

INDIGENOUS GOVERNANCE

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ABSTRACT

Purpose of the study: Governments in Africa have a wealth of indigenous governance systems practiced in rural communities in Kenya. The indigenous systems that are functioning in Africa are hardly recognized by the existing government. Thus, the study objective is to analyse the similarities and contrasting areas in the two-governance system for transformed governance.

Research methodology: The study relied upon the existing literature to make inferences concerning the current study.

Findings: Fundamental to this shift is an understanding that indigenous governance exists and is practiced by Meru Community (Njuri -Ncheke). The formal institutions of contemporary governance already accommodate indigenous governance in various forms albeit implicitly. The study anticipates that contemporary indigenous policies are, ultimately, only as strong as the framework of governance that supports them.

Conclusions: The type of governance that existed and how such modes of governance were ultimately controlled by the people and the gods go a long way to show the ontological connection between the societies and the laws that bound them.

Recommendations: The article recommended that there need to be a conceptual shift in how we understand the framework of Contemporary governance (County Government) of Meru and the indigenous governance of *Njuri Ncheke*.

Keywords: *Contemporary governance, Indigenous governance, Njuri Ncheke, Meru Community Kenya*

INTRODUCTION

In the year 2010, the Kenyans voted for a constitution with an organizational structure as an express recognition that decision-making about the government services, to communities required the involvement of indigenous peoples at the highest levels. The previous constitution abolished the system of representation and avoids any mention of indigenous governance. The current study challenges the policymakers to advocate a focus on practical measures to alleviate indigenous disadvantages in Meru. The article argues that to achieve practical results, government policies must consider how best to facilitate the inevitable exercise of indigenous governance at the national and county levels (Diamond, 2007). The article draws attention to the continuing importance of indigenous governance in Kenya's Constitutional framework. The article emphasizes comparative analysis between the indigenous governance and contemporary governance in Meru County and their practical implementation. The distinction is captured broadly, in the difference between government and governance.

The article does not focus on the need for formal recognition of indigenous government within the constitution of Kenya but county legislation, although this may be an important part of any strategy to ensure indigenous governance is properly accounted for in government law policy. Instead, the article makes a case for lawmakers to recognize that indigenous governance already exists in some counties without legal recognition. The study proposes that the *Njuri Ncheke* must be accounted for in developing laws to protect and maintain indigenous social, cultural, and political rights (Kimenyi, 2002). It is concerned with how the relationships between groups and institutions operate within the laws of the nation, and not only how the county implements its legislation. The article draws on two theories by the Functionalist Theory and the Evolution Theory of Governance as advanced by Talcott Parsons and Ferdinand Tonnies respectively. The Evolution Theory argues that traditional societies are seen as relationship-based and functionalists' theory as a market relationship-based which is a contrasting difference and one practical argument to substantiate the claim that indigenous governance needs to be taken seriously as a part of the constitutional framework of the County of Meru.

The evolution theory is a theoretical approach to the place of law in society, it focuses on the practical reality that society is constituted of co-existing communities with allegiance to laws other than those of the central government (Aseka, 2005). The theorist argues that for the formal legal system to reflect the normative relation that develops in the interaction of the different laws, customs, and systems of governing of these communities. Second, the article

argues that the political legitimacy of the society as a whole is enhanced when the political integrity of different social groups within the society is recognized. The article draws on a strand of liberal and communitarian philosophy, which makes the case for formally recognizing community, as well as individual interests in the political framework of the nation.

The study accepts that, in practical terms, supporting the governance mechanisms of different groups in society is, in itself, a measure to improve the social and economic conditions of those groups. Functionalists' theory emphasizes of quality of governance structure as one of the key indicators for successful development and economic well-being within indigenous communities. Aristole (2004), provides a similar definition for governance, focusing on control over the making of political rules; governance is the stewardship of formal and informal political rules of the game. The point that the article underlines is that how should the state facilitate the autonomy and effectiveness of indigenous governance in the relationship between indigenous communities and county government.

STATEMENT OF THE PROBLEM

Africa as a continent is in dire need of a political system that will affect the life of the people economically and socially. Traditional legal knowledge (customary laws and traditional institutions) in the mid of 20th century and before has been considered by most African states as archaic, uncivilized, and an obstacle to development. However, recently some African states and scholars seem to have recognized the drawbacks of discriminating policies towards customary laws and traditional institutions. A study carried about the comparison of indigenous governance with contemporary governance (Akoth, 2018) argues that indigenous governance could be used as an alternative system to contemporary governance in Ethiopia. The researcher intends to show the gaps in the *Njuri Ncheke* system and the contemporary governance system with a view of establishing key values and principles that can be integrated for transformed governance.

What is Governance?

Governance has been defined as the process of making da decisions and implementing the decisions (Preston, 1997). Dimension of governance includes policy development, use of authority and power, issues of equity and accessibility, the role of different stakeholders, representation, voice and advocacy, institutional structures, hierarchical, multi-dimensional, and horizontal and vertical power levels. Further, the attributes of governance are accountability, influence and persuasive elements, responsibility, legitimacy, and democracy

(Temple *et al.*, 2013). The interactions among structures, processes, and traditions that determine how power and responsibilities are exercised, how decisions are taken, and how citizens and other stakeholders have their say (Oxhorn, *et al.*, 2004). The concept of governance is multi-dimensional as it moves between aspects of institutions, actors who are individuals and groups, localities and discourses (Othman, & Mukandala, 1994).

Institutions related to the formal and informal rules, the laws, policies, and social-cultural norms which shape social behavior (Oloka-Onyango, 2010). Informal institutions are socially shared usually unwritten rules, and created, communicated, and enforced outside official channels (Preston, 1997). The presence of informal and formal institutions is linked to cultural traditions and recognized as one of the factors that have set indigenous people apart. Both indigenous cultural governance, and nation-state forms of governance, in all their diversities, influence governance arrangements for the many new indigenous organizations that is formed globally as a result of the increasing recognition of territorial and other rights.

Indigenous Governance System

The section is about reviewing literature relating to indigenous governance with particular emphasis on the comparison of *Njuri-Ncheke* governance and modern governance. Indigenous governance is a system of governance that is not transplanted or adopted from other countries but formulated and practiced by the people who are native to the specific land. According to Zurcher (2013) governance is defined as a way in which a people live best together or the way a people has structured their society about the natural world. Indigenous political systems were and are complex structures of governance and they were designed to fit with the realities of a people territory and to provide opportunities to make interpret and enforce laws in a consensual manner.

Indigenous orders are composed of unwritten customs and practices. Indigenous systems belong to the people themselves, such authority orders were not subject to the authority of another nation or other government. An indigenous governance (*Njuri-Ncheke*) arrangement in this study is linked to cultural traditions that are highly diverse, with a connection to unique language, culture, environment, and practices. They nevertheless share some characteristics that distinguish them from the nation-state and corporate governance (Wambui, 2015). These distinguishing characteristics include consensus rather than voting by majority-driven decision making, with roles for *Njuri-Ncheke* elders. Indigenous councils in Kenya are defined as groups of people that are active in communities and visible in performing a variety of functions of

governance, social-cultural heritage, political and religious duties (Preston, 1997). The councils visible in Meru include youth groups, women groups, men groups, and religious councils (M'Imanyara, 1992). The indigenous council of *Njuri-Ncheke* is regarded as the custodian of the activities of the Meru community.

The council of *Njuri-Ncheke* receives the bulk of cases dealing with conflicts that might be political, domestic, and social-cultural. The guiding purpose of the indigenous councils is to foster a just system and to restore peace by resolving conflicts as they arise within the Meru community. This is done by ensuring that disputants and their respective supporters are reconciled. The indigenous methods of resolving conflicts aim to reach every group of the community and encourage them to practice peace in their daily life (M'Imanyara, 1992). Contemporary decision-making by *Njuri-Ncheke* is all about land, the people of Meru, beliefs, and customs based on cultural institutions founded in Meru customs.

The Emergence of Governance in Africa

The term governance and its more explicitly normative companion good governance entered political discourse concerning Africa in the early 1990s (Ahluwalia, 2001). This was an auspicious time for governance concepts to engage with African politics. The 1980s had witnessed the collapse of statist socialism and an increasing inability of African states to function as a result of economic recession and crippling levels of external indebtedness (Comaroff, 1999). The World Bank adopted the term governance in its research literature based on lending from the mid-1990s. Governance became an international development policy, a global set of political desiderata, and a set of conditionality that accompanied aid and soft loan allocation.

Development within African countries intertwined with these international patterns, albeit in complex ways. All African states experienced significant turbulence during the 1980s and 1990s, one result of which has been the formal democratization of many states and rethinking of governance (Chabal, 2009). The term African governance refers to two salient trends in political analysis. The perceived crisis of African states has led observers to set out a range of models and prescriptions concerning political renewal and the reestablishment of centralized political order. The generalized interest in governance has strongly shaped academics understanding of state reform. What have been the principal effects of governance politics in Africa? Africa governance has produced a novel form of politics, based on donor agendas of state reform, emerging liberal and civic advocacy groups (Clapham, 1996).

Cultural Governance

Culture governance refers to a specific, top-down steering mechanism designed to improve elite control over the outputs of highly complex systems, like the modern democratic welfare state (Temple, 2012). The rise of cultural governance is a response to the challenges to the modern political system posed by the effects of globalization. The modern political system can no longer govern coherently and effectively only using commands, directives, warnings, or patriotic appeals. By expanding the role of self and governance among the populace, systems can more effectively deliver expected services and increase the legitimacy of their decision-making (Cowan *et al.*, 2002). While more cooperative and inclusive, than traditional, hierarchical authority, culture governance is still an elite-directed steering tool Larry and Plattner (2010) consequently, culture governance poses a unique challenge to the foundation of representative government. Culture governors seek to connect with the polity down to the individual level through new, dedicated networks to make it amenable to their policy directions. Culture governance threatens to supplant the politics of the ordinary by co-opting even the most mundane political discourse with an underlying imperative to maintain and improve the existing system (Larry & Plattner, 2010).

NJURI-Ncheke Governance

The study examines the extent to which indigenous governance systems have been acknowledged in the current contemporary governments. Indigenous people refer to those people, the original inhabitants, of a geographic space who in this study are the Meru people who are subject to *Njuri-Ncheke* governance. Indigenous governance refers to the myriads of ways in which these peoples continue to formulate, organize, and actualize their self-governance in formal and informal settings. The organization of *Njuri-Ncheke* takes place independent of or before the colonization by an external political entity (Alfred, 2005). The literature review is focused on the cultural practices and rules relevant to the *Njuri-Ncheke* governance system and their exhibiting traits of transformed contemporary governance. The governance of *Njuri-Ncheke* has changed and adopted contemporary principles when situations and circumstances dictate (Mwenda, 2013). The organization of the *Njuri-Ncheke* had already existing forms of the political community before their domination and exclusion by contemporary governance. In many cases, these forms of governance continue and constitute an important part of the political lives of the Meru people.

In many cases, the *Njuri-Ncheke* have accommodated them to, and integrated themselves into political structures of the colonial power, either by force or choice. The governance of *Njuri-*

Ncheke has historically been channelled into structures that typically continue to be controlled by the contemporary governance power, formally and informally (Mutembei, 2014). The practices of *Njuri-Ncheke* are specifically developed and exercised in opposition to western governance styles. *The Njuri-Ncheke* has always resisted colonialism and has practiced political governance to counteract the negative effects of exploitation and domination. The indigenous governance practices often take on more than one of these dimensions such as working within structures formally sanctioned by the colonial power, but also simultaneously modifying and resisting them. Further, because *Njuri-Ncheke* is a set of practices that are always changing with the needs of the people of Meru and with the colonial setting itself it cannot be formalized as consisting of any particular one of these relationships (Mwenda, 2015).

Theoretical Framework

This study was based on the framework of the Evolution Theory postulated by Ferdinand (1936) and the Functionalist Theory postulated by Tonnies (1951). The two theories have the assertion that the communities are determined by the structures of power at the place. The theory is a buildup argument that there is a relationship between the African governance system and the contemporary governance system. This is caused by sharing principles and values in societies by uplifting the dignity of the person through a good governance system.

Evolution Theory 1853 – 1936

Evolution theory flourished in the nineteenth century, in the aftermath of the industrial and French Revolutions. These revolutions both shattered an existing order and laid the foundation for a new one. The industrial revolution led to the mechanization of production, higher productivity, and their concomitant quest for new markets, many of which were found in colonized territories. The French revolution signaled the beginning of the end of the monarchy and ushered in parliamentary democracy in Europe. In observation of these social, political, and economic transitions, evolutionary theorists used different labels to characterize the old and new societies. Thus, Ferdinand Tonnies distinguished between *gemeinschaft* (community) and *gesellschaft* (society). In traditional societies, relationships are emotion-based and are such communal (*gemeinschaft*) relationships. On the other hand, relationship in modern societies is driven by the desire to achieve some specific goal (for example, financial gain). Tonnies called this goal-driven relationships *Gesellschaft* or social relationships. Durkheim, on his part, theorized mechanical and organic solidarity as characteristic modes of relationships in two distinct phases of social change. According to him, everyone is a jack of all trades in traditional

society. What sustains such a society is collective conscience consisting of primitive values and norms.

In modern (organic) society, division of labor pertains, and because of this mutual dependence becomes necessary for survival. It is this need for mutual dependence, rather than a collective conscience, that holds the society. Another of these characters is theoretical metaphysical and positive stages of social changes. According to this distinction, reasoning in traditional societies, characterized as the theoretical stage, is based on religion whereas reasoning in modern (positivistic) societies is based on science. Three salient features of Evolutionary Theory informed the structure of modernization theory. First, it assumed that social change is unidirectional. Human society, on this account, invariably moves in one direction from a primitive to an advanced state typified by western society. Second, it imposed a value judgment on the evolutionary process; the unidirectional movement towards the final phase is good because it represents progress, humanity, and civilization. Third, it assumed that the rate of social change must be slow, gradual and peace meal- it is evolutionary, not revolutionary -and the process of evolution from a primitive society to a modern one, is time-consuming.

The theory confirms that indigenous councils like the *Njuri Ncheke* of Meru play a developmental role, complementing devolved governments' efforts in mobilizing the population for participation in decision-making (Herbst, 2000). The collaboration between indigenous governance and modern governance will inspire the youth to appreciate that their culture has a contribution to make in bettering the leadership in the county. This argument is supported by Mbaku and Saxena (2004) who argue that the traditional authority has helped in resolving conflict in several African communities, for example, the *Gacaca* of Rwanda that helped reconcile the country after the genocide of 1994. The argument advanced in this study and supported by the theory is that growth and development from a primitive world to civilization has structures that are powerful but unfortunately not recognized. However, the weakness that the theory has it that the challenge might arise that the indigenous councils compete with the current system of governance, easily causing confusion and rivalry. Another weakness in evolution theory is that the development of the African continent is essentially determined by the colonial masters who defined and sustains the conceptions of the western democracy as opposed to the local governance system that is culturally connected with the communities.

Functionalist Theory

Functionalism bequeaths to modernization in its other theoretical heritage. In his version of functionalist theory, Talcott Parsons articulates the concept of pattern variables to distinguish traditional societies from modern ones. According to him, there are five sets of these variables. The first of these is affective versus affective-neutral relationships. Social relationships, in traditional societies, tend to have an effective component. What this means is that they tend to be personal, emotional, and face-to-face. Employers treat employees as family members and find it hard to dismiss them even when their company fails to be profitable. In modern societies, however, social relations are essentially effective-neutral in that they are impersonal, detached, and indirect. Consequently, employees stand the threat of being dismissed if they stand in the way of economic productivity and entrepreneurial profitability.

The second set of variables is particularistic versus universalistic relationships. According to parsons, people in traditional societies tend to associate with members of the same social circle, trust one another and feel an obligation to fulfil social promises. Another set of variables is collective orientation versus self-orientation versus self-orientation. In traditional societies, loyalty is often owed to the collective, such as the family or community, and people are asked to sacrifice their interests for the sake of fulfilling collective obligations. This stress on collective orientation constrains individual innovations, creativity, and imagination. On the other hand, self-orientation is stressed in modern society. This means that people are encouraged to be themselves and develop their talents and prospects. This stress on self-orientation is said to energize the individual, leading to technological innovation and raising economic productivity.

In traditional societies, a person is evaluated by his or her ascribed status, often derived from social background and family connections, whereas achievements are the yardstick for personal evaluation in modern society. The fifth and final set is functionally diffused versus functionally specific relationships. The relationships between an employer and employee in both societies are invoked for illustration. In traditional societies, according to Parsons, the employer's role is not just to employ. Frequently, it involves training the employee through apprenticeships, the responsibility of hosting and guiding him or her. Therefore, the employer's role becomes functionally diffused and highly inefficient. In modern societies, however, the employer has limited obligations to the employee. Their relationship seldom extends beyond the sphere of work. Therefore, the employer's role tends to be functionally specific. Because they can avoid

other obligations to each other, the employer and employee can focus on increasing efficiency and productivity.

Indigenous Governance –*Njuri Ncheke*

Nuri Ncheke is the institution whose responsibility was to make laws and issue state orders as well as decrees affecting the entire Meru society. Kiama, on the other hand, was the institution responsible for the execution of the order, decrees, and enforcement of law and order within the state (Fardiman, 1973). To enforce law and order, Kiama enlisted the assistance of the army, especially, in cases of civil disobedience and resistance by convicted criminals. Delegates to *Njuri- Ncheke* assembly were representative of every house of Kiama (Gaaru-e-Kiama) and were Merus wisest (Rimita, 1988). It was the duty of every delegate to the *Njuri-Ncheke* assembly to submit a verbal memorandum concerning his area of jurisdiction to the assembly. The assembly was, then, able to discuss new bills, make laws, issue orders and decrees. Also, full payments and instalments were fixed by *Njuri Ncheke* for serious cases include; murder and payment of ransom for captives from enemy lands.

Judiciary

The judiciary was among the best organized of ancient Meru- institutions, once *Njuri- Ncheke* passed laws, it was the duty of the legal experts, to administer justice. Administration of justice was the main preoccupation of elders. At any court sitting, experts in legal proceedings were invited from houses of Kiama to act as assessors. The judiciary was so good that it allowed the plaintiff and the defendant to invite their trustees in court, who in most cases, were themselves very knowledgeable in legal practice.

CONCLUSION

The study has sought to debunk the claims of a lack of governance in most African societies and to show that the converse the collaboration is the case is possible. Governance existed in these societies, albeit, in a different form to western-conceived notions of governance. An attempt has been made to do this with the aid of references to the nature and structure of traditional African communities' societies. The type of governance that existed and how such modes of governance were ultimately controlled by the people and the gods go a long way to show the ontological connection between the societies and the laws that bound them. African states are to a large extent currently devoid of such connection between the people and the laws that bind them. In many instances, the laws in force within a state are viewed as alien and foreign laws that the people have no connection with. This has contributed to the dismal state

of affairs within African countries. For good governance to be established on the continent, the content and nature of the laws in force have to be re-worked to reflect the norms and values of the African people.

This is an essential part of the process of finding solutions to Africa's problems. It is advocated in this study that for Africa to enjoy the fruits of good governance and development, the laws in force on the continent, whilst being contemporary and international, must also still reflect the very essence of African societies, and the values and norms of African people. In Africa, many Ethnic groups have their own (indigenous) form of governance characterized by remarkable qualities. In Kenya, the *Njuri Ncheke* is one of the indigenous people with their indigenous governance systems called the *Njuri Ncheke* system. The main objective of the study was to access the basic qualities of the *Njuri Ncheke* and contemporary governance. The comparison was made based on identified values/ principles leadership values, the base of decision making, sovereignty, the centre of leadership, inclusiveness participative democracy, and leadership development. Finally, the study found that the *Njuri Ncheke* system is embedded in the heart and soul of the people of Meru. Finally, the study suggests that the government should support indigenous governance, particularly in the legislation.

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