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LOCAL DISPUTE RESOLUTION IN KENYA: A CASE STUDY FROM ISIOLO COUNTY

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Over the course of 2023, Kenya has been mired in socioeconomic and political challenges that portend no quick fix. An economic crisis linked to national debt, combined with the implications of the Russia–Ukraine war, saw inflation reach 9% in February 2023,[1] while the most devastating drought in 40 years[2] is projected to affect 5.4 million people across the country.[3] Although the Kenyan supreme court affirmed the Independent Electoral and Boundaries Commission declaration of President William Ruto as the winner of the August 2022 presidential election, opposition leader Raila Odinga has been leading a series of anti-government protests that criticise both the dire economic situation and the legitimacy of the election. One of the troubles that has seen the most surprising engagement from the government comes from the north of Kenya – the increasing instances of banditry.

Since September 2022, bandits have killed 100 civilians and 16 security officers.[4] Bandits also set bonfires mere kilometres away from a public *baraza* [Swahili for a public meeting] in the county that was attended by the Kenyan interior minister, a show of force in response to the heavy police presence and the minister's promises of security in the region.[5] In an unprecedented move in the history of country, the national government declared this violence a national emergency and launched a joint military–police operation in February 2023, but early reports indicate that this hard security approach has been unsuccessful.[6]

A hidden key to the issue of banditry may be found in one of the most significant structures in the northern counties – Alternative Dispute Resolution (ADR) mechanisms. ADR is a broad term that encapsulates many mechanisms beyond the judiciary to resolve conflict. In northern counties such as Isiolo, Samburu, and Marsabit, ADR structures are comprised of clan leaders who mediate violent and non-violent disputes in accordance with traditional values. These processes aim at reconciliation.

This article explores the use of local dispute resolution mechanisms, which often combine mediation and arbitration, in inter-group violent conflicts. Since the passage of the 2010 constitution, these mechanisms have been applied throughout the country to resolve different civil disputes, increasing the ease and spread of access to more cost-effective and quicker resolutions. The increased use of these mechanisms has also led to a reduction of the judiciary's longstanding backlog.[7] It is through collaborative interventions with ADR structures that the national government will be able to sustainably address insecurity in the north. Drawing from 24 interviews conducted for Samantha's doctoral research and Luqman's firsthand experience as a programme officer at Isiolo Peace Link working with peacemakers and peacebuilders in Isiolo County, this paper sheds light on why this approach works and promises positive outcomes in the current situation.

SECURITY IN THE NORTH

The marginalisation of northern Kenya has had lasting impressions on the security sector in the region. Northern Kenya is presently divided into 11 counties: Baringo, Elgeyo Marakwet Garissa, Isiolo, Laikipia, Mandera, Marsabit, Samburu, Turkana, Wajir and West Pokot. The interiors of these counties are populated by a high number of pastoralist and agro-pastoralist communities. Communities such as the Somali, Meru, Borana, Samburu, and Turkana raise cattle, camels, and other animals that are the key currency and livelihoods of these communities.

In the north, the most common security threats are issues linked to these livelihoods. Scarce resources such as grazing pasture and water are made even scarcer during seasonal droughts. Violations of natural resource management structures and agreements exacerbate problems in inter-community relations. Due to the porous borders with Ethiopia, Somalia, and Uganda, clashes over cultural practices such as cattle rustling have become more deadly with the trade of small arms and light weapons.

When the British Empire exercised its imperial power over the then-protectorate (1901 to 1960), the northern arid lands in Kenya were overlooked in favour of more readily arable land. This neglect continued during post-independence regimes, with underdeveloped school systems, infrastructure, and local courts. The distant relationship of the capital to these frontier lands was worsened by the Shifta War (1963–1967), when the brutal repression of an independence movement left the northern residents with a legacy of distrust towards the central government.

After a violent electoral cycle in 2007, in 2010 Kenya adopted a reformed constitution that decentralised powers across 47 newly created counties, although security remains strictly under the jurisdiction of the central government. Decisions regarding when, where, and how to intervene in sensitive situations are made in Nairobi, where local perspectives are rarely considered. This gap between local perspectives and interventions has led to heavy-handedness in national government responses to outbursts of violence in these counties.

The security situation in the north is further complicated by the realities of violent extremism. Counties such as Isiolo have experienced radicalisation and recruitment by al-Shabab, a militant group founded in Somalia, that has launched attacks in Kenya.[8] While local peace organisations, traditional and religious leadership, and local police officers have collaborated to prevent violent extremism, human rights abuses and extrajudicial killings committed by the national government anti-terror police unit has sown mistrust between residents and the capital that can still be felt in 2023.

CHALLENGES OF A HARD SECURITY APPROACH

Recent increased violence from bandits in the north has led to a high number of civilian and security officer deaths, livestock thefts, destruction of homesteads, and physical and emotional trauma in local communities. The interior cabinet secretary has announced the government plan to go so far as to label the bandits as terrorists.[9] This choice of labelling is not trivial. Rather, it moves the government strategy much closer to a hard security approach. As a result of the Prevention of Terrorism Act of 2012, the government has significant flexibility in identifying terrorists as such and once applied, this label warrants security-only interventions.[10] Alternative means of responding to insecurity, such as local dispute resolution approaches, are rendered less feasible once use of this label is formalised.

On 15 February 2023, a joint military–police operation was launched to intervene in six hotspot counties – Baringo, Elgeyo Marakwet, Laikipia, Samburu, Turkana, and West Pokot. These interventions include imposing curfews, displacing locals from places identified as alleged bandit hide-outs, and restricting civilian movements. A special security unit is also tasked with pushing out bandits from their hideaways and executing aerial bombardments.[11] Participants in this joint operation increasingly admit, however, that success is so far elusive.[12]

Since the Shifta War in the mid-1960s,

there has not been such a concentrated hard security effort in the north. This has created significant drawbacks that cannot be ignored. First, this joint action only targets bandits, not the business and political actors rumoured to be funding the bandits. Despite recognition of these shadow actors,[13] the current programme includes no plans or provisions for investigating and holding them equally accountable.[14]

Second, the plan to label bandits as terrorists is highly problematic. With minimal justification, this conflates Kenyan experience of jihadism with livestock-stealing bandits, thus decontextualising the current violence. Third, a purely hard security approach sidesteps a much-needed conversation about structural inequality across Kenya and ignores the likelihood that these issues are a root cause of such banditry. Low employment opportunities, sparse education across the rural parts of the northern counties, and poor infrastructure increase the chances of people turning to violence. A hard security intervention such as that launched in February is akin to putting a Band-Aid on an open gaping wound.

HUMAN SECURITY APPROACH: LOCAL DISPUTE RESOLUTION MECHANISMS

In the 2010 Kenyan constitution, Article 159(1) formally recognises ADR as a legitimate manner for conflict resolution for those who wish to participate. This has led to a significant shift in caseload from the judiciary, which had been backlogged for many

years. In its current handling of the bandit problem in the north, however, the national government overlooks the potential of ADR mechanisms, which include many non-judicial forms of conflict resolution, such as mediation and arbitration processes, to resolve violent and non-violent conflict.

To illustrate the value of ADR in the northern bandit crisis, it is useful to draw on Luqman's professional experiences and Samantha's doctoral research interviews with peacemakers and peacebuilders in Isiolo County, which is an exemplar studied by neighbouring counties.[15] Isiolo has a large pastoralist population, which has experienced numerous issues with cattle rustling and banditry. ADR is effectively used by the councils of elders for various ethnic groups. Considered as opinion shapers, elders tend to be members of these councils because of their experience and know-how in traditional and cultural processes of settling disputes. Elders may also have dual roles as religious leaders such as imams, who are regarded as wise, thereby reinforcing the legitimacy and acceptance of council decisions. These councils are key players in resolving violent and nonviolent disputes in their communities, with inter-community conflict often bringing the various councils together to peacefully resolve contentious issues.

Although it is regarded as an exemplar in the region, ADR in Isiolo is largely underfunded. Clan elders and other representatives must often fund their own expenses to travel to conflict areas or host mediation efforts.[16] The county and federal governments offer limited to no support for ADR-related activities. In contrast, the judiciary has recently embarked on supporting the ADR mechanism by formulating the Alternative Justice System policy, which sets out plans and procedures to support ADR processes.[17] This policy also delineates a framework for funding and resolving challenges between the customary and civil legal systems.

One of the most significant achievements of ADR in the region is the Modogashe Declaration in 2001. Long-standing inter-ethnic violence in the northern region over cattle raiding and scarce resources had gone unaddressed by the national government. To remedy this, local leadership from Isiolo, Wajir, Garissa, and Marsabit developed a mechanism for conflict resolution incorporating indigenous practices that are considered to be holistic and reconciliatory approaches to reducing violence. In particular, this mechanism reinforces traditional rangeland management techniques for times when there are droughts and limited grazing areas, thus decreasing the chances of potential conflicts over natural resources. This was a collaborative effort of traditional and religious leaders, district peace committees, local administration representatives, political leaders, and women peacebuilders in the region.[18]

The success of the 2001 Modogashe Declaration drew national attention. The follow-up iterations in 2005 and 2011 subsequently received support from the

government via the National Cohesion and Integration Commission.[19] Despite challenges with implementation, including contradictions with the formal laws of the country, the declaration is widely seen as having contributed to the reduction in violence in the north. Moreover, this initiative also made major progress in the recognition of both the rights of women in their communities and their role in conflict resolution processes.

Local dispute resolution such as is employed in Isiolo represents a human security-oriented approach. Due to community respect and appreciation for traditions and customs, the rulings and interventions based on this mechanism carry deep significance and legitimacy.[20] By being part of the fabric of the community, these leaders also demonstrate a long-term commitment to peacebuilding. Elders consistently connect with former conflict parties and attend follow-up peacebuilding and community cohesion events. Members of various councils of elders stress that the goal is to create sustainable peace in their communities, going on to note that court judgements fail to address the emotional depth of this.[21]

Interviews with members of the Isiolo Peace Committee, the local community councils of elders, and independent women mediators reveal that these leaders have extensive early warning networks, powered by personal phones and sparse data plans, which help them intervene before a conflict fully erupts.[22] The results they achieve have been accomplished without stable funding,

promising perhaps even greater efficiency and efficacy if better financial streams are provided to support this work.

While the human-security approach utilising ADR has many strengths, it is not a cure-all for the issue of banditry. Some of the most effective conflict resolution efforts in Isiolo have been joint efforts with police officers and the military. The security forces can be key to bringing fighting to an end so mediation can begin. In May 2022, for example, traditional leaders from the Borana and Somali communities, with support from Isiolo Peace Link (a community-based organisation) and the security forces, facilitated the handing over of stolen cattle, goats, and camels in Garbatulla sub-county. This handover was peaceful and put an end to reprisal violence over thefts.[23] The mere perception of elders and security forces working together can also help persuade conflict parties to come to the table while the collaboration itself can draw from both sides' strengths.

CONCLUSION AND RECOMMENDATIONS

The use of a hard security approach, an almost exclusively national government intervention, mischaracterises the trouble in many parts of northern Kenya. Through conflict analysis addressing the fraught past between the region and the central government, combined with employing tools and expertise developed and led by northern residents, the government can develop a more effective and sustainable

multidimensional intervention. In part, this can be achieved through:

- Increased collaboration and more resources to better support local ADR processes and actors to share their input with security forces and vice versa; that is, mobile devices with data access for local actors to receive updates from security forces about developments in conflicts.
- Support for the implementation of the recently developed Alternative Justice System policy, which provides a framework for comprehensive support for local ADR mechanisms.

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16   Interview with independent woman mediator, Isiolo, May 2022

17   Interview with member of Isiolo Peace Committee, Isiolo, May 2022

18   Interview with member of Isiolo Peace Committee and participant in Modogashe Declaration process, Isiolo, May 2022

19   The National Cohesion and Integration Commission was established after the 2007 electoral violence to confront and mitigate inter-ethnic tensions and conflicts.

20   Interview with the general-secretary of the Somali Council of Elders, Isiolo, February 2023.

21   Interview with the general-secretary of the Somali Council of Elders, Isiolo, February 2023; interview with the chair of the Somali Council of Elders, Isiolo, February 2023.

22   Interview with the general-secretary of the Somali Council of Elders, February 2023; interview with independent woman peacebuilder, Isiolo, February 2023; interview with the chair of the Isiolo Peace Committees, Isiolo, February 2023.

23   Interview with the general-secretary of the Somali Council of Elders, Isiolo, February 2023.; interview with security officer, Isiolo, February 2023.