

Law, Religion and Reconciliation in Africa



Edited by
M. Christian Green
Jean-Baptiste Sourou
Célestin Gnonzont



10 THE UNITING POWER OF CUSTOMARY OATHS AMONG COMMUNITIES AFFECTED BY ETHNIC VIOLENCE IN KENYA'S NORTH RIFT

Susan M. Kilonzo¹

You always educated us that once we become grown men, responsible warriors, we need to know and practice the culture of our people. Why is it then that you ask us to slaughter these trapped Kikuyu men, women, youth and children in the very villages we live in? In the very land that feeds us? Are you forgetting our culture? Shouldn't we not preserve the soil and not pollute it with human blood, for it feeds us? How are we going to feed ourselves and our children from the very land that that we are almost cursing with human blood? The oath that we took as warriors contravenes what you are asking us to do. Can we escort our enemies out of our land and execute them elsewhere?²

INTRODUCTION

The narrative in the epigraph above is from a research participant interviewed in West Pokot. He was responding to a question on how culture is sometimes instrumentalised for violence. In the end, he noted that culture can also be a tool for peacebuilding. He gave an example of how traditional education obtained from elders – especially in sessions of oath-taking to bind the warriors to certain observances – aimed for the good of not just those participating in oath-taking, but also the entire community.

Seemingly, indigenous oaths, just like the modern legal oaths, are still relevant among most African communities not only in maintaining and perpetuating violence, but also in reconciling and sustaining peace. This chapter explores the continued use of oaths, especially those that are administered to either unite communities for war or to reconcile communities going through violence or emerging from the same. The arguments in the chapter are therefore guided by the dichotomous role of oaths, to respond to the question on whether customary oaths are still viable as a way of either uniting warriors for violence against the perceived enemies or uniting communities for peace.

Conflicts in the North Rift have been discussed extensively in academic literature. Although the causes of the conflicts may seem diverse, they seem to ultimately speak to resource scarcity and the need for better economic livelihoods. The causes

1 Associate Professor of Sociology of Religion, Faculty of Arts and Social Sciences, Maseno University, Kenya.

2 Interview with Dan by S Kilonzo. West Pokot, Kenya, August 2018. Note that names of those interviewed for this study have been changed to preserve anonymity.

range from cattle rustling,³ the role of climate change,⁴ gender trajectories of the conflicts,⁵ effects of proliferation of arms on the conflicts,⁶ social and economic factors⁷ and the role of state.⁸ Glaringly lacking in this literature is attention to indigenous knowledge systems (IKS) in conflict resolution, and, specifically, the role of the oathing processes as entrusted to community elders in the conflict resolution processes. Literature on role of IKS peacebuilding exists, albeit from different perspectives, cultures and conflict contexts.⁹ Of key interest here is the role of oaths

- 3 See Mahmoud H. 2011. "Conflict and constraints to peace among pastoralists in Northern Kenya", in Baregu M (ed). *Understanding obstacles to peace – actors, interests, and strategies in Africa's Great Lakes region*. Kampala: Fountain, 146-168; Schilling J, Opiyo FE and Scheffran J. 2012. "Raiding pastoral livelihoods: motives and effects of violent conflict in north-western Kenya", *Pastoralism* 2(1):1-16.
- 4 See Tarusarira J. 2022. "Religious Environmental Sensemaking in Climate-Induced Conflicts", *Religions* 13:204; Medina L et al. 2022. *Towards a Common Vision of Climate Security in Kenya*. Rome: CGIAR Climate Security Focus.
- 5 See Kaimba G, Njehia B and Guliye A. 2011. "Effects of cattle rustling and household characteristics on migration decisions and herd size amongst pastoralists in Baringo District, Kenya", *Pastoralism: Research, Policy and Practice* 1(1):1-18; Kimaiyo D. 2016. *Women involvement in cattle rustling between Marakwet and the Pokot communities of North-Western Kenya*. PhD Thesis, University of Nairobi.
- 6 Mkutu KA. 2006. "Small arms and light weapons among pastoral groups in the Kenya-Uganda border area", *African Affairs* 106(422):47-70; Mkutu K. 2008. *Guns & governance in the Rift Valley: pastoralist conflict & small arms*. Oxford: James Currey; Eaton D. 2008. *Violence, revenge and the history of cattle raiding along the Kenya-Uganda border*. Halifax: Dalhousie University; Bevan J. 2007. *Between a rock and a hard place: armed violence in African pastoral communities*. Nairobi: UNDP.
- 7 Leff J. 2009. Pastoralists at war: violence and security in the Kenya-Sudan-Uganda border region. *International Journal of Conflict and Violence* 3(2):188-203; Mahmoud H. 2011. "Conflict and constraints to peace among pastoralists in Northern Kenya", in Baregu M (ed). *Understanding obstacles to peace – actors, interests, and strategies in Africa's Great Lakes region*. Kampala: Fountain, 146-168; Security Research Information Centre (SRIC). 2016. "An assessment of socio-economic impact of conflict in Turkana and West Pokot Counties". Nairobi: SRIC, April; Greiner C. 2013. "Guns, land and votes: cattle rustling and the politics of boundary re(making) in Northern Kenya", *African Affairs* 112(447):216-237.
- 8 Mkutu KA. 2007. "Impact of small arms insecurity on the public health of pastoralists in the Kenya-Uganda border regions", *Crime, Law and Social Change* 47(1):33-56; Mkutu, *Guns & governance in the Rift Valley*; Bolton M. 2017. "How to use the arms trade treaty to address armed violence in pastoralist communities". n.p.:Arms Trade Treaty Academy, Control Arms Secretariat, and Pace University International Disarmament Institute.
- 9 Schirch L. 2001. "Ritual reconciliation: transforming identity/reframing conflict, promoting justice and peace through reconciliation and co-existence alternatives", in Abu-Nimer M (ed). *Reconciliation, Justice and Coexistence: Theory and Practice*. Lanham, MD: Lexington Books, 145-161; Magak K, Kilonzo S and Miguda-Attyang J. 2015. "The Place and Prospects of Indigenous Theatrical Performances in Peacebuilding in Kenya", in McOpiyo L (Guest Ed.) "The Arts and Peacebuilding in Africa: Creative Approaches to Transforming Conflict", *African Conflict & Peacebuilding Review (ACPR)* (1):18-40; Kilonzo S, Gumo S and Omare S. 2009. "The role of taboos in the management of natural resources and peace building: a case study of Kakamega forest in Western Kenya", *African Journal of Peace* 1(2):39-54.

and how they play out, especially in relations between the youth, who are the community warriors and defence system, but who also may be seen as perpetrators of violence by the elders who are the custodians of culture.

To some extent, oaths can be perceived to fall within mechanisms that contribute to informal processes of transitional justice and aid in the conflict resolution, retribution, reparation and accountability.¹⁰ A reading through John Paul Lederach's *Journey Toward Reconciliation and Building Peace: Sustainable Reconciliation in Divided Societies* is a beginning point for interrogating indigenous systems. In this case, oaths have their place in reconciling conflicting ethnic communities or worsening conflicts.¹¹ The key research question that the present study centres on is: How does customary oathing system among the Pokots, Turkanas, Kikuyu and Marakwets exacerbate conflicts or mediate conflict resolution mechanisms between the communities.

This chapter partly relies on an emerging theme of traditional peacebuilding mechanisms, from field data collected in a larger study on, the role of the Catholic Church in peacebuilding processes in Kenya's North Rift region between 2018 and 2020.¹² The study was carried out in five counties, namely: West Pokot, Turkana, Elgeyo Marakwet, Nandi and Uasin Gishu. Although the focus of the larger research was not on the place of traditional or customary law in peacebuilding, data from focus group discussions (FGDs) given by those affected by violence and key informant interviews with Church and development projects leaders showed significant existence of oaths among the communities in question, and the role of the same in both resolving and fueling conflicts. It is from this data that the chapter borrows snippets that exemplify the relevance of three oaths, namely *mis*, *kwanyan*, and *muma*.¹³ Data, which is corroborated with information from other sources, especially related research in the area, is presented using narrative and textual analysis.

10 International Centre for Transitional Justice (ICTJ). 2013. *What Is Transitional Justice?* New York: ICTJ; African Commission on Human and Peoples' Rights (ACHPR). 2019. *Study on Transitional Justice and Human and People's Rights in Africa*. Banjul: ACHPR.)

11 See Lederach J. 1999. *The Journey toward Reconciliation*. Scottsdale, PA: Herald Press. Lederach J. 1997. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, DC: United States Institute for Peace (USIP).

12 The said research project was funded by Templeton Religion Trust, through Nagel Institute of Calvin College, USA.

13 *Mis*, as used by the Pokots, is an oath of secrecy meant to unite the warriors when going out for war. *Kwanyan*, which among the Turkana as well as the Pokot, means small intestines (especially of goat) is meant to for cleansing in the case of warriors who have killed. It may also be used to break an oath that existed before as the chapter will show. *Muma* is a general term for oath that applies among many communities including the Kikuyu, Marakwet and Nandi communities. *Muma* applies when the communities want to enter into social contracts, or like the Pokot and Turkana, to keep certain secrets within the groups partaking of the oaths.

The first section of the chapter discusses the meaning and power of oaths in African communities. This is important; for it sets the tone on the relevance of oaths and how these apply in various contexts. The second section acquaints the reader with the role of oaths in conflicts and conflict resolution, with elaborate cases from the North Rift, explaining how oaths are used to cement engagements in war, but also how the same can be used to resolve conflicts and sustain peaceful coexistence. The third section explores the positioning of oaths within the context of religion, and specifically Christianity, with specific focus on the Catholic Church. From these three key sections, the chapter draws conclusions and makes recommendations that speak to the agenda for peace as spelt out in the African Union Transitional Justice Policy, which encourages a holistic approach to peacebuilding and conflict resolution, with clear emphasis on the need for peacebuilders to understand and engage well with the contexts within which conflicts happen.¹⁴

THE MEANING AND POWER OF OATHS

Oaths are defined as “solemn declarations invoking God as a witness to statements and promises, inviting Him to punish anything false”.¹⁵ Further, the Bible is riddled with covenants that can be equated to oaths and proper oath-taking ceremonies. Although there is a strong indication that oaths have a genesis from tradition, it is not just in traditional societies that oaths apply. Oaths are also in use in contemporary legal fields, as well as religious realms. According to theologian Walter Burkert, “The function of an oath is to guarantee that a statement is absolutely binding, whether it be a statement about something in the past or a declaration of an intent for the future.”¹⁶ Kofi Agyekum, a linguist, shows that “oath-taking dates as far back as the Sumerian civilisation (4th to 3rd millennia BCE) of the ancient Middle East, and to ancient Egypt.”¹⁷ At that time people often swore by their life. *Ankh*, the Egyptian term for oath, means “an utterance of life”.¹⁸ Oaths were also taken by invoking sacred watercourses of the underworld, combining associations with water and lightning.¹⁹ Agyekum further observes, “Oath-taking in Europe and the Near East originated from religious customs, but it became extended to secular settings, especially in law courts and other legal proceedings, with the particular usage varying from country to country.”²⁰

Oathing can be a private or public affair, with the former referring to oaths between two people or within a small group and the latter to the larger community, to

14 African Union (AU). 2019. Transitional Justice Policy. Addis Ababa: African Union.

15 *New Geneva Study Bible*. 1995. Nashville: Thomas Nelson, 670.

16 Burkert W. 1985. *Greek religion*. Raffan J (trans). Oxford: Basil Blackwell, 250.

17 Agyekum K. 2004. “Ntam ‘reminiscential oath’ taboo in Akan”, *Language in Society* 33: 320.

18 Agyekum “Ntam ‘reminiscential oath’ taboo in Akan”, 320; Mallory JP and Adams DQ. 1997. *Encyclopedia of Indo-European culture*. London & Chicago: Fitzroy Dearborn, 409.

19 Mallory and Adams, *Encyclopedia of Indo-European culture*, 409.

20 Agyekum “Ntam ‘reminiscential oath’ taboo in Akan”, 319.

uphold certain promises and commitments to each other. Among the Kamba of Eastern Kenya, *ndundu* oath is either taken publicly or privately and in secret. Publicly, it is done by community members to give assurances that no one in the community will ever use witchcraft to harm their fellow community members. Privately, people take the *ndundu* oath to keep secrets amongst themselves. If the promises made during oathing are not adhered to, whether in the case of public or private oathing, there are consequences. For instance, one can suffer mental illness, mysterious loss of property, death in the family or their own death if the conditions set in the oathing process are not respected. If these consequences result, the remedy is through *Kúúw'a kithitu* (oath cleansing) through a religious ceremony and by a qualified religious leader.²¹ Therefore, oaths in African traditional religion (ATR) are significant components of religious practices. They are considered sacred and inviolable, with the belief that the gods or ancestors would punish anyone who violates them.²²

Oaths in Africa carry historical weight, stemming from the continent's diverse and ancient cultures. From the Maasai of East Africa to the Yoruba of West Africa, oaths have been utilised as a sacred covenant to ensure the truthfulness of individuals, especially during conflict resolution. In many African societies, oaths have been administered by respected elders, spiritual leaders, or diviners, imbuing the process with a sense of authority and spiritual influence.

Oaths are taken in various forms, for various reasons or to serve different purposes, depending on the context, culture and the religious practices of a particular society. They are taken to affirm the truthfulness of a statement, to establish the innocence of an accused person or to bind individuals to a particular obligation or commitment. Among the Yoruba of Nigeria, oaths are used to establish trust between individuals and are believed to have the power to bring harm to those who break them.²³ Among the Kamba of Eastern Kenya, as noted above, they are taken to preserve safety of community members through swearing that one will not cause harm on the other. They are also used to keep group or community secrets.²⁴ Further, among the Kamba, they may be used as a way of getting into a marriage covenant, to unite couples under the witness of the larger community, in which way they serve as some form of binding covenant.²⁵

Overall, oaths in ATR are seen as a way of establishing trust, accountability and social cohesion. They are believed to have the power to invoke the supernatural, which reinforces their significance and importance in the religious practices of

21 Muliro MN, Theuri MM and Matheka RM. 2015. "Traditional Oath Administration and Cleansing in Africa: The Case of the Akamba Ethnic Group in Kenya", *The International Journal of Humanities & Social Studies* 3(6):211-217.

22 Badejo D. 1996. "The meaning and implications of oaths in African traditional religion", *Journal of Religion in Africa* 26(1):44-61.

23 Abimbola, K. 2006. *Yoruba culture: A philosophical account*. n.p.:Iroko Academic Publishers.

24 Muliro et al, "Traditional Oath Administration and Cleansing in Africa".

25 Muliro et al, "Traditional Oath Administration and Cleansing in Africa".

many African societies. For example, in some African societies, an accused person may be required to swear an oath of innocence to prove their innocence. Among the Kamba of Eastern Kenya, oaths are often used to establish the innocence of an accused person or to confirm the truthfulness of a statement²⁶ through very crude means. To reveal the culprit of deceit or theft, methods such as licking a hot-burning iron are used. The belief is that if the accused is innocent, the tongue will not burn, but if they are guilty, it will. It may also involve the use of symbolic objects, such as a calabash or a spear. Similarly, in Yoruba culture, oaths are taken to confirm the truthfulness of a statement or to establish the innocence of an accused person. The consequences of violating the oath are well understood, and may include punishment or ostracism from the community. Such oaths are taken in the presence of community leaders or elders, who are believed to have the ability of divine sanctioning and endowed with supernatural power to oversee such.

Oaths are also used to reinforce social norms and values in African societies, which can help prevent conflicts from arising in the first place. By binding individuals to a set of values and principles, oaths can help promote cooperation and mutual respect, which are essential components of conflict resolution. However, there are concerns about the use of traditional oathing systems in peacebuilding. Some critics argue that oaths can be manipulated by those in power to promote their own interests, and that they can be used as a means of silencing dissent.²⁷ Additionally, there are concerns that traditional oaths can be exclusionary, particularly towards women and marginalised groups.²⁸

The taking of an oath is usually a solemn and formal ceremony that involves the use of specific language, gestures or objects, such as sacred stones, to reinforce the seriousness and sacredness of the act.²⁹ The swearing of an oath in ATR is often accompanied by the use of symbolic objects or actions, such as the sacrifice of an animal, pouring libation or invoking the name of a deity or an ancestor. In some cases, oaths may be taken in public spaces, such as a marketplace or village square, to ensure that they are widely witnessed and respected. The sacredness of oaths is seen in the invocation of names of ancestors, spirits or deities to witness the oath-taking.³⁰ Oaths are often taken in the presence of a religious leader, elders, or a group of witnesses who represent the community. These leaders are responsible for ensuring adherence. They also ensure that the consequences of violating oaths are understood and, if need, be executed upon those who violate.

26 Kitonga MK and Ngumbau VM. 2017. "African Traditional Oaths and Conflict Resolution in the Kamba Community of Kenya", *International Journal of Humanities and Social Science Research* 6(2):13-20.

27 Uvin P. 2009. "Traditional oaths, modern justice: The use of oaths and affirmations in African courts", *Journal of African Law* 53(2):203-222.

28 Marealle WN. 2019. "The role of traditional oathing systems in promoting peacebuilding in Africa", *Journal of Peacebuilding and Development* 14(2):20-31.

29 Gbadegesin S. 2004. *African philosophy: Traditional Yoruba philosophy and contemporary African realities*. Peter Lang.

30 Mbiti JS. 1990. *African religions and philosophy*. Second Edition. London: Heinemann.

Oaths in the Kenyan context were useful in the struggle for independence. The Oath of Understanding (*Muma wa kuruta andu urimuini*), for instance, instructed the Kikuyu of the necessity of opposing the Europeans. The appurtenances used were a black lamb, soil and green bananas. The blood of a black lamb represented the blood to be shed by the Africans, the soil the land to be regained and the bananas the fertile colour of the regained land. The oath went as follows:

The oath of showing the people that the European in Kenya was treating our people as slaves. The European in Kenya is a thief who has stolen our land and freedom. The European has made us into slaves. We must oppose him using pacifist methods; if these fail, then we must fight; if this also fails, then we must pray to God for deliverance. From now on, the young men and women must steal weapons. With these weapons we shall fight and kill the leaders and settlers.³¹

Subsequently, oath-taking in situations of conflicts is not just for the sole purpose of peacebuilding but also for unity to fight the enemy and win. The relevance of oaths for peace, and with reference to Tiv people of the Middle Belt in Nigeria, is explained by scholars of philosophy from Akwa Ibom State University in Nigeria who show that *Swem*, a traditional oath of the Tiv people has magical forces and is used for the settlement of disputes and the provision of justice. This *Swem* institution is therefore used in maintenance of social order among community members.³²

In this chapter, the focus is on oath-taking processes that emphasise unity, reconciliation and forgiveness, and promoting healing among the parties involved, but also the need to show how the reverse, oathing for war, works. By adhering to the oath, individuals show their commitment to reestablishing trust and rebuilding relationships, thereby strengthening community and societal bonds. From the study findings, there is evidence of oath-taking aimed at resolving conflicts and maintaining community's peace. However, the persistence of conflicts in the region is an indicator that there may be structural underlying issues that still need to be addressed. This implies that the indigenous knowledge systems should find place within other existing mechanisms of peacebuilding for a holistic redress to conflicts that result into violence in the region.

OATHS FOR RESOLVING CONFLICTS AND PEACEBUILDING

For peacebuilding and conflict resolution, traditional oathing systems play an important role in promoting peace and justice in many African societies. These systems involve the use of specific words, rituals and objects, and they are taken by individuals to bind themselves to a particular promise or agreement. In some African countries, traditional oathing systems have been incorporated into the legal

³¹ Mau Mau: Black My Story. 2020. "The Oath of Understanding", Facebook.com, 7 May. [Accessed 2 April 2023].

³² Uwaezuoke O and Odominyan E. 2023. "African Traditional Oath as a Mechanism for Peace and Social Order", *Journal of Applied Philosophy* 21(2):56-69.

system to promote justice and accountability.³³ In the peacebuilding process, oaths are used to promote accountability and trust in communities affected by conflict.³⁴ Another example of the use of oaths in conflict resolution is the practice of *mubaya'a* among the Hausa people of Nigeria. *Mubaya'a* is a form of oath-taking that is used to establish trust and cooperation between individuals. It is often used in commercial transactions or as a means of resolving disputes between individuals or groups. The oath is taken in the presence of witnesses and may involve the exchange of symbolic objects or actions, such as the spitting of water or the breaking of a kola nut.³⁵

Seemingly, oaths have played a significant role in African societies for centuries, serving as a potent tool for conflict resolution and fostering social cohesion. Rooted in cultural traditions and spiritual beliefs, oaths hold immense significance in African communities, serving as a solemn commitment to honesty, accountability and justice. Throughout history, various African cultures have employed oaths to settle disputes, restore harmony and promote peaceful coexistence. For example, traditional oaths were used as part of Sierra Leone's Truth and Reconciliation Commission to help promote accountability for crimes committed during the civil war.³⁶ In this regard, the African Union, through its Transitional Justice Policy, recommends for a multiplicity of approaches to peacebuilding and development, that take care of contextual issues including holding communities and individuals accountable. The policy specifically recommends the use of functioning local reconciliation mechanisms among the various sectors of the community; and Institutional and legal reforms that recognise alternative and traditional dispute resolution mechanisms in matters of accountability and reconciliation.³⁷

USE OF OATHS IN SITUATIONS OF CONFLICTS: STUDYING THE NORTH RIFT CONFLICTS IN KENYA

The North Rift region of Kenya is largely characterised by pastoral communities. Because of the harsh weather that is experienced during dry seasons, the livestock in most areas die, especially where there is scarcity of water. In order to replenish stock, communities raid from each other. The raids are fatal and result in loss of life and property. In the North Rift conflicts, oaths can serve two purposes: they can be used to unite warriors for war, in which case the oath of binding and secrecy is administered, or they can be used to unite communities for conflict resolution and peacebuilding. The sections below explain this.

33 Marealle, "The role of traditional oathing systems"; Uvin, "Traditional oaths, modern justice".

34 Marealle, "The role of traditional oathing systems".

35 Tade AO. 2016. "Mubaya'a (Oath-Taking) among the Hausa: A Socio-Legal Perspective", *Journal of Law, Policy and Globalization* 47:52-59.

36 Marealle, "The role of traditional oathing systems".

37 See AU, Transitional Justice Policy.

The uniting power of mis (among the Pokot) and kwanyan (among the Pokots and Turkana)

The North Rift region has for a long time been characterised by conflicts among the Pokots, Turkana and Marakwet ethnic groups. These conflicts can in certain instances be intra-ethnic, as in the case of 2023 conflicts, where bandits within one ethnic group killed, raided animals and terrorised their fellow ethnic group members; otherwise, historically, the region has experienced inter-ethnic conflicts.³⁸ Research has warned against pathologizing the conflicts and romanticizing the role of old traditions, noting that there are structural issues that must be dealt with if the conflicts are to be fully resolved.³⁹ This however is not to say that traditional approaches to fuel or quell violence are inexistence.

The power and aim of oath-taking in uniting the warriors is mainly to keep secrets that relate to warriors' strategies for attack. Through the oaths, the warriors also receive blessings from the elders, since it is the elders who administer the oaths and help the warriors form a covenant with each other. Among the Pokot, the warriors, through the elders, receive *mis*, an oath that prepares them for war with their perceived enemies.⁴⁰ The enemy, in this case, is not in the sense "a community" that has aggrieved them in any way, but a community that may have more cattle than they do, which then necessitates a raid, in order for the Pokots to replenish their dwindling stock. *Mis* is therefore taken by warriors as a means of declaring, secrecy of their strategies in inter-community wars over cattle resources. It also carries the implication that, with the blessings of the elders, the warriors should go attack, raid and deliver stock back to their community. The warriors, having been summoned by elders to two or three meetings and convinced to participate in the raids, are invited to the final meeting. This is referred to as *kwokö luk*, a ceremony in which they receive spiritual blessings. This final meeting is also meant to ensure that their technical tools are sufficient and reliable. The *kwokö luk* is elaborate and involves a number of taboos for the warriors going out on war. Bollig, a European anthropologist while studying oath-taking among Pokots, explains that "none should have intercourse with a woman and no one should be engaged in an open quarrelling."⁴¹ Men who violate against these taboos are excluded. While explaining the procedure of the raids, social and cultural anthropologist Michael Bollig observes that:

38 Bollig M. 1990. "Ethnic conflicts in North-West Kenya: Pokot-Turkana Raiding 1969-1984", *Zeitschrift für Ethnologie* 115:73-90; Lines KP. 2009. *Is Turkana Cattle Raiding a Part of Turkana Ethnicity? An Anti-Essentialist View of both Internal and External Factors for Ngingoroko*. Doctoral Thesis. Wilmore, KY Asbury Theological Seminary; Kilonzo S. 2021. "Silent peacemakers: grass-roots transitional justice and peacebuilding by women in Kenya's "North Rift conflicts", *Journal of the British Academy* 9(2):53-74; Medina L et al. 2022. *Towards a Common Vision of Climate Security in Kenya*.

39 Devine P. 2016. *Persistent conflict between the Pokot and the Turkana: causes and policy implications*. Unpublished PhD Thesis, University of Nairobi; Bolton, *How to Use the Arms Trade Treaty*.

40 See Kilonzo, "Silent peacemakers".

41 Bollig, "Ethnic conflicts in North-West Kenya", 75.

After the final blessing of the *kwokö luk* the raiding group sets off soon. The *luk* marches without taking many precautions. Their attack is an outright invasion ... Usually the *luk* will attack shortly before dawn. If there is a police post nearby, they equip some 20 men with guns and plenty of ammunition to encircle the police station and prevent police officers from getting out ... The raiding group divides into smaller groups of 10 to 20 men. They plunder the homesteads and drive away livestock. Obviously not every raid results in many people getting killed.⁴²

In case one of their men is captured, they will do all they can to get their kin back, dead or alive.

One such instance was encountered during field research in an interview with a key informant and mediator of the warring groups. The mediator received a call from a Pokot elder, alerting him that the Marakwet had captured, killed and kept the body of a Pokot warrior in a forest. The elder warned the mediator that the Pokot warriors were planning a deadly attack and said it would help if the mediator could negotiate for the body to be released. The mediator had to leave midway through the interview. Just before he left, he was quick to point out that the act of rescuing bodies and ensuring that they are given a decent burial is part of the oath-taking processes of the warriors. It would therefore be a taboo for the Pokot warriors to abandon one of their own, even if he were dead.

These oath-taking practices and taboo systems of the Pokots are more or less similar to the practices among the Turkana. The warriors have to be prepared in a ceremony in which prayers of blessing and protection for the cattle raiders, as well as the cattle, are made by elders and traditional religious leaders.⁴³ The Turkana elders also consult the fortune tellers not just to pray for the warriors, but also to warn them of any bad omens that may await them. They do this by consulting the spiritual world and performing rituals in line with protecting the warriors and empowering them to put up a good fight. The raiders come back after killing, and as such are considered unclean. They are not fit to integrate into the community and require some form of cleansing to drive away the spirits of the dead and the uncleanness or contamination from the blood of the dead, before they settle in to share the loot. peacebuilding and natural resource researcher Leonardo Medina and research colleagues⁴⁴ explain that:

when they return home, they are stopped somewhere and the elders and the fortune tellers are called to bless them before they come into the community. They are cleansed because they have killed so many people, so the elders cast out all the bad spirits and demons of those they have killed. They slaughter some of the livestock they have brought from the raid and use the blood to chase away the demons and the bad omen.

42 Bollig, "Ethnic conflicts in North-West Kenya", 75.

43 Lines, *Is Turkana Cattle Raiding a Part of Turkana Ethnicity?*

44 Medina et al, *Towards a Common Vision of Climate Security in Kenya*, 19.

Besides the blessing and cleansing of the warriors by the elders, women also play an important role in encouraging the young men to take part in the violence⁴⁵ They view this as part of growing their economic livelihoods but also as a sign of bravery for their young men.

Once the raiding is done, Bollig explains how the plunder is shared among the Pokot. He says:

There are no strict rules governing the separation of the loot...those who went for the first spying expedition should get a large share, so they are allowed to select first. Then those who own guns are allowed to take out quite a bit more than those who are armed with a spear only... Usually everybody tries to grab as many animals as he thinks are appropriate and tries to get away as soon as possible. Some few animals will go to the prophet and the ritual elders who ensured success with their blessings.⁴⁶

Although one would argue that the elders and religious leaders should act in the best interest of everyone and work towards uniting the community, seemingly, in the case of these pastoralists, oaths that regard the “welfare” of the concerned communities, whether they are harmful or otherwise, seem to be encouraged, by the elders, who are mainly men, and women as well. The argument is that they hustle and rustle to provide befitting livelihoods for their community and families. With the changing economic times and acquisition of more complicated weaponry by the warriors, recent trends of raiding are more fatal.⁴⁷

The uniting power of muma, mis and kwanyan for conflict resolution

In several encounters with research participants, while responding to the question of why the government is unable to deal with ethnic conflicts in the region, the response was that the kind of war going on in the North Rift is riddled with complex causal factors, one of which is culture, and as such, only the locals seem to know the solutions well. This resonates with Michael Bollig’s findings, in which he explains that “several times government officials tried to make peace between Turkana and Pokot to no avail”.⁴⁸ The elders were then held to sanction the peace agreements with their most effective blessings and oaths – *muma* among the Kikuyu and Nandi or *kwanyan* among the Pokot. Even then, at the time, this did not ensure the success of an agreement.

However, research underlying the present study, revealed that the oaths and peace pacts, as sanctioned by the elders and with the help of a Catholic bishop, the late Bishop of Eldoret Cornelius Korir, seemed to work in certain instances. Once oaths

45 Bollig, “Ethnic conflicts in North-West Kenya”; Medina et al, *Towards a Common Vision of Climate Security in Kenya*.

46 Bollig, “Ethnic conflicts in North-West Kenya”, 76.

47 Medina, *Towards a Common Vision of Climate Security in Kenya*, 18; Bolton, *How to Use the Arms Trade Treaty*; Mkutu, *Guns & governance in the Rift Valley*.

48 Bollig, “Ethnic conflicts in North-West Kenya”, 75.

and peace deals are signed, although the peace might last for only one or two years before violence erupted again, there would at least be reprieve for communities. One such peace pact through oath-taking between the Pokots and Marakwet in October 2015 led to a calmness in the area until December 2016. Afterwards, when drought started ravaging the area, the Pokots started encroaching upon the Marakwets, as reported by one coordinator of a church peacebuilding project:

By the end of the first year of the peace pact, the communities had nothing to refer to for sharing resources and therefore while traditionally the elders could meet and discuss ways of sharing the resources, it could not be possible due to the past mistrust and conflict that had happened before, hence the forceful entry of herders into other communities' lands with disregard to traditional rules of engagement. This then generated to violent conflicts, therefore giving cattle rustlers the leeway to steal, maim and uproot people from their habitat.⁴⁹

As we observed, "Oaths have been culturally used to prevent wars. Once an oath is taken with the aim of stopping conflict, if there is a need for men to go back to war, only another oath can be used to neutralise the first one. If they go against the cease-war oath, calamities befall them and the community at large."⁵⁰ Indeed, the research showed that in 2015, at Kainuk, along the West Pokot-Turkana counties' border, and which is a hotspot of cattle rustling an oath had to be officiated by both Pokot and Turkana elders to end violence between two ethnic groups who had been doing erratic raids of cattle from each other, causing death and destruction of property. However, the Pokot warriors had already partaken of the *mis*, which had a binding role to unite them for war, with promises made to ritual elders to bring the loot of raids home for sharing. Thus, the first oath among the Pokot had to be broken by another oath through a *kwanyan* ceremony.⁵¹

Significantly, the mediation efforts were led by Bishop Korir, who had worked on peacebuilding for the communities in the region for a long while. Being an outsider to the Pokot community, he had to be initiated as an elder first, in order help the elders administer the *kwanyan* oath. He underwent all the ritual processes that a Pokot and Turkana man has to go through before they are allowed to join in as an elder. The twelve elders from the different Pokot clans had to be called in to initiate the bishop before the *kwanyan* ceremony was officiated.⁵² Once Bishop Korir was initiated and *kwanyan* administered, the mediation process took quite a short time and an agreement for conflict resolution was brokered. The bishop convinced the elders to consider involving women and youth in their discussions regarding conflict resolution and peacebuilding processes, noting that they were either equally

49 Interview with Ken by S Kilonzo. Near the Turkana-West Pokot border, Kainuk, Kenya, 13 November 2018.

50 Kilonzo, "Silent peacemakers", 66.

51 Kilonzo, "Silent peacemakers", 66.

52 Kilonzo, "Silent peacemakers".

or even more affected by the conflicts. With such agreements in the 2015 case, the killings ceased and dialogue began among the aggrieved communities.⁵³

Seemingly, the use of oaths in African traditional religion (ATR) for conflict resolution is a significant aspect of traditional justice systems. In the context of the communities in the North Rift, the taking of oaths is viewed as a way to deter individuals from engaging in wrongful behavior and to ensure that they adhere to the agreements made during mediation processes and conflict resolution.⁵⁴ The oaths also seem to serve as a means of establishing trust and credibility between conflicting parties through a solemn promise to abide by certain rules or agreements.⁵⁵ The belief is that those violating the oaths will be punished not just by the elders, but also by the gods. In this context, oaths have been used to establish the truth in disputes and to hold individuals accountable for their actions. Here one must also be keen to note the power of the elders. They have the dice in their hands and can turn it at will. If they feel that the warriors should go back and loot, all they need to do is to break the *kwanyan* oath and allow for *mis* to be taken again to allow for rustlings to continue. This then becomes a cycle of non-ending violence.

On gender issues, the *mis* and *kwanyan*, which seem to be male-dominated, can be contrasted with the *mato oput* rituals in northern Uganda, which pay attention to the role of women.⁵⁶ In some Ugandan *mato oput* meetings and rituals that contribute to the observance of *mato oput*, while men are more active in the *ekiriket* peacebuilding meetings that handle more complex matters of governance, women are active in the *ekoi* (sharing of information) and *etem* (organising of meetings) processes.⁵⁷ Such gender dynamics are important in informing indigenous societies and peacebuilding actors of the role of gender in cultural observances and how to negotiate for a semblance of equality in such communities on conflict resolution issues.

Among the Pokot and Turkana in Kenya, the fact that women are not quite involved in the oathing processes, does not mean that they have no power in conflicts and peacebuilding processes. The power of women among the Pokot, in the use of the *legitio*, a belt used to tie women's wombs after they deliver, is evident. A man cannot go to war when the wife has this belt on. This is why, if women in this community want to punish the men, then they untie the belts when the men have gone on the raids. The belief here is that once the belts are untied, the men cannot survive the

⁵³ Kilonzo, "Silent peacemakers".

⁵⁴ Adeniyi O. 2017. "The Role of Oath Taking in the African Traditional Justice System", *Journal of African Studies and Development* 9(2):1-9.

⁵⁵ Salami RA. 2017. "Conflict resolution in African traditional societies: A comparative analysis of selected communities in Nigeria and Ghana", *Journal of Conflict and Security Law* 22(3):391-413.

⁵⁶ Kilonzo, "Silent peacemakers".

⁵⁷ See Langole S. 2014. "The Significance of Indigenous Peace Building Initiatives as Non-formal Peace Education Systems in Northern Uganda", in Kilonzo S and Njageh A (eds). 2021. "Alternative Approaches to Peace Building in Africa", *Journal of International Politics and Development (JIPAD)*, Special Edition 12(2):85-104.

opponents' attack. Further, the warriors listen to their mothers, and as already noted, women play a crucial role in encouraging their sons to take part in the raids. Subsequently, engaging women in peacebuilding processes and conflict resolution, ensures coherence and a levelled platform to negotiate for the right strategies.

From the discussion above, it should be evident that oaths may be used to justify acts of violence or to perpetuate harmful cultural practices, including subordination of women. However, when properly applied, oaths establish the truth and hold individuals accountable for their actions.

THE DUALITY OF OATHS AND ROLE OF CHRISTIANITY IN CONFLICT RESOLUTION

From the discussion above, one would wonder how it is that churches can participate in customary laws that speak to violence or conflict resolution. What permits the church leaders to engage indigenous practices? We have encountered a bishop being initiated as an elder, participating in all the rituals involved and helping the community elders to administer oaths. His goal was to help in the negotiation processes, to end the killings and to work towards peacebuilding. Further, at a focus group discussion at a Catholic Church in Uasin Gishu county, an area characterised by ethnic violence among the Kikuyu and Kalenjin, we learnt that the Church was preparing to administer *muma* for Kikuyu and Kalenjin men. The oath was said to be the final deal that would deter anyone from shedding human blood, after the two groups had been engaged in ethnic cleansing violence, with the Kalenjin pushing away the Kikuyu, whom they argued did not belong. (The trigger of this violence was politics of general elections in the country in 2007.) In these preparations, the Church was taking the lead, with the priest on the frontline. They explained that this was the final seal of a social contract for the two communities to cease war and engage in community development as good neighbours.

The question that arises from these experiences has to do with the juxtaposition of the two cultures – customary law and religion. When we interviewed a priest on the Church's position on the use of oaths and other indigenous practices, as a way of uniting communities, the priest's response was straightforward, in the form of a question: "What is the lesser evil? To continue to witness the killings, or to engage their culture in resolving the disputes?"⁵⁸ The priest further argued, "We cannot completely uproot ourselves from people's culture, and their laws of resolving disputes. All these people are Christians, but they live within a culture." According to H. Richard Niebuhr, there are three possible relationships between the Church and culture: "Christ within Culture", "Christ against Culture", and "Christ above Culture."⁵⁹ In the context of oaths and the position of the Catholic Church in the North Rift, Christ seems to be within culture. The Church is able to accommodate

58 Interview with Fr. Patrick by S Kilonzo. Sacred Heart Cathedral. Eldoret, Kenya, 17 November 2018.

59 Niebuhr HR. 1958. *Christ and Culture*. New York: Harper & Brothers.

cultural beliefs and practices, and where need be allows for Christians to engage the cultures for the welfare of the broader community. For Niebuhr, Christ within culture argument exemplifies that Jesus is part of the cultural and social heritage that must be transmitted and conserved, thus, “Christ of Culture”.

Further, the Church seems to be also cognisant of the policies that encourage indigenous approach to peacebuilding. The African Union Transitional Justice Policy⁶⁰ points out that peacebuilding frameworks should be context-specific, drawing on society’s conceptions and needs of justice and reconciliation. The policy particularly highlights consideration of the following actions, among others, by peacebuilders:⁶¹

- a. Support and respect community-based accountability mechanisms that seek to foster integration and reconciliation;
- b. Explore alternative and non-formal dispute resolution mechanisms where necessary;
- c. Integrate generic African practices into international norms and standards that would enhance international commitment;
- d. Recognise the contribution of positive traditional practices and customary norms in Africa that have proven to be useful complements to criminal prosecutions.

CONCLUSION

The use of oaths as customary laws to address ethnic conflicts in Kenya’s North Rift region, seem to work in favour of both violence and conflict resolution. The way in which the oaths work seems to entirely depend on the custodians of the cultures as well as religious leaders. Power control and relations are at play. The leaders seem to possess some good amount of command, power and respect within these communities. If the examples cited above oaths seem to resolve conflicts, as seen in the case where an oathing process led to peaceful co-existence for over one year, then these traditional practices should be given a change to promote cultivation of peaceful and inclusive societies. It remains relevant for peacebuilding practitioners to engage indigenous approaches for conflict resolution and peacebuilding among the warring communities. This is especially the case if the indigenous practices can be inculcated in peacebuilding efforts for positive peace that addresses structural issues, such as the root causes of violence, as well as strengthening institutions for social justice.

While the indigenous methods of conflict disruption, prevention and resolution work within certain ethnic communities, and inasmuch this may be useful for only these communities that share in these beliefs and practices, it remains a challenge to implement the same for cross-ethnic or cross-national conflicts. International relations and peace scholar Muema Wambua, by use of examples from the *gacaca courts* in Rwanda and *mato oput* among the Acholi in Uganda, shows the limitations

⁶⁰ AU, Transitional Justice Policy.

⁶¹ AU, Transitional Justice Policy, 12.

of such approaches and argues that in the case of multi-ethnic communities, the identity discourse would not allow for the use of these approaches to conflict resolution.⁶² The use of the traditional mechanisms of conflict resolution has to be contextual. Further, there is need to consider the conflicts that such approaches may have with the legal judicial laws. There has to be some kind of a common ground that allows for agreement between the judicial law and indigenous customary practices in a way that is not antagonizing.

⁶² Wambua M. 2021. "Historical injustices and transitional justice interventions in Kenya: victims' and interveners' experiences and perceptions", *Journal of the British Academy* 9(2):75-102.