Ncheke is a men only Council.



Figure 4.7: Researcher with key informants at the Kaya HQs

Source: Researcher (2018)

4.2.9 How composition of councils enhance ADR Efficiency in both Meru and Kwale Counties

This study wanted to find out how efficiency of ADR was enhanced in both Counties. The findings from FGDs in both Counties are presented below. Based on the FGDs in Meru County (members of Njuri Ncheke):

“For ADR to be more efficient, elders of council should be given relevant training on mediation. They further indicated that any support from the government would enhance the efficiency. The government should be giving financial support to the council of elders, recognize them in the constitution as a means of disputes resolution mechanism, eliminate political interference, give them legal education/seminars among others so that they can solve more conflicts at the grass root levels. The government gave local administrators necessary trainings, facilities like offices that ease their working”. KII,28/6/2018)

According to Shamir (2004), mediation employs a neutral person who facilitates the negotiation between the parties with an effort to reach a mutually accepted resolution. Mediation has become a very important and viable alternative to adjudication and arbitration in the legal system (labour disputes, family, business, and commercial disputes). In some countries, laws require mandatory mediation, as a way to encourage the parties to the dispute to use the mediation process as a preferred way to resolve disputes. Unlike the process of facilitation, where the third party merely hosts the parties and encourages them to continue negotiating in a neutral, welcoming environment, the mediator plays a more active role. The mediator not only facilitates but also designs the process, and assists and helps the parties to get to the root of their conflict, to understand their interests, and reach a resolution agreed by all concerned. This makes mediation effective.

“FGDs (member of The Kaya council) in Kwale County identified that relevant training on mediation to the Kaya elders; provision of supportive facilities like offices would enhance the efficiency of mediation”.

4.3 Interests of alternative dispute resolution mechanism

4.3.1 Cultural Interests of alternative dispute resolution mechanism both in Meru and Kwale Counties

This study sought to determine whether cultural interests of alternative dispute resolution mechanism during conflict resolution in Meru and Kwale counties are observed. The findings are presented in Table 4.7.

Table 4.7: Cultural Interests of ADR both in Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Cultural interests				
Yes	35	94.6	27	81.8
No	2	5.4	6	18.2
Total	37	100	33	100

Source: Field Data (2018)

According to Table 4.7, the study established that cultural interests are observed in both Counties for conflict resolution. The study further identified that cultural interests were applied more in Meru County 94.6% as compared to 81.8% in Kwale County. According to one Key informant in Meru County,

“The whole process of dispute resolution starts with culture at the centre. While we are resolving a dispute through ADR forms (mediation, negotiation and conciliation), we normally ensure that all disputes and resolution do not violate our culture. For example, we send one of us to the parties in a dispute to negotiate before they appear before the council. The negotiator brings his report to the council. Whether he has managed to solve it not. If yes, the disputants declares before the council that they have arrived that a solution. If not, the council convenes, to hear the two sides and determine the case. The culture dictates that oathing is done as the last option when all other avenues have been exploited.

This is because oathing at the shrine using “Zenge” is considered very lethal as it can affect all members of family. The secretary of the council added oathing is feared for its adverse effects and many disputants do not wish to reach that stage. This Makes ADR very effective and efficient in dispute resolution”. (Key informant in Meru County,28/6/2018)

Similarly, FGDs in Kwale revealed that, like in Meru county cultural interests are key in determining a dispute. According to the chairman of the council in Kwale County,

“For the success of ADR, culture requires that the disputants hold sacred trees within the Kaya forest that is maintained for such purposes. It used as the last resorts. “Another of the Kaya Council argued that, these threes are so sacred that nobody wishes to reach that far. The effect of these threes are immense for those denying actually what they did.”(FGDs,7/6/2018)

Kaya secretary indicated that,

“The kaya forest is actually our weapon. When we have hit a dead rock in a given matter, then we turn to the forest. Disputants can be required to either hold some sacred trees on just pass from one end to other. If you are lying, it is believed that you cannot get out alive. Within the forest our secret weapon hidden there”.(Kaya Secretary,7/6/2018)

The Kaya treasures intercepted him and said that,

“The aim of sacred threes and forest in general is to scare but to find the truth and a matter at hand once and for all amicably without coercion.”(Kaya Treasures,7/6/2018)

These findings are similar to Mburugu’s, (2016) in the same area who found out that negotiation is used most in Meru County. Most of the conflicts are resolved at Njuri Ncheke houses with only intra Njuri Ncheke disputes and appeals being handled at Njuri Ncheke headquarters next to Nchiru market opposite Meru University of Science and Technology. Further, he found out that conflict resolution methods used by Njuri Ncheke council of elders included determination of cases, oathing, counselling, peace crusades, dialogue and instilling discipline among community members.

Westendorf, (2015) found out that negotiated peace process is done to bring to an end violent conflict hence settlement is put in place and peace is consolidated. Kihara (2016) also pointed

out that, negotiation is a voluntary process which is designed to reach an agreement when the disputants have some interest that are shared and the other that are opposed. According to Muigua and kariuki, (2012) negotiation involves two or more people of either equal or unequal power meeting to discuss shared or opposed interests in relation to a particular area of mutual concern. With negotiation, the goal is mainly to avoid the overemphasis of how the dispute arose but to create options that satisfy both the mutual and individual interest.

4.3.2 Self-interests of ADR actors in Meru and Kwale Counties

The study further sought to find out how self-interest of people involved in ADR affect peace building in both Meru and Kwale Counties. The findings are presented in Table 4.8.

Table 4.8: Self-interests of ADR actors in Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Yes	2	5.4	3	9.1
No	35	94.6	30	90.9
Total	37	100	33	100

Source: Field Data (2018)

Based on the findings presented in Table4.8, the study found out that in both ADR actors do not have self-interest when solving disputes. Further, the study found out that lack of self-interest in disputes resolution was more in Meru 94.6% than in Kwale County 90.9%.

FGDs in Meru County indicated that they do not allow self- interest in the council, as it will affect the outcome of cases and soil the credibility of Njuri Ncheke.

The Council Chairman was of the view that:

“in Njuri Ncheke, our justice is free of any self motivated gain. The council has in place mechanism to detect any self- interest in any case by the council members. Any member found violate this code ethics is fined heavily and disqualified from the council”. Council Chairman,27/5/2018)

The secretary to the council argued that they are entirely neutral in delivery of Justice.

“In our council, right from investigation stage we are impartial. All members of the council an oath against partiality in any case. Thus our member’s trial as much as possible to be neutral in all cases. In the rule of the thumb in the council is, a member of the council con not mediate, negotiate or conciliate members of his family against members of another family. In such case we choose somebody else within the council to do the job and report to us”.(The Secretary to the Council 27/5/2018)

A member of the Njuri Ncheke added that, all cases are solved at local level very fast and in an impartial manner.This has make made us very popular.

*“In our County, Njuri Ncheke solves most of the cases at the grassroots level. They also focused positively on the future of the parties involved in the conflict. No one has ever complained of partiality in our ruling because we avoid right from the beginning. Most our members are old men who have gone through informal education, hold high status in the society and are rich so at no point they can be partial.”*Member of the Njuri Ncheke,27/5/2018)

On the other hand, according to the key informants in Kwale, The council is normally impartial in its delivery of justice. They further said that without impartiality, the council would die long time ago.

“In Kwale County, the Wazee wa Kaya council mostly listens to and determines cases at local level. Most cases are determine before they reach the courts because of its cost and speed. The success of our cases in hidden in free trails. No manipulation or desire for self-gain from the members of the Kaya council allowed to penetrate into our ruling. Without impartiality, we would lose meaning in the society”.(KII,6/6/2018)

The secretary to the council of Kaya elders indicated that:

“Before members are appointed to represent the nine sub tribes of the Mijikenda, they undergo thorough scrutiny. Self-evaluation in our council is a continuous process. Therefore, we easily detect any form of self-interest creeping into the council.

The aim of the council is peaceful co-existence not self-gain".The secretary to the council of Kaya,6/6/2018).

According to Ishinda *et al.*, (2008), the chief architect or founder–father of Njuri Ncheke, was Kaura-O-Bachau (Kaura son of Bachau). Before he died, Kaura-O-Bachau made a vow, a binding curse that the Njuri Ncheke shall never die or cease to exist in Meru community. Generally, in many traditional communities, breaking such a curse is considered a bad omen and it explains why the Njuri Ncheke has continued to thrive to avoid a curse from God or the wrath of the ancestors thereof.

According to M'Imanyara, (1992), Njuri Ncheke was the institution whose responsibility was to make laws, issue state orders as well as decrees affecting the entire Meru community/society. Njuri Ncheke acted as the judiciary and also enforced the rules and regulations aimed at conserving the environment. Njuri Ncheke continues to operate in the Meru community and plays various roles in conflict resolution and maintenance of peace not only within the Meru community but also with its neighbours.

According to Bekoe,(2005), ADR has been successful in combating many civil wars and it is gaining global acceptance as the most chosen way of ending civil wars. Nonetheless, some negotiated conflicts have poor record of success. Negotiations needs effective mediation which is great in mitigating deadlocks observed during the negotiations process organizing for interactions involving warring parties, control formal negotiations and structuring the agenda for the negotiations Bercovitch *et al.*, (2009).

4.3.3 Economic interests of ADR Actors in both Meru and Kwale counties.

The study sought to find out whether ADR actors are guided by economic interests in conflict resolution in both Meru and Kwale counties. The findings are presented in Table 4.9.

Table 4.9: Economic interests of ADR Actors in both Meru and Kwale counties.

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Economic interests				
Yes	3	8.1	1	3.0
No	34	91.9	32	97.0
Total	37	100	33	100

Source: Field Data (2018)

From the findings in Table 4.9, the study found out that in both ADR actors do not have economic interest while solving disputes. Further, the study noted that Kwale had the highest resistance to economic interest 97% than Meru County that had 91.9%. This meant that determination of cases in both counties is not driven by economic aim.

FGDs in Meru county indicated that before recruited into the council they are screened very well. They must be members of the society high moral standards with sources of income

Njuri Ncheke treasurer argued that, FGDs in Meru County indicated that before being recruited into the council they are screened very well. They must be members of the society high moral standards with sources of income

Njuri Ncheke treasurer argued that,

“Our members are actively involved in economic activities like miraa cultivation, engage in businesses among others that generate income for them. Thus, nobody would be willing to get any economic gain in terms money or any form from disputants for defeat justice. The main aim of the council is not to make economic gain but to solve disputes amicably. In fact, the Njuri Ncheke court is the cheapest and faster compared the judicial system. This is because our aim is not money but peace. Whatever little token received especially when one if fined either monetary or goods it has spent to enhance council capability. No members of the even the chairman is paid”. (Njuri Cheke treasurer,28/5/2018)

A Key informant in Kwale, county indicated that the Kaya is the cheapest form of justice in the region. Disputants are not required to pay the council for better hearing. The secretary to the argued that

“Our aim as the council is not make economic gain. All members in the council have their sources of income. This a key requirement for members. It meant to deter any form of wanting to make the money through the council”. (KII,7/6/2018).

The chairman of said that

“our council with sensitive cases. Cases of land are very sensitive. Any misjudgement may mean that someone becomes landless. Thus we avoid at all cost any economic interest that may subvert justice”.(Chairman,7/6/2018)

According to Muigua and Kariuki, (2012), negotiation involves two or more people of either equal or unequal power meeting to discuss shared or opposed interests in relation to a particular area of mutual concern. With negotiation the goal is mainly to avoid the over emphasis of how the dispute arose but to create options that satisfy both the mutual and individual interest. Shamir,(2004) further elaborates that the practice of negotiation in ADR has three approaches of resolving disputes and each practice has different orientation and focus. These practices include,

- i) interest-based which focus on the discussion from positions to a discussion based on interests which opens up a range of possibilities and creative options where positions very often cannot be reconciled and may therefore lead to dead end;
- ii) right-based approach is when negotiations between parties fail, the parties may then attempt to resort to what they consider to be their right through appealing to the courts either local, national or international court; and
- iii) power-based approach is where resorting to threat or even violence as a way of communication for purposes of persuasion. Anderlini (2000) noted that negotiations gives a

political roadmap for the coming days by taking into account compromises, building consensus, developing the extent of mutual trust, and hence seeking to successfully bring to an indefinite end long lasting conflicts.

The success of negotiations hatch a new vision at various degrees like inter-group and interstate stability for regional, national, and local levels. Negotiations in Africa are undertaken by international, regional, state and non-state actors tailored by the standard way of ceasefire agreements, transitional governments, disarmament, demobilization and reintegration reforms in the constitution not mentioning a few, democratic elections Daley, (2006).

4.3.4 Political interest of ADR actors in both Meru and Kwale counties

The study sought to establish whether ADR actors in both Counties have political interest during dispute resolution. The study sought information from key people in both counties to ascertain According to the Key Informants in Meru County (Njuri Ncheke Secretary and Chairman on 29/5/2018 at the shrines): Political interest are the major hindrances we face as the council. However, they have minimized its penetration into the council significantly. They further said that because they dealing peoples' lives they do not entertain political interference during the entire process of conflict resolution

The Chairman of the council said that,

“For the success of ADR in our county political interest are kept at bay though it’s not easy. All of us have political affiliations. As a council,we took an oath to serve people impartially. Thus we don’t allow political interests of our members undermine our delivery of fair justice”(Chairperson on 29/5/2018).

The secretary of the added that,

“Political interests are seasonal and occur at different level. Local political interests and national political interests. It is hard to deal with political interest because some of the disputants may be related to either local or national political leaders who might have their sympathizers within the council and hence may want justice go their way.

For sure is a big challenge but, as a council we require any member affiliated with any political leader either locally or nationally to disqualify himself from a case indirectly or directly touching them.” The way we conduct, our cases ensure than political interferences are not allowed into the council, for example,

“Many fear the repercussions of the oath and they prefer ironing out their disputes at an earlier stage. When defendant(s) fail to appear before the council of elder (Njuri Ncheke), they are summoned three times. If he/she fails to appear before the council of elders, a determination of the matter before hand is done in his/her absence. At this point, a complainant is required to give "Zenge" (a mature he goat) to the council of elders to be used in the oathing process. After receiving the goat, the oathing process starts. Mainly the success of ADR in Meru County is anchored in the oathing procedure and processes not political interests”. (Secretary on 29/5/2018).

Similarly, in Kwale County, Key informants indicated that political interest is mole within the council that is eating justice. Members are affiliated to politics either locally or nationally. Political affects delivery of justice negatively. They further said that, political interest are minimized through continuous scrutiny within the council regularly.

Members of the Kaya said,

“Political interests are very dangerous especially when approaching election. Being free from any form of political interests is not easy, but as council, we have put in place mechanisms to minimize the adverse influence of politics in our decision-making”. (Members of the Kaya, 6/6/2018)

Another member added,

“Political interest if allowed can kill the council as it would bring division within the council. Such divisions would be brutal to delivery of justice. As council we urge our members to leave politics aside or disqualify yourself if you sense political connection might undermine proper delivery of justice”.(Member,6/6/2018)

According to Shamir, (2004), “consensus- building, relates to a decision and agreement reached by all the identified parties who have a stake in the outcome and decision of the conflict. Through this process, the stakeholders create new and more efficient options to resolve the issues

at hand. Special approaches to deal with emergency conditions such as floods, and droughts, were to be developed to encourage cooperation, and avoid potential conflicts. Consensus building is a process that seeks a unanimous agreement over one or more disputed subjects. It is an effort to bring together groups who are stakeholders in an open controversy on a basic policy issue and priorities.

It is an effort to arrive at decisions in which the interests (or part of them) of all the parties involved are met. All the interested parties have to participate on a voluntarily basis, be supportive of the process, and make it work. The desire to reach a resolution to the dispute is an important starting point, an attitude vital for the progression of a process so complex. It manifests the willingness of all the participants to make efforts towards reaching a resolution, even though the parties know that at a later stage there may arise the need for some compromise. Parties who are interested or affected by the outcome should choose the representatives who will participate in the process and present them adequately without fear or favour”.

According to Albin and Druckman, (2012), the principles of procedural justice (PJ) was found to relate more with agreements anchored on the principle of distributed justice of equality. In addition, the study revealed that agreements are meant to be more durable when founded on equity, but not when based on other DJ principles. The principle of equity counted for the relationship between PJ and durability regardless of diversity between the parties in power. Further findings show that two types of equality exist -equal treatment and equal shares. These equities are associated with the looking into the future agreements with high durability. The study concludes that durability includes equality in the terms of agreements and that PJ helps but does not guarantee achieving such agreements.

4.3.5 Social interests of ADR actors both in Meru and Kwale Counties

The study sought to determine the social interest affect delivery of justice during conflict resolution. According to FGDs discussants, the main challenges that affect their workings is social interests. This is because the cases they deal with socially in nature. They further said that such cases are difficult to determine because the outcome can change social lives of disputants.

The treasure to Njuri Ncheke in Meru County said,

“Social interest are considered very in the determination of cases. As you want to safe guard social interests of one part in a case, you are ruining the other party’s social interests. Thus as the council we tend to be neutral. However our judgments must consider social impact we must be fair and impartial.”(Key Informant on 28/25/2018).

According to the chairman of the council in Meru County,

” social interest are key in our case determination. Some members may wish to be more popular in the society, takes some of these opportunities to takes sides with aim of gaining some social status. As council our oaths and repercussions associated with violating such oaths keep members on track.”(Key Informant on 28/5/2018).

On the other hand, Key Informants indicated that social interests are equally a change to delivery of justice in Kwale County. The further indicated that, social interests are key in justice delivery.

“Our members are keen when determine a case before them. The social interest of both the offender and the victim are considered, however they do not affect justice delivery to the greater extent. The aim of both parties i.e. offender, the offended and members of the council is to reach the bottom of case. Thus social interest as much they important, do not matter very much. We are guided justice and the truth”. Member of the Kaya council 6/6/2018.



Plate 4.8: Researcher at Njuri Ncheke shrine HQs

Source: Research assistant (2018)

These findings are similar to the findings by Mburugu (2016), who noted that Njuri Ncheke faces key challenges. Social challenges, financial problems are the main challenge experienced by the council. This is so because Njuri Ncheke has only registration fee for new members and the very low legal fees that are charged to those seeking its services as the sources of its income. Political interference, especially from the community power elites as they compete for influence of Meru community, is another challenge to the Council especially as this goes against the council's mandate of uniting the community. Njuri Ncheke also lacks the legal mandate for its peace promotion activities, as the institution is not registered. It therefore has no legal backing in resolving disputes and its resolutions are not enforceable. Other challenges include disregard of Njuri Ncheke by the youth and elite in the community who, in spite of indications otherwise, still consider the institution as "primitive" and out of step with modern ways of operation. Hostility from some religious groups and lack of commitment by some of community leaders and members are also identified as challenges.

Toft, (2010) found out occasionally, peace achieved by negotiation considers the pre-negotiation. These agreements deal with the manner in which parties in a conflict will manifest the regulation or resolve their minor diversity aimed at resolving conflicts by settling in an agreement. Up to now, negotiation remain the most preferred way of solving conflicts because it gives valuable and a unanimously agreed upon result for parties involved in a conflict Bercovitch, et al.,(2009). According to Kansas, (2011),top leaders of the parties in conflict fight hard to ensure that financial resources used in negotiation process does not bore fruits on the negotiation of peace.

The study concludes that no one main factor that contributes to the failure or success as opposed. They just but affect the process of negotiation on equal terms.



Plate 4.9: Researcher with FGDS at the Kaya HQs

Source: Researcher assistant (2018)

4.3.6 Environmental interest of ADR actors both in Meru and Kwale Counties

The study also wanted to determine ADR actors have environmental interest during conflict resolution.

Table 4.10: Environmental interest of ADR actors in both Meru and Kwale Counties.

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Economic interests				
Yes	34	91.9	30	90.9
No	3	8.1	3	9.1
Total	37	100	33	100

Source: Field Data (2018)

The study found out that in both counties, environmental interest are considered during conflict resolution. Further, the study established that Meru slightly observed environmental interest 91.9% more than Kwale County 90.9%.

The Key informants indicated that, the council normally, takes into county the environmental interest during conflict resolution. They further indicated that when dealing land, miraa disputes, they consider the environmental. Thus, the ruling must satisfy the disputants as well as the environment.

A member of Njuri Ncheke council indicated that:

“During our dispute resolution we focus on many thing apart from fairness and equity.Environmental protection is considered essential therefore I our quest for justice, we make sure we don’t deprive environment is rightful rights”.(Member of Njuri Ncheke council,29/5/2018)

Additionally, the secretary to the council in Meru county indicated that,

”environmental interest weighs on them heavily when dealing with issues that touch on land. Any wrong decisions may affect not the offender but the entire community thus we consider environ very much.Events such as coronation normally done in the forest are taken with care to safeguard environment.”(the Secretary to the council in Meru County,29/5/2018)

Similarly, in Kwale county, Key informants indicated that, matters environment are central in their decision making. Chairman of the Kaya council said that, “our *strength comes form from the forest. Thus, we cannot make a ruling than cause monumental effect not to the forest but also, to people around it. Thus, issues dealing with are handled with a lot of care to environmental degradation.*

Another member In Kwale County, FGDs (*members of the Kaya*) indicated that;

“The government should build offices for them; safeguard their facilities like the Kaya Forest. They should also train them on how they can handle cases and recognize their efforts in conflicts resolution processes. They also indicated that the government should give them, build structures for them, provide facilities like computers to use in their offices, provide water, electricity and furniture for their offices”(discussant 1 from Wazee wa Kaya council of elders). This can save environment from destruction during events like coronation.”(KII,7/6/2018)

These findings are similar to (Quam (1996), who identified that there is need for the government to strengthen traditional institutions in building peace committees. These committees should be trained on modern arbitration, mediation, dialogue and democratic governance issues in order to enable them take cognizance of the modernizing world. Members of the peace committees should be facilitated to visit other areas that have mainstreamed the said issues.

4.4 Positions of ADR in both Meru and Kwale counties.

4.4.1 Standards of ADR both in Meru and Kwale Counties

This study sought to determine whether standards of ADR affect conflict resolution in Meru and Kwale Counties. The findings are presented in Table 4.10.

Table 4.11: Standards of ADR both in Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Standards				
Yes	31	83.8	29	84.8
No	6	16.2	4	15.2
Total	37	100	33	100

Sources: Field Data (2018)

The study established that, in both counties the application of ADR in solving conflicts has standards/ codes. Further, the study established that Kwale County had slightly more standards 84.8% as opposed to Meru County 83.8%.

According to discussions with FGDs in Meru County. They have codes that guided them in decision-making.

“Our council has established standards and guidelines that guide us during conflicts resolution. They are designed in an acceptable manner both members of the council and disputants. These standards are made clear to them all so that nobody may feel he/she has been treated unfairly”.

The chairman of the council indicated that,

“our standards are designed to ensure free and fair delivery of justice to all. Similarly, the study found out that in Kwale, the Kaya council has standards that guide its operations. Through these standards, are meant to dispense justice with equal measure. Key informant, 6/6/2018),”

Our standards are friendlier to us and to the community. We make understand them so that when we, offer justice they are part of it. These standards are not static, but dynamic to fit all situation as they arise. They are set out clearly at start of each case”. member of the Kaya council 6/6/2018

This finding is similar to Reif (1990), who found out that, ADR positions in conciliation provides the go between an opportunity to resolve a conflict while keeping the flexibility of procedures and the final freedom of the protagonists to select whether or not to accept the conciliator's recommendations. He further says that more often conciliation is part of other treaty relationships and is used to resolve private conflicts. It is remotely applied in any of these sectors when international economic or business disputes are involved. This was caused by the infancy of many provisions with the conciliation option.

Schreur (2001) states that since its foundation in 1965 up to date, five conciliation cases have been reported. Two of them were successfully resolved, a third led to a resolution proposal that

parties in the conflict did not accept but later served as the basis of a solution, and the final two were withdrawn during the process. Among those disputes settled, include the most recent one of a Canadian business, TG World, and the Nigerian government concerning an oil exploration contract. After one year of conciliation process started in 2004, the Parties reached an agreement allowing TG World to continue its operations in Niger.

4.4.2 Unanimous Positions of ADR Actors both in Meru and Kwale Counties

The study further sought to find out the people involved in ADR processes in both Counties have unanimous positions during conflict resolution.

Table 4.12: Standards of ADR both in Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Unanimous positions				
Yes	25	67.6	24	72.7
No	12	32.4	9	27.3
Total	37	100	33	100

Sources: Field Data (2018)

According to the findings above table, the study identified that in both counties, ADR actors have unanimous positions on some matters. The study found out that in Meru county ADR actors had unanimous positions on 67.6 % of the matters before them, while 32.4% had contradictory positions. On the other hand, the study noted that in Kwale, county 72.7 % of matters before the Kaya council get a unanimous position while 27.3 get a contradictory position. Further, the study established that unanimity of positions was more in Kwale county 72.7% than in Meru County 67.6%

The study interviewed key informants and conducted FGDs in both counties. A key Informant in Meru County (*member of Njuri Ncheke*) noted that:

“The council of elders of Ameru people/Njuri Ncheke have positions during conflict resolution process. These positions are the same but them dependent on the matter at hand. The council membership is normally an odd number either 9 or 11 during each sitting. The importance of having such numbers is for easy decisions making. Where members don't have the same position, the majority are assumed the winner. Their decision is final and its binds all members.”(*member of Njuri Ncheke,29/5/2018*)

According to the FGDs in Meru County,

“The Njuri Ncheke council of elders is entrusted with responsibility of ensuring the three is harmony and peace within the community being an icon in conciliation process. As indicated sometimes government official are consulted in critical issues like murder, rape among others”

(FGD discussant in Meru).

According to key informants in Kwale County,

“Like in Meru County, it is the council of elders (Wazee wa Kaya) are involved in ADR process. The council of elders in are trusted because they do not take sides when solving cases. In addition, local administration also take part in ADR process and thus positions exists within the council. That is the reason why the Kaya is made up nine members. The odd numbers is crucial during decision-making.”(KII,7/6/2018)

According to key informants in Kwale County, *“like in Meru County, it is the council of elders (Wazee wa Kaya) are involved in ADR process. The council of elders in are trusted because they do not take sides when solving cases. In addition, local administration also take part in ADR process and thus positions exists within the council. That is the reason why the Kaya is made up nine members. The odd numbers is crucial during decision-making.”*

According to Wilkes, Zotova, Kuburić, Andrejč, Brkić, Jusić, Momčinović and Marko, (2013).reconciliation is largely accepted and used as a means of attaining peace between warring parties. In addition, the study found out that the public play a vital role towards the building of

reconciliation process and of trust in a country. Factors like religion, local conditions, people and trust affects reconciliation

4.4.3 Contradictory Positions of ADR actors both in Meru and Kwale Counties

The study sought to found out whether Contradictory positions when during ADRs (mediation, negotiation and conciliation) are applied to solve disputes in both Counties. The results are presented in Table 4.11.

Table 4.13: Contradictory Positions of ADR actors both in Meru and Kwale Counties

County	Meru		Kwale	
	Frequency	Percentage	Frequency	Percentage
Contradictory positions				
Yes	30	81.1	26	78.8
No	7	18.9	7	21.2
Total	37	100	33	100

Source: Field Data (2018)

Based on the findings in Table 4.13, the established that during ADRs (mediation, negotiation and conciliation) council members hold contradictory positions in both counties. Further, the study noted that in Meru 81.1 % of the council members hold a Contradictory position while 18.9 hold unanimous positions on some disputes. On the hand, the study noted that in Kwale County 78.8 of the council members hold Contradictory positions on disputes while 21.2 hold unanimous positions. Further, the study noted that council members in Meru County contradicted more in some matters than Kwale County.

These findings are similar with the findings of Mburugu,(2016) in the same area, which found out that negotiation is used most in Meru County. Most of the conflicts are resolved at Njuri-Ncheke houses with only intra Njuri- Ncheke disputes and appeals being handled at Njuri-Ncheke

headquarters. Further, he found out that conflict resolution methods used by Njuri-Ncheke council of elders included determination of cases, oathing, counselling, peace crusades, dialogue and instilling discipline among community members.

According to Mahapa and Christopher, (2015), conciliation is not easy whenever it is applied to solve problems. They further indicated that all stakeholders must understand fully the components and challenges before they consider them as best alternatives to dispute resolution.

4.4.4 Complimentary positions of ADR actors both in Meru and Kwale Counties

This study sought to determine Complimentary positions in both Counties. The researcher conducted focused group discussions to gather information on the same. According to the Key informants in Meru County (*Njuri Ncheke secretary and chairman on 29/5/2018 at the shrines HQs*),

“The success of ADR in Meru County banks on oathing, honesty complimentary they receive from other parties like women and judiciary. Their support is heavily appreciated as they contribute immensely to the delivery of justice that is free and fair to all parties. The wife of the Chairman of the Njuri Ncheke is part of the council. She normally, attends the councils meetings. Her work is deal with matter considered private for women. Her involvement aids in justice delivery as she assists the council in finding out the root course of a problem”. (*Chairman on 29/5/2018*).

The secretary argued that,

“We receive great help from the judiciary. During their siting, representatives from Meru law courts are sent to observe on they are carrying their operations. Sometimes, we receive referrals from Meru law courts. In acase, a representative of the court must be present .Once we are through with a dispute, we report to the court where Memos are signed. Thus we support the assistance we get from other parties”. (*Secretary,28/5/2018*)

According to other FGDs (*Members of the Kaya*), they too receive support from other parties.

Unlike in Meru county, the kaya does not consists of women they do they get help from them.

The support they get from judiciary is highly appreciated.

The judiciary assists us finding whether our ruling conflict the supreme law of the land .Through this, we were to avoid appeals in the court”.

According to Madhuku (2010), there is no given minimum qualifications for those who take part in conciliation. This factor overshadows the success of conciliation. He further says that many academicians are of the view that the failure of the dispute resolution tools is caused by the incompetence of actors who preside over them.

Similarly, Matsikidze, (2013) found out that dishonour of conciliation agreements is very much common. He further said that there is no provision stating the impacts and punishment for breaking the agreements of conciliation. This leads to the situation where other party is left with a pledge that cannot materialize. Conciliation as a tool for dispute resolution is criticised because of it is over reliance on the goodwill and total faith which actors cannot give a binding decision.

Billings, (2008) studied on the Conflict, Conciliation and Computer-Mediated Communication: using online dispute resolution to explain the impact of media properties on relational communication. The findings of this study show that various structures put in place affects communication by extent of certainty possessed by interlocutors, availability and efficiency of interlocutors to manage information in the air and enter subjective experience of presence, which affects the success of conciliation.

4.4.6 Sustenance of Peace through ADR both in Meru and Kwale Counties

This study sought to determine what could be done in both Counties to attain and sustain the desired peace. Key informants were interviewed to this end. The Key Informants and FGDs in Meru County who included Police officers, DOs and members of the Njuri Ncheke all agreed on

ways of sustaining peace. They said that they have stable peace such that not even one incidence of conflicts reported is difficult. They however indicated that, to end conflicts, everybody in the County should respect one another. Respect for individual properties is necessary. Police and DOs indicated that respect to rule of law will ensure that they the lasting peace in this County is paramount.

Njuri Ncheke members said that to respect each other is to respect the ruling of council, reduction of political incitement, equitable sharing of resources especially those obtained from the sale of Miraa will reduce domestic violence and hence stable peace.

Key Informants in Kwale County (Members of the Kaya) generally reported that elimination of conflicts completely in the County is very difficult. They attributed this to historical injustices especially on land, population pressure, and unequal distribution of resources among others. They however, indicated that if people can follow the laws of God, respect each other and their properties they would attain and sustain peace for harmonious co-existence in the community. As indicated by one of the members of the Kaya that:

“If the government can address historical injustices, share the national resources equitably, create jobs then many idle people can be engaged, increased police patrols, empower local administrators through training can reduce conflicts hence attain and sustain peace” Key Informant, Kwale County,(2018).

Morgan,(2005) states that the safety of humans either personal, institutional or structural-cultural levels can be effectively attained while building peace if a cultural identity and an interpretive bottom-up approach to peace building is used to address the problems of marginalized people, groups, and communities, material and socio-cultural which are at the centre of human security and peace building. He concludes that efforts must be made to go past

short-term goals of keeping a ceasefire, demobilization, disarmament, and monitoring competitive elections among former adversaries.

According to PSC, (2014) the conciliator is expected to lower tension, enhance communication, interpret issues, offer technical assistance, explore potential solutions and bring a negotiated settlement forward. They further say that he/she should assist parties in a conflict to understand the aim and needs of all who are involved. The conciliation process do not sort to get solutions at all, or a conciliator impose a solution on the parties, but instead, the conciliator has to work to achieve neutral grounds upon which the parties may build an agreement acceptable to all those involved.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATION

5.1 Introduction

The aim of this study was to assess the applicability of alternative resolution mechanisms on peace building in Meru and Kwale Counties. The study was guided the following specific objective: To examine the composition of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties, to assess the influence of interests of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties and to establish the positions taken by actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties.

5.2 Summary of the Findings

5.2.1 Composition of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties.

This was the first objective of the study. The study wanted to find out whether Composition of alternative dispute resolution mechanism was used in solving conflicts affect peace building in Meru and Kwale Counties. The study found out that council in both counties have structures. Further, the study established that, the structural composition of council in Meru County (Njuri ncheke) was more established and organized 94.9% than Kwale County (Kaya) 90.9 %. In Meru County the councils deals mostly with disputes related to domestic disputes/violence, land, miraa farm destruction while Kwale County the Kaya council deals with destruction of Kaya forest in Kwale among others. Further, the study found out the council has a well-defined structure with clearly spelled out roles. The chairperson who must a mana of high integrity, rich, sound family of more one wife heads it.

Similarly, the study found out that the Kaya has a council that consist the chair, secretary, treasure and other members. Additionally, the study noted Unlike in Meru County, the Kaya council only made up of men. According to the key informants in Kwale council secretary)

The study found out that 81.1% of the council members in Meru were men, 8.1% were youths, women and government officials 5.4. in Kwale County, the study found out that 90.9 of the council members were men,6.1 % were youths while 3.0 % were government official while the council did not consist of women at all. These findings meant that the Kaya councils of elders consisted more men than in Meru County. Further, the study established that the councils of elders in Meru County consisted more women members unlike Kwale County. Additionally, the study found out that Meru County had more youth and government official as members of the council in Kwale County.

Additionally, the study established that most members in Njuri ncheke and the Kaya councils were over 50 years. Additionally, the study found out that Njuri ncheke had more members in their council who were over 50 years old than in the Kaya council. In addition, the study noted that the Kaya council of elders consisted more members aged between 40-45 years old than Meru county. Meru County had more members aged between 30-35 years old than in Kwale County.

The study established that 94.6% of the members in the Njuri Ncheke were males while only 5.4% were females. Further, the study noted that in Kwale County all members in The Kya councils of elders were males.

The study found out that in both counties most members in the council of elders in Njuri ncheke and the Kaya councils of elders had information education that has been passed down the generations. However, more members of Njuri Ncheke had informal education than their

counter-parts in Kaya council. Additionally, the study noted that Kaya council members had more primary secondary education than Njuri ncheke. In addition, the study noted and tertiary education than the members of the Kaya council.

The study established that in Meru County indicated members of the Njuri Ncheke are men and women of integrity, higher molarity, rich free from any corrupt dealing in the society. Further, the study noted that the main challenges affecting our workings are financial challenges, lack of facilities where we conduct our 'court proceedings" spread in the entire Meru and Tharaka Nithi Counties

5.2.2 Interests of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties

This was the second objective of the study. The study wanted to find out how various interests of ADR affect peace building in both Meru and Kwale counties. The study established that cultural interests are observed in both Counties for conflict resolution. The study further identified that cultural interests were applied more in Meru County 94.6% as compared to 81.8% in Kwale County. Additionally, the study found out that in both ADR actors do not have self-interest when solving disputes. Further, the study found out that lack of self-interest in disputes resolution was more in Meru 94.6% than in Kwale County 90.9%. The study found out that in both ADR actors do not have economic interest while solving disputes. Further, the study noted that Kwale had the highest resistance to economic interest 97% than Meru County that had 91.9%. This meant that determination of cases in both counties is not driven by economic aim.

In addition, the study found out that Political interest are the major hindrances facing the council. However, they have minimized its penetration into the council significantly. They further said that because they are dealing with peoples' lives they do not entertain political interference

during the entire process of conflict resolution. The established that the main challenges that affect their workings is social interests. This is because the cases they deal with socially in nature. They further said that such cases are difficult to determine because the outcome can change social lives of disputants.

The study found out that in both counties, environmental interest are considered during conflict resolution. Further, the study established that Meru slightly observed environmental interest 91.9% more than Kwale County 90.9%. The council normally, takes into county the environmental interest during conflict resolution. They further indicated that when dealing land, miraa disputes, they consider the environmental. Thus, the ruling must satisfy the disputants as well as the environment.

In Meru County indicated that they do not allow self- interest in the council, as it will affect the outcome of cases and soil the credibility the Njuri ncheke. In addition, the study the council is normally impartial in its delivery of justice. They further said that without impartiality, the council would have “died” long time ago.

In addition, the study found out that in both ADR actors do not have economic interest while solving disputes. Further, the study noted that Kwale had the highest resistance to economic interest 97% than Meru County that had 91.9%. This meant that determination of cases in both counties is not driven by economic aim. On the other hand, the study noted that social interests are equally a challenge to delivery of justice in Kwale County. The further indicated that, social interests are key in justice delivery.

5.2.3 Positions of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties.

The study wanted to determine how positions held by council members affect peace building in both Meru and Kwale counties. The study established that, in both counties the application of ADR in solving conflicts has standards/ codes. Further, the study established that Kwale County had slightly more standards 84.8% as opposed to Meru County 83.8%. The study identified that in both counties, ADR actors have unanimous positions on some matters. The study found out that in Meru county ADR actors had unanimous positions on 67.6 % of the matters before them, while 32.4% had contradictory positions. On the other hand, the study noted that in Kwale, county 72.7 % of matters before the Kaya council get a unanimous position while 27.3 get a contradictory position. Further, the study established that unanimity of positions was more in Kwale county 72.7% than in Meru county 67.6%

The study established that during ADRs (mediation, negotiation and conciliation) council members hold contradictory positions in both counties. Further, the study noted that in Meru 81.1 % of the council members hold a Contradictory position while 18.9 hold unanimous positions on some disputes. On the other hand, the study noted that in Kwale County 78.8 of the council members hold Contradictory positions on disputes while 21.2 hold unanimous positions. Further, the study noted that council members in Meru County contradicted more in some matters than Kwale County.

In addition, the study found out that success of ADR in Meru County banks on oathing, honesty complimentary they receive from other parties like women and judiciary. Their support was heavily appreciated as they contribute immensely to the delivery of justice that is free and fair to all parties.

The study found out that achieving stable peace such that not even one incidence of conflicts reported is difficult. They however indicated that, to end conflicts, everybody in the County should respect one another. Respect for individual properties is necessary. Police and DOs indicated that respect to rule of law will ensure that they the lasting peace in this County is paramount.

5.3 Conclusion

5.3.1 Composition of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties.

This was the first objective of the study. The study wanted to find out whether Composition of alternative dispute resolution mechanism was used in solving conflicts affect peace building in Meru and Kwale Counties. The study concluded that out that council in both counties have structures. Further, the study concluded that, the structural composition of council in Meru County (Njuri ncheke) was more established and organized than Kwale County (Kaya). The study concluded that in Meru County the councils deals mostly with disputes related to domestic disputes/violence, land, miraa farm destruction while Kwale County the Kaya council deals with destruction of Kaya forest in Kwale among others. Further, the study concluded that council has a well-defined structure with clearly spelled out roles.

Similarly, the study concluded that the Kaya has a council that consist the chair, secretary, treasure and other members. Additionally, the study concluded the Kaya council is only made up of men.

The study further concluded that the Kaya councils of elders consisted more men than in Meru County. Further, the study concluded that the councils of elders in Meru County consisted more

women members unlike Kwale County. Additionally, the study concluded that Meru County had more youth and government official as members of the council unlike in Kwale County.

Additionally, the study concluded that most members in Njuri Ncheke and the Kaya councils were over 50 years. Additionally, the study concluded that Njuri Ncheke had more members in their council who were over 50 years old than in the Kaya council. In addition, the study concluded that the Kaya council of elders consisted more members aged between 40-45 years old than Meru county.

The study concluded that most of the members in the Njuri Ncheke were males. Further, the study concluded that in Kwale County all members in The Kaya councils of elders were males.

The study concluded that in both counties most members in the council of elders in Njuri Ncheke and the Kaya councils of elders had information education that has been passed down the generations. Further, the study concluded that, more members of Njuri Ncheke had informal education than their counter-parts in Kaya council. Additionally, the study concluded that Kaya council members had more primary secondary education than Njuri Ncheke. In addition, the study concluded Meru county tertiary education than the members of the Kaya council.

The study concluded that in Meru County, members of the Njuri Ncheke are men and women of integrity, higher molarity, rich free from any corrupt dealing in the society.

5.3.2 Interests of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties

The study concluded that cultural interests are observed in both Counties for conflict resolution. The study further concluded that cultural interests were applied more in Meru County as compared to in Kwale County. Additionally, the study concluded that in both ADR actors do not have self-interest when solving disputes. Further, the study concluded that lack of self-interest in

disputes resolution was more in Meru than in Kwale County .The study further concluded that in both ADR actors do not have economic interest while solving disputes. Further, the study concluded that Kwale had the highest resistance to economic interest in dispute resolution than Meru County.

In addition, the study concluded that Political interests are the major hindrances facing the council. However, they have minimized its penetration into the council significantly. The study concluded that the main challenges that affect their workings is social interests. The study concluded that in both counties, environmental interest are considered during conflict resolution. Further, the study concluded that Meru slightly observed environmental interest more than Kwale County. The council normally, takes into account the environmental interest during conflict resolution. They further concluded that when dealing with land, miraa disputes, they consider the environmental.

The study concluded that in Meru County they do not allow self- interest in the council, as it would affect the outcome of cases and soil the credibility the Njuri Ncheke. In addition, the study concluded that the councils are impartial in their delivery of justice.In addition; the study concluded that in both ADR actors do not have economic interest while solving disputes. Further, the study concluded that social interests are equally a challenge to delivery of justice in Kwale County. The study further indicated that, social interests are key in justice delivery.

5.2.3 Positions of alternative dispute resolution mechanism on peace building in Kwale and Meru Counties.

The study concluded that, in both counties the application of ADR in solving conflicts has standards/ codes. Further, the study concluded that Kwale County had slightly more standards as opposed to Meru County. The study concluded that in both counties, ADR actors have unanimous positions on some matters. The study concluded that, unanimity of positions was more in Kwale County than in Meru County.

The study concluded that during ADRs (mediation, negotiation and conciliation) council members hold contradictory positions in both counties. Further, the study concluded that council members in Meru County contradicted more in some matters than Kwale County.

In addition, the study concluded that success of ADR in Meru County relies on oath-taking, honesty and complimentary they receive from other parties like women and judiciary.

The study concluded that achieving stable peace such that not even one incidence of conflicts reported is difficult. The study further concluded that, to end conflicts, everybody in the County should respect one another. Respect for individual properties is necessary. Police and DOs indicated that respect to rule of law will ensure that they the lasting peace in this County is paramount.

5.4 Recommendations

The study recommends that structure of councils to be more inclusive with well-defined spelled out roles. Further, the study recommended that the kaya council of elders to include women in their composition. Additionally, the study recommended that both Nuri ncheke and kaya to include more youths in the composition. In addition, the study recommended that councils in both counties to embrace more members with formal education.

The study recommended that cultural interest should not take the largest share in decision-making but instead they consider other disputes in relation with the current situation as well. In addition, the study recommended that political interests should not be allowed into decision-making processes.

The study recommended that council in Meru County should have flexible standards that accommodate all disputes. In addition, the study recommended that, the kaya council to allow compliments from other groups like women.

5.5 Suggestions for further study

The first objective of the study was to examine the composition of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties. For further study, the study suggested that, new studies to be done to investigate how composition of councils of elders influence peace building between the Kisii of Nyamira County and Kipsigs of Bomet county along the boarder.

The second objective of the was to to assess the influence of interests of actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties. For further study, the study suggested that, new studies to be done to investigate how interests of ADR actors promoted peace between the Marakwet, Samburu and Turkan counties.

The third objective was to establish the positions taken by actors involved in alternative dispute resolution mechanism for peace building in Kwale and Meru Counties. For further study, the study suggested that, new studies to be done to investigate how the positions ADR actors influence peace building between Kisii county and Narok County along the border at Ngararo

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APPENDICES

APPENDIX I: QUESTIONNAIRE

Good morning/afternoon/evening,

My name is Bandari Handson Ogechi, a student at Kisii University pursuing a Doctorate of Philosophy in Conflict Resolution and Peace Building. I am conducting a study on Alternative Dispute Resolution (ADR) Mechanisms and their Implication in Peace Building in Kenya. This study is for my PhD academic purposes but the findings will be used to provide the country with an overview of Alternative Dispute Resolution Mechanism and its implication in peace building in Meru and Kwale Counties. Therefore, I kindly ask you to spare some time to answer the following questions. I assure you of strict confidentiality for your responses and identity. Thank you for your cooperation. Thanks in Advance

PART A: BIO DATA

1. Please indicate your Gender

Male [] Female []

2. Please indicate your Age bracket

15-20 years [] 21- 30 years [] 31-40 years [] 41-50 years [] 51-60 years [] over 60 []

3. What is your level of education (please tick)

Primary education [], O-level [] Certificate level [], Diploma level [] Degree level []

Post graduate []

4. How long have you lived in this County?

Less than 2 years [] 3-7 years [] 8- 15 years [] 16-25 years []

Over 25 [] None []

5. Have you ever witnessed any disputes in your life?

Yes [], No []

If yes, which one and what was the cause?

.....
.....

PART B: COMPOSITIONS OF ADR AND PEACE BUILDING IN MERU AND KWALE COUNTIES

6. Does the councils of elders in your county have a Structure?

Yes () No ()

If yes, how is it composed?

.....
.....

7. Who are the members of the councils in your county?

Males only () females only () both ()

8. Does the members of councils have age limit for member joining them?

Yes () No ()

If yes, Does it affect the membership of the council

.....
.....

9. Does the composition of councils of elders in county consist of both Gender or one ?

Yes () No ()

If no, how does affect free and fair justice in you county

.....
.....

10. What kind of education do members have?

Informal ()

Primary education ()

11. Do members have certain Community statuses?

Yes () No ()

If yes, does it limit council membership to those with special features?

.....
.....

PART C: INTERESTS OF ADR AND PEACE BUILDING IN MERU AND KWALE COUNTIES

12. Have you ever had Cultural interests in solving disputes in your County?

Yes [] No []

If yes, indicate how it affects decisions made

.....
.....

13. Do you have any Self-interests in conflict resolution in your County?

Yes [] No []

If yes, explain why

.....
.....

14. Do you have any economic interests during conflict resolution in these counties?

Yes () No()

If yes, how does it affect out come

.....
.....

15.Does social interests of council of elders affects outcome of ADR?

Yes() No ()

If yes, explain how

.....
.....

16. Does Environmental interests affect ruling of councils of eldser in you county

Yes () NO ()

If yes, what can be done tp mitigate it

.....
.....

17 What can be done to enhance the success and efficiency of ADR?

.....
.....

18 What are the challenges ADR faces in conflict resolution?

.....
.....

PART D: POSITIONS AND PEACE BULIDING IN MERU AND KWALE COUNTIES

19 Have you ever applied any Standardsin solve disputes in your County?

Yes [] No []

If yes, how does it affects decision making during conflict resolution.

.....
.....

20. Does councils of elders have Unanimous positions in some matters during peace building in your County?

YES () No ()

If yes, does it affects the trust of parties

.....
.....

21 Does councils of elders have Contradictory positions in some matters during peace building in your County

If yes, does it affects the trust of parties?

.....
.....

Yes [] No []

22 Does councils of elders have Complemenytary positions in some matters during peace building in your County

Yes () No ()

If yes, how does it contribute to fair justice delivery in your county

.....
.....
PART E:GOVERNMENT POLICIES AND PEACE BUILDING IN MERU AND KWALE COUNTIES.

23. Are there government policies in place on peace building in your County?

Yes [] No []

If yes, what are they?

.....
.....

24. What are the government strategies put in place to improve peace building in your County?

Use of kangaroo courts [], Use of government mediators [], Litigation []

Others specify

.....
.....

25. Are these policies and strategies applied by the government efficient and effective?

Yes [] No []

If No, what can be done to improve their functionality?

.....
.....

26. What other policies and strategies in your own opinion should be applied by the government to enhance peace building?

.....
.....

**APPENDIX II: QUESTIONNAIRE FOR FOCUSED GROUP DISCUSSION GUIDE
FOR BOTH MERU AND KWALE COUNTIES**

1. Does political pressure affect the verdict of Njuri Ncheke or Kaya Elders when handling cases in which politicians are involved?
2. Will you be comfortable if lawyers are involved during mediation sessions?
3. Which cases will be handled best by women mediators?
4. What can you propose to the government to do to strengthen ADR in your County?
5. Mediation being a movement sweeping the world over: what will the chief justice do in order to popularize it?
6. In your honest opinion, what are the best practices, which can be infused into the mainstream judicial justice system in Kenya?
7. Most agreements or verdicts passed are not binding. What will the Njuri Ncheke or Kaya Elders do to ensure the implementation has taken without affecting the relationships and harmonious co-existence within the communities concerned?

THANKS FOR TAKING YOUR TIME TO ANSWER THE QUESTIONS

APPENDIX III: KEY INFORMANT INTERVIEWS FOR BOTH MERU AND KWALE COUNTIES

1. Traditional justice systems advocate for punishment (Retributive justice), while ADR advocates for healing and reconciliation (Restorative justice). What activities can you apply /perform to transform the perpetrators?
2. Arbitration has completely been taken by the judicial justice system. What measures can be taken to avoid the same scenario for mediation as we advocate for policy gaps in ADR?
3. How can we rate the success and failures of ADR in the competitive world of Traditional judicial justice systems?
4. Is the police and provincial administration practicing ADR? If yes, can we commission them to be an arm of ADR in helping to sort out many cases before going to court?
5. What has Traditional Judicial System borrowed from ADR to make judicial systems more client-friendly as ADR?
6. In your own opinion, what will be the educational training and ethical standards for mediators as ADR practitioners?
7. What will be the role of government in the management of ADR movement in Kenya?
8. What will be your honest advice to the government and ex-chequer on the creation of ADR centres and to enhance awareness for the smooth propagation of the ADR movement in Kenya?

Thank you for your response

APPENDIXIII: RESEARCH LETTER FROM THE UNIVERSITY

APPENDIX IV:RESEARCH PERMIT FROM NACOSTI

APPENDIX IV: RESEARCH AUTHORIZATION FROM NACOSTI

**APPENDIXV: RESEARCHAUTHORIZATION FROM THE COUNTY
COMMISSIONER,KWALE COUNTY**

**APPENDIX VI: RESEARCH AUTHORIZATION FROM THE COUNTY DIRECTOR
OF EDUCATION, KWALE COUNTY**

**APPENDIX VII: RESEARCH AUTHORIZATION FROM THE COUNTY
COMMISSIONER, MERU COUNTY**

**APPENDIX VIII: RESEARCH AUTHORIZATION FROM THE COUNTY DIRECTOR
OF EDUCATION, MERU COUNTY**