

## **Generation Sets as Institutions of Cohesion and Mutual Existence in Pre-Colonial Kenya**

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**Abstract:** Age grade and age-set systems were critical pillars among pre-colonial African societies for they ensured the maintenance of social order, cohesion, and mutual preservation. It is through these age old mechanisms that respect for people and their property were inculcated and, consequently, peace and tranquility guaranteed. In spite of the centrality of these institutions in maintaining the social fabric of pre-colonial African societies, there is inadequate coverage of this field by historians; mostly it is subsumed under other aspects of pre-colonial African historiography. There is, therefore, need to focus on the pre-colonial systems of maintenance of societal order of Kenyan communities. This is because the study of this phenomenon is of intrinsic value from the purely academic view point; affording us an opportunity to examine in details how the body politic was maintained. This paper is therefore a small contribution towards this. It examines the history of pre-colonial order and especially its maintenance and enforcement for peaceful coexistence in pre-colonial Kenyan societies. It focuses on age-grade and age-set systems as well-trying mechanisms of order and social control.

**Keywords:** Pre-colonial Kenya, Age-set, Age grade.

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### **INTRODUCTION**

Pre-colonial African had institutions which regulated the affairs of all sections of their people. These institutions were responsible for making and enforcing customary laws and time-tested policies that bound all members of the society thereby enforcing discipline, obedience and, ultimately, ensuring continuity of social cohesion from one generation to the other. In the pre-colonial Kenyan society, the local neighborhood community formed the political base. In the pre-colonial set up, an individual belonged to his family, clan and ethnic group. The community provided the individual's security, understanding, awareness and fellowship. The dominant feature of the indigenous society was security for the individual person as well as for the group as a whole. This, in the ultimate, meant close integration of all patterns of behaviour. The communities were bound together by their participation in the common social functions and ceremonies of their societies [1]. All these functions were accomplished through the age-set and age-grade mechanisms in which both males and females were socialized. This paper examines the general trends in crime and punishment in pre-colonial Kenya and demonstrates that these societies, through generation systems, had effective methods of dealing with crime and antisocial behaviour. Age-grades and age-set institution in pre-colonial African societies were well-trying social mechanisms

that governed relations between generations and constituted critical principles through which Africans maintained social order. Age-grade and age-set were institutions that appeared to cut across much of the pre-colonial societies in Kenya and elsewhere in Africa. The socialisation of young boys and girls into the society was characterized by orderly management of maturation. It produced responsible adults, who were governed by strict rules and norms.

### **SOCIAL STRUCTURES OF LAW AND ORDER**

In anthropological terms, every society had its own customs which bound all the members. Customary practices were unwritten codes generally accepted by all the members of the society. Every society had its customary laws, taboos and obligations which demanded great self sacrifice by its members. They were obeyed so as to enforce morals [2]. As Ng'ang'a shows, most of the communities approached the issue of deviance and untoward acts through the authority of the council of elders which had powers and ability to impose fines, demand community service, administer punishment, ostracize or curse offenders. Age-sets and age-grade emphasized corrective responsibilities and acceptable behaviour among the members. Individuality and self-serving orientation was discouraged hence collective responsibility in terms of behaviour and social conduct was well maintained [3]. There were

rules and regulations governing every aspect of life. Those who observed the rules were deemed as law abiding while deviants were deemed evil and shunned as they might bring ceremonial uncleanness and bad luck to their families and society in general. Purification ceremonies were carried out to put right anything that had gone wrong and heavy fines imposed on recalcitrant. A habitual offender could not be tolerated and was treated as a social misfit. Most communities in Africa were rigidly structured through a male dominated age-grade system in which elders exercised a wide range of political power [4].

Most pre-colonial societies in Kenya had a well organized system that enhanced mutual respect for members of the society. For instance, among the Ameru there was a well organized council of elders, *NjuriNcheke* [5] whose main responsibility was “to make and execute customary law, listen and settle disputes and pass on customary knowledge from one generation to another. The knowledge emphasized acceptable behaviour in the community. The council of elders also had the role of the custodian of the indigenous law and culture.” The Giriama also had a well developed non-centralized leadership of the council of elders, the Kambi [6], whose power of the curse and select membership were important in enforcing order. Similarly, the Luo community had *jodong'gwen* with power and authority to discipline all and sundry. Among the pre-colonial pastoral [7] and agricultural communities, there existed generation principles which were the basic instruments of social order and crime control. Age and gender were the key axis of social organization and distinguished categories of persons and structured their roles, rights and obligations. Relationship between men and women depended on their age, kinship, clan and age set affiliations which were generally based on mutual respect. For men, the differences in age were marked formally by their designated age-grades. Elderhood played a significant role social cohesion and stability of the community.

#### **STRUCTURES OF MAINTAINING SOCIAL ORDER**

“Age-grade” was primarily a social label or category by which the life-cycle of an individual was divided into a number of stages according to his or her relative age. The usual examples of age grades are childhood, adolescence, adulthood and elderhood. Age grading was important as it prescribed roles and responsibilities for each person in the community. This helped to avoid social confusion and conflict thereby maintaining order and social cohesion. Age- grades differ from age-sets in that they generally do not form the basis for corporate actions by their members as a group. Members of an age-grade do not acquire new communal rights and obligations by passing from one

grade to another. Its members pass as a group through such ranked age categories. The usual examples of age grades are childhood, adolescence, adulthood and elderhood. Age grading was important. Every age grade had its prescribed roles and responsibilities well defined. This helped avoid confusion and conflict thus maintaining order and social cohesion. Age grades differ from age-sets in that they generally do not form the basis for corporate actions by their members as a group. Members of an age -grade do not acquire new communal rights and obligations by passing from one grade to another. Its members pass as a group through such ranked age categories.

Spencer's work on the Samburu, affirms an age -grade, as a stage through which males pass at some period of their life together with others of their age [8]. Each man belongs to only one age-set from his youth onwards and passes through a number of age-grades. Spencer further observes that, among the Samburu, there are three principal age-grades among men namely, boyhood, *moranhoo*, elder hood. Women do not belong to age-set though they too have age-grades; girlhood and womanhood. The age-groups have a moral obligation to show respect for seniority. In addition Spencer posits that, the Moran age-grade there was junior *Moran* who performed particular ceremonies which gave them specific ritual and social privileges. Practically all members of the senior age-set will have married and settled down to elder hood as the juniors graduate. In the elderhood there were junior elders and senior elders who had not yet become “fire sticks” elders to any age-set of Moran. There were “fire sticks” elders and there were senior elders who still had a “fire stick” relationship with the junior elders. Maasai warriors after graduation to elderhood were allowed to carry long stick, a prerogative of the elders. The “fire stick” was carried by the elders only. They were better known for the fact that they were fathers of the *Morans*. It should be noted that one entered the junior elderhood after graduating from warriorhood. There were various modes of behaviour that were expected and observed by member of various age-grades at different periods of their lives.

The Kikuyu like other ethnic groups, ascribed roles or status to each individual depending on age. For example *ciana* (children), *mumo* (young initiates), *anake* (warriors) and *athuri* (elders) were each assigned specific roles in the society [9]. The males, passed from childhood to adulthood through a prescribed pattern, but the most significant experience, socially and politically, was circumcision and the attendant grouping of the initiates into age groups or sets. Kenyatta further posits that, each age set was given a name which was distinct and institutionalized and consisted of novices (both boys and girls) initiated at any given time, who remained members of it throughout their lives.

Behaviour and conduct was an aspect inculcated during the socialization of Kikuyu children [10]. A male was expected to uphold great respect and obedience to the elders. From childhood, a boy was taught by his mother to obey his father and all men of the same age- set with his father (classificatory fathers) without question. Girls, on the other hand, were socialized in such a way that they maintained a high level of respect for the elders. Rules of modesty were applied before all those who were called fathers. This would be reflected in a girl relationship with her own father. The relationship between mothers and a son was also emphasized. A male Kikuyu was expected to show great respect to the classificatory mothers than his biological mother. Homesteads were greatly respected on account of the good behaviour of its children.

After girlhood girls got into womanhood after they got married. This category was very important. Women were expected to teach their children acceptable norms. Women were very vital for the social order and cohesion among the Kikuyu. It is worth noting that, the Kikuyu clans are named after women namely; *Anjiru, Ambui, Aceera, Anjiku, Ambura, Airimu, Athirandu, Angari* and *Angui* [11]. This shows how vital women were in the Kikuyu social political organization.

Among the Kipsigis, the mother had a significant role in ensuring her daughter behaved well. She had to keep close watch over her daughter and safeguard her from deviant behaviour. Every girl had to be taught that she had to respect and obey her classificatory mothers because their help would be needed in all the ceremonies connected with her marriage and it would be a misfortune indeed if she did the contrary. Disrespect could lead to her being cursed with bareness [12]. Relationship between siblings was also emphasized at an early age. Every girl was taught to be respectful and obedient to her biological brothers.

The Kipsigis organized themselves and divided their responsibilities in age - grades rather than kinship [13]. This linkage helped create social harmony and order in the society. The society believed in human equality especially with respect to social, economic and political rights and privileges. This cohesion created unity and mutual respect among the members of the same age grade. Every member of the age - grade had a universal responsibility to the group. This social organization of the Kipsigis controlled behaviour amongst the members [14].

To illustrate this among the Kikuyu, at the lowest level were the junior elders, a group that consisted of all those men who had ceased from being warriors and had got married. To join the junior elders'

cohort, the entrants paid a fee. To become a junior elder one paid a ram and a calabash of beer. Those aspiring to join senior elders had to pay double fee. Depending upon individual circumstances, the junior elders paid additional fee of two goats and a beer to mark the end of their period of apprenticeship. They were then admitted into the *Kiama* and henceforth regarded as senior elders. The council of senior elders was known by a variety of names such as *Kiamakiamburiigiri* (the council of two goats), *Kiamakia Bururi Kinene*(the nation council), *Kiamakia Athamaki*, (the council of leaders) or simply as the *Kiama*(the council) [15]. It was the highest authority in the land, vested with legislative, executive and judicial functions. Like their junior counterpart, the *Kiama* could be sub - divided into several sections based on various functions they were expected to carry.

The third stage in manhood was marriage. When a man got married and established his own homestead he was required to join the council of elders (*Kiama*). The first grade of eldership was (*Kiamakia Matimu*) the word *Matimu* which means spears signifies the carrying of spear [16]. There was a code of behaviour for the leadership in that they were learners of the *Kiama* procedures. The newly married man was the messenger to the *Kiama*. He would help to skin the animal, light fire and bring firewood to roast meat for the senior elders; this was in essence the fees they paid for training.

Peristiany affirms that among the Kipsigis, there are three age grades: boyhood, warriorhood and elderhood [17]. The *Moran* was the ritual leader who held over members of his age-set. These powers were to help him maintain peace in the age-sets. Internal control over the affairs was predominantly in the hands of the Moran. When situations got out of their control it was unlikely that a deliberate breach of the accepted code of conduct among the Moran would tempt others to support the wrongdoer. It was more likely that they would take direct action to punish him and in certain instances, the offence would lead to physical reprisals [18].

*Morans* [19] were encouraged by the elders to settle their disputes peacefully and to avoid violence. The elders only approved whipping contests and collective beating when it was quite apparent to them that a peaceful settlement would not be accepted by all those implicated. A sense of respect was an attitude inculcated into persons of both sexes from a fairly early age. It was a virtue which was constantly emphasized by the elders in many contexts.

Eldership was a very important institution that maintained social order and control. Council of elders in the pre-colonial Kenyan communities was a wisdom

keeper and a guardian of the sacred teachings, stories and practices of their culture passed down from one generation to another. As shown by Spencer, Elderhood was the age-grade that made the males have ultimate power over the entire society and in particular over the *Moran* [20]. This power rested on the ability of elders to invoke the curse. It was the pillar of Samburu morality. All social obligations which formed a part of the Samburu moral code would be expressed with reference to it. *Morans* had a less developed sense of respect than the elders, although a greater sense of respect than boys. *Moranhood* was a very important social organization where elders inculcated a sense of respect. Spencer further asserts that there was a great consistency in the belief that certain action would lead to misfortune through the agency of supernatural forces directed ultimately by God, *Nkai* [21].

The Kipsigis for example, had the *Kokwet* which was the basic unit of ensuring regulation of economic cooperation and the resolution of disputes. Authority over the village was in the hands of the elders [22]. The *Kokwet* played a significant role in dispute resolution. The social stratification of the Kipsigis and the formation of the age-set system allowed members to form a bond that was maintained throughout the lives of those concerned. In their lifetime, the age-set group shared experience and a sense of social responsibilities right from initiation [23].

Among the Maasai, the first level of authority emanated from the age-group. Before the boys were circumcised, a chief councilor, *Olaiguenani*, was selected from their midst and given a club, *Okiuka*; a symbol of leadership and authority. In addition, the tattoos marking *Olaiguenani* as a brave warrior were made on his thigh. He was selected during the time of the first ritual so that by the time the boys went to display their strength in knocking down the ritual bull, he was already a source of authority. Members of *Olaiguenani's* group learned to respect him and refrained from contradicting his commands led them through all the rituals throughout their natural lives. By the time this happened his authority was no longer confined to the age-group but extended throughout the community [24]. Beside the clan, had a larger social political unit comprising of different war groups located in the same geographical zone a *pororiet*. This was the highest political unit and judicial court among the Kipsigis.

In anthropological terms, age-sets are those social groups whose members were recruited on the basis of their approximate age during a period of "open" initiation. Each set was organized as a corporate body and ranked hierarchically in relation to other such groups. Each set comprised only those persons initiated (usually through circumcision) during the same

communal initiation period. Each person remained a member for life of the specific named set into which he was recruited at the time of his initiation. Each age-set was separated from others by a closed period of initiation, during which new recruitment took place. The membership of the preceding group became fixed or set in number, such that it was conveniently described as an "age-set" to distinguish it from other age-groupings that could take place in the society. Members of the same age-set shared specific rights and obligations to each other. Individuals progressively acquired new community rights and obligations by virtue of their membership in a specific age-set.

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Members of the same age-set shared specific rights and obligations to each other. Individuals progressively acquired new community rights and obligations by virtue of their membership in a specific age-set [25]. The concept of age set was an important aspect of maintaining social order and cohesion. It aided in keeping track of groups of people with members of the age-set being given a rank in the age groupings. The ranks defined the behaviour of each and every individual member and their behaviour towards other members of other age-set; both young and old. Age-sets acted as agents of gender segregated social control; it is important to note that women had no age-set. During the circumcision ceremony powers of the age set created a strong bond of friendship.

These social institutions maintained social order and peace with mutual respect and dignity [26]. For instance, among the Samburu an age-set was an important social mechanism of maintaining law and order. An age-set was composed of all men who had been circumcised in youth during a specified period of time. Members of one age-set or age mates were not merely equal. They were expected to observe certain norms of behaviour which derived and expressed their joint membership of a corporate group. No man, for example, would address an age mate related to his wife by the term which he would use for his other *affines Lautan*. Members of alternate age set stood in a special relationship to each other in which the senior of the two



had the power of the curse. The power was said to be derived from the fact that it was members of the senior age-set who ceremonially brought the junior age-set into existence when it was first constituted. Somebody in the preceding age-set was an adviser but anyone beyond that was a senior elder if he was your father's age or beyond. The senior age-set subsequently stood as moral guardians over the junior age-set and it was their duty to supervise its maturation specifically in its passage through the Moran age-grade [27]. Somebody in the preceding age-set was an adviser but anyone beyond that was senior elders was your father's age or beyond.

Among the Maasai, age grouping was an important mechanism of maintaining discipline and respect. This meant that each age-set consisted of two age-groups, the 'right' one. The group that was circumcised first being known as *Ilmanki*. The one to be circumcised later was known as *ilmania*. The difference came with the first lot of boys to be circumcised. When *ilmanki* were ready for circumcision, all the necessary rituals were performed. The initiates were grouped together. Fire was kindled to herald a new generation of warriors. After the boys were circumcised they became warriors. They were recognized for their deeds of daring exploits and as brave adventurers [28]. Each age set comprised two age-groups; the 'right' and 'left groups.' The purpose of the ceremony was to merge the two age groups into one set and decide on a common name of identity. After this ceremony they could share their rights and privileges equally. These social levels of behaviour and interactions had their own status, mode of behaviour and scope of authority.

In addition, the Kikuyu age system, *Riika* (*mariika*) referred to four different age groups. Generation set was political for administrative purposes. The *mariika* were only two namely Mwangi (*Irungu*) and Maina. For example, a man and a son could never be in one generation. Its terms of office begun with the conspicuous and distinctive handing over ceremony called the *Ituika*. This took place in about thirty to forty years. One generation handed over reigns of power to its successor to conduct the political, judicial and religious functions [29]. The rules of age-set were quite flexible; sometimes even warriors could participate in the deliberations of the junior council. Normally the council chose a titular head, *muramati* (custodian). Its primary duty was to regulate the day to day affairs of the *mbari*, such as mediating or, being its spokesman in the intra-*mbari* affairs. *Riika* also meant an initiation set which comprised of all boys who had undergone circumcision in a given year. Circumcision was the only criterion for its membership. This corporate body was normally named after the most outstanding event that had occurred either shortly, before or after their initiation. Several such initiations

were grouped together to form a contingent of an army. They then embraced a name which had been of the initiating set of the first initiates or a totally different one [30].

The initiation rites dramatized the transition of males from childhood to adulthood. Initiation served as one of the main educational channels in the Kikuyu society. This education was both practical and theoretical. It covered such fields as traditions, religion, folklore, and mode of behaviour and the duties of adults including taboos to observe. The initiates were invested with important roles, responsibilities and privileges in the social system. As a corporate body, the age set emphasized and encouraged group solidarity, co-operation, conformity and mutual help. The result of being that an age group exhibited a strong sense of comradeship and fraternal egalitarianism [31]. This initiation system helped in maintaining social order and control and it was based on the democratic principles. In the Kikuyu community, circumcision was crucial as it fostered social cohesion. It was a sign of adulthood and one would from then be allowed to take an active part in the government. This act was to instill a sense of belonging to the community; indeed one became a full member of the community.

All those initiated in the same open period formed a junior warrior set embracing all the age sets. In return, the age-set formed a contingent of warriors with its own distinct songs and shield emblems. Apart from military service, the warrior corps formed a reservoir of able bodied men for performing other public functions. They acted as executive officers to the elders. The warriors were entrusted with such activities as policing, duties in the market and during the festivals. They arrested habitual criminals and called the public for gatherings such as the *Ibata*. During which rules and prohibitions were promulgated and other important pronouncement made [32]. It should be noted the *Maasai* unlike the *Gikuyu* had a standing army.

When necessary, a warrior council *njama ya anake* secured the community, punished habitual criminals and any other offender as directed by the elders. For this reason, their main function was to carry out governmental operations on behalf of the community at large. But the *njama* only acted when the situation had deteriorated to almost unmanageable proportions. Despite the enormous power and privileges in the hands of the warriors, they were adequately controlled. Like in all the other age groups, they were strictly governed by their own council- warrior council. The council had the overall command of their activities including personal behaviour [33]. The *Muthamaki* acted as the chief spokesman for the territorial warriors. His main duty was to control and supervise their welfare and activities. He also reprimanded the wrong

doers and assembled the warriors when necessary. There was a rigid code of behaviour within each warrior group. To ensure that no warrior brought shame to the age-set. The age-set acted as an important agent of social control contributing enormously to social cohesion and political stability.

Among the Kuria there was an age-set system, *esaaro* and a generation set system. This system helped cement the Kuria society together. The age-sets were usually named after some important local events which took place about the same time when the sets were being initiated. The age set determined the age of different people in the society.

Among the Embu, Satish asserts that *njama* also made rules and executed them [34]. However, the community wide organization was the generation age-set, *Nthuke* that made most of the laws and promulgated them to people in dances like the *Kivata*. It laid down rules and regulations in respect to behaviour and marriage. The age set was the custodian of the traditional religion, worship and prayed for rain [35].

Among the Kipsigis, the age-set system shaped the community's way of life. This mechanism created a strong bond that unified the community. The age-set, *ipinda* shared experiences. The age-set bound boys or girls who were initiated together and were expected to be friends for life. Age mates also trained and fought together in the army. The Kipsigis organized themselves and divided their responsibilities in age-grades rather than kinship [36]. This linkage helped create social harmony and order in the society. The society believed in human equality especially with respect to social, economic and political rights and privileges. This cohesion created unity and mutual respect among the members of the same age grade. Every member of the age-grade had a universal responsibility to the group. This social organization of the Kipsigis controlled behaviour amongst the members [37]. As soon as boys came out of initiation at the age of fourteen to eighteen, they underwent a period of seclusion in their houses, set apart from the rest of the community for nine months the result of which was that the entire cohort of the initiates formed an age-set [38].

Social values and expectations of the communities were inculcated in them. Behaviour modification took place during this period. The second most important source of authority was *olobolkiolkiteng*. The *olobolkiolkiteng* was selected before the boys were circumcised. It was he who provided the big bullock which was slaughtered after the boys had wrestled with it. He was respected by the age-group. *Olotuno* came third in the hierarchy of those to whom respect was given. He was selected during the *Eunato* ritual when the warriors graduated to become

elders. He thus became the leader of the group and all the expectations connected with the establishment. It has already been noted that he opened the way to marriage by being the first one in the age-group to select a bride. But nevertheless he was superseded by the chief councilor as far as authority was concerned. The fourth member in this hierarchy was *Oloberu Enkeen*. He shared much the same degree of authority with *Olotuno* as far as rituals were concerned. But nonetheless, *Olotuno* commanded more respect both within the age-group and in the community. He was the man who decided the name for the age-set.

"Generation-sets" though similar to age-sets are organized as a corporate group and ranked hierarchically in relation to others. Such groups nevertheless differ significantly in modes of recruitment. Age-set recruit their members on the basis of approximate biological age and brothers of the same father. They frequently enter different corporate age-set. Generation sets are always formed on a genealogical basis. All sons of a man, irrespective of differences in age between them are recruited into the same generation-set. Age grading was important. Every age grade had its prescribed roles and responsibilities well defined. This helped avoid confusion and conflict thus maintaining order and social cohesion. For example, all young men between the ages of eighteen and fourteen comprised a warrior class, *anake* whose duty was to defend the community. The community respected them and had pride in them. Thus social cohesion promoted peaceful coexistences among the members of the society.

Generations were political and used for administrative purposes. This social order maintained democratic transition in government and social order. In that one generation would hold office of the government for a period of about thirty to forty years and at the end of each regime the young generation would take over administration of the community. The Kikuyu community had both civil and criminal law which was established. The procedures to be followed were clearly defined. Rules and regulations governing the behaviour between individuals and groups within the community were laid down.

In the Kikuyu community, At *Kiamakiamataathii* [39] social status changed. Only certain greetings were prescribed to the group because they were considered to be politically, religiously and socially equal. The last and the most honored status in a man's life history was his membership of the last prestigious religious and sacrificial council, *Kiamakiamaturanguru*. This stage was reached when a man had practically all his children initiated, and his wife (or wives) had passed the child bearing age. Beside his staff of office, he wore brass rings *icohe* in his ears,

to distinguish himself from the rest of the elders but he was not yet invested with power to lead a sacrificial ceremony at the sacred tree. He was treated as a holy man and the high priest. All religious ceremonies were in their hands. This equates to offices such as Orkoyot among the Nandi, *Oloiboni* among Samburu and Maasai, *Omugambi* among Kisii and *Ruoth* among the Luo.

In the Kikuyu customary law, there was no system of imprisonment. The offenders were punished by being made to pay fines to both the *kiama* and compensation to right the wrong done. Some leaders, by talent and inclination, were proficient in judicial or religious affairs. Such people tended to be more influential in those spheres than their comrades. The outstanding feature of the *kiama*, however, was an inner core of prominent elders, *athamaki* who virtually ran the affairs of the *kiama*.

Each territorial unit had a corresponding *kiama*: at the lowest level was the village council which dealt with the village affairs and above it was the *mwaki*, the ridge or the district council. Each of them had a leader or spokesman *muthamaki*, who acted as the coordinator. Not all the elders actively participated in the council affairs. In order to play any significant role in its functions, an elder had to be a member of the ruling generation. The most significant function of this council was the administration of justice. This was carried out through arbitration by a court of the *kiama* assessors [40]. The primary purpose of the judicial process was to maintain peace and stability. The choice of the assessors' involved in the hearing of a case depended very much on the type and the number of people it had affected. Within the kingship group, the settlement of dispute was the responsibility of the head of the family [41] or the *muramati*. Depending on the seriousness of the offence committed or the number of families affected, a family council, *ndundu ya mucii* would be assembled to settle a private dispute.

However, matters involving members of different clan- *mbari* were settled by the village council, or a bigger council, depending on the seriousness of the dispute and the background of the litigants. The latter, however, had an important say in the proceedings, for it was they who required members of the appropriate *kiama* to take action. Often the disputants attempted to settle their differences privately but after failing they agreed to refer the matter to the elders for arbitration. Their evidence, together with that of any other witness, was then heard. After this the case was open for general discussion by those present.

After the pronouncement of the judgment, the guilty party was expected to pay compensation within two days although the elders did not use power to

enforce their judgment; it was common knowledge that they could resort to religious sanctions with dire consequences if their judgment was ignored. Nothing was more feared than a public curse by the elders, some of them being the highest ritual and ceremonial personalities in the land. Moreover, a person who persistently flouted the judgments of the elders got ostracized by the society or, as an extreme measure; he had all his crops uprooted by angry neighbors.

The institution of the council of elders was also used by the Meru community. This council of elders, *NjuriNcheke*, was responsible for customary laws and acted as the custodian of the community's customary laws, orders and decrees affecting the entire Meru society. *Kiama* on the other hand, was the institution responsible for the execution of orders, decrees and enforcement of law and order within the community. To enforce the rules and decrees *kiama* got reinforcement from the warrior corps especially in cases of disobedience and resistance by convicted criminals. Penalties were fixed by the *Njuri Ncheke* for serious cases such as murder. The Meru had a well defined judicial system that corrected deviance and disorder in the society. Once the *Njuri Ncheke* passed laws and decrees, it was the duty of the legal experts in customary law to administer justice. The administration of justice among the Meru was the responsibility of the elders. During any sitting of the *Njuri Ncheke*, legal experts in customary law were invited from other houses of *kiama* to act as assessors.

The institution of the council of elders was fair as it allowed the plaintiff and the defendant to invite their own trustees before the council of elders. In case of any misconduct in the society it had to be proven beyond reasonable doubt that the accused was guilty as charged. If found guilty of either witchcraft or murder he would be put to death by council responsible for execution, *Kiamakia Nkomango* only after one of his kinsmen had thrown the first stone or stick at him thus implying that even his closest relatives had agreed with the verdict of the judges. Where a convicted criminal attempted to escape the afflicted persons had the duty of alerting the military units in the village who subsequently stalked the criminal until they overpowered him.

The members of his/her family would be asked to hold in for prosecution. If members of his family declared him unworthy and unwanted, he would be put to death. Execution involved wrapping the accused with dry banana leaves and setting him on fire or by hauling him down a steep hill on a closed beehive or down a water fall or by stoning. This action or punishment was only carried out when it had been proven beyond any doubt that the witch or wizard had killed a member of the complainant family or in possession of poison.

If one was held as a suspect he would be compelled to pay a fine of one bull to the *Kiama* in order to clear himself of accusations. The bull would be slaughtered and eaten by the elders and members of the warrior corps. During the case, the accuser and accused were supposed to be present. After that the accused person would give the *Kiama* a ram. He then dug a pit, placed the ram inside and was asked by the elders to solemnly swear as he hit the head of the ram with a stick chanting "may I die like this ram if I have killed or even thought of bewitching". This swearing was a social mechanism of maintaining law and orders [42]. The accused then killed the animal after which it was slaughtered and he was given a pancreas to eat on the spot. He and the plaintiff were put under observation for one year. If one of the two died, the dead was presumed to have lied to the court. Should the plaintiff die, it was taken as evidence that the suspect was not guilty, thereafter, the plaintiff's family was ordered to pay damages. Consequently, summons was very much respected by all the members of the society [43].

Communities had well organized and standardized fines for various offences and crimes. This ensured a uniform mode of administration of justice throughout the community. The fines were of two categories namely, the fine payable to the court and fine payable to the plaintiff depending on the seriousness of the offence. Fines payable to the court were either a he-goat or a bull. Offences fell under three main types namely, physical injuries related offences, property related offences and insult related offences. Those accused of manslaughter or murder paid the same fines to the relatives of the deceased. The fines for homicide were the highest of many court awards. The lowest court award was paid to the victim who had suffered physical injuries but did not lose body organs or suffer permanently. Victims of beatings and actual bodily harm using sharp objects such as knives, spears, arrows and sticks qualified for such awards. The payments could be in the form of land, non-land and livestock related offences.

The various judicial councils were the administrators of justice. The *kiamakia Ngome* was the top council in power and its function was higher than the above two. It dealt with all civil and criminal cases of all types civil and criminal. It handled serious cases such as witchcraft and murder cases. They executed the witches and decided on compensation. The council heard and determined cases, settled disputes, made decisions on and expected the *Njama ya Ita* to execute their decision [44].

The procedure for justice was to sue the alleged offenders before the elders. If the elders considered the offences were beyond their jurisdiction they would refer it to the highest councils in the land. If

any litigant or accused was dissatisfied with the decision of a council, one had the right to appeal to the next. An oath would be used because it would make the *Athamaki* abide with it as a verdict for all not for one. One would rather be tortured to death than say who opposed or decided at the judgment.

On finding someone guilty many types of punishment were inflicted. The punishments were imposed by ordinary council, if they were not death punishment. But all the other punishments were decided by the *Kiama Kia Ngome* or *Mugongo* meaning the people or tribe if someone was proved guilty of either manslaughter or murder. The people did not believe in killing the guilty person, for by so doing they would lose two lives instead of one. So the offender and his family or clans were ordered to compensate the family of the dead person [45].

## CONCLUSION

From our discussion above, the penal system in the indigenous Kenyan societies form of criminal justice originated from the council of elders who determined the form of punishment for criminal offenses committed. The societies had their own home-grown ways of handling deviance and other anti-social behaviour. The instrument of social order and control were similar in many communities. In Kenya, many communities confronted waywardness through recognized social mechanism of crime control and punishment. Members of the same age set were not only answerable to the community but also to the members of the senior age - sets. Consequently, they had to behave in a manner that was acceptable to all. Members of the community were bonded together by the age-set and age-grade and eldership which had powers to impose fines, demand community service, administer punishment or even ostracize. As shown, Crime and punishment were internally solved in the society through the social mechanism accepted by all the members. Furthermore, there was no prison system at that time, thus the punishment or penalty given was final.

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