

**University of Nairobi  
Institute of Diplomacy and International Studies**

**Role of Regional Organizations in Conflict Resolution:  
Lessons from Kenya's 2007 Elections**

**By**


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R50/75803/2009**

**A Research Project Submitted in Partial Fulfillment of the Degree of  
Master of Arts in International Studies.**

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**Declaration**

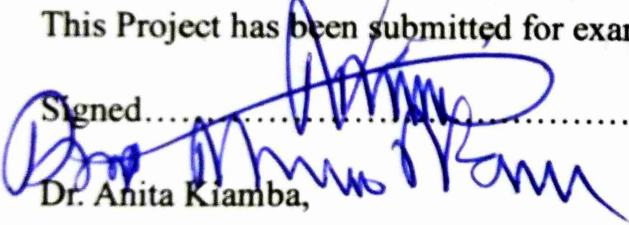
I, Robert Kungu hereby declare that this research project is my original work and has not been presented for a degree in any other University

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This Project has been submitted for examination with my approval as University Supervisor;

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## **Abstract**

Preventing or resolving world wars is a primary function of regional and international organizations. United Nations is a good example of such organizations that has experienced tremendous successes and major lessons in the area of conflict and conflict management.

These organizations also thrive in other areas such as promoting trade and regional integration. The AU (African Union) has been on the frontline when it comes to conflict matters within Africa. Conflict in Burundi and Kenya in 2003 and 2008 respectively are worth mentioning as examples of nations where the impact of the AU has been felt during conflict resolution.

Scholars and critics alike often branded the OAU as a dictator's club because of its non-intervention stand during conflict citing the traditional form of sovereignty as its major obstacle. However, in 2002, there was a shift that strengthened the AU structure to promote intervention during grave circumstances, although this is still a work in progress.

It is also worth noting that the AU has also faced significant challenges and some can be traced back to its predecessor the OAU, while attempting to execute its mandate. One example is the uprising in Libya in 2011 where the AU appeared incapable to intervene and resolve conflict. This points us towards possible weaknesses such as lack of resources and political.

This study has established that for the AU to be effective in executing its mandate, it needs to resolve the inconsistency within its legal framework to simplify a situation that requires forceful intervention during a violent crisis. Furthermore, the study has also pointed out the need for financial stability as crucial to AU's success and promoting political will among its membership to ensure that crises are resolved before they escalate.

## **Abbreviations**

**ACHPR**- African Court on Human and Peoples Right

**AMIB** – African Union Mission in Burundi

**AMIS** – African Union Mission in Sudan

**APSA** – African Union Peace and Security Architecture

**APRM** – African Peer Review Mechanism

**ASF** – African Standby Force

**AU** – African Union

**CEWS** – Continental Early Warning System

**EWS** – Early Warning System

**ECOWAS** – Economic Community for West African States

**EU** – European Union

**ICISS** – International Commission on Intervention and State Sovereignty

**IGO's** – Intergovernmental Organizations

**IDP's**- Internally Displaced Persons

**IREC** – Independent Review Commission

**LRA** – Lord Resistance Army

**MCPMR** – Mechanism for Conflict Prevention Management and Resolution

**NATO** – North Atlantic Treaty Organization

**OAU** – Organization of African Unity

**PSC** – Peace and Security Council

**PEV** – Post Election Violence

**PoW** – Panel of the Wise

**REC** – Regional Economic Communities

**UCG** – Unconstitutional Change in Government

**UN** – United Nations

## **Dedication**

To the greatest people in my life who made me ready for all this;

My beloved wife Linet, Children Calvin, Leon and Ethan.

## **Acknowledgements**

It is my sincere desire to express my utmost gratitude and special tribute to the following people for their valuable support that they have extended towards the completion of this project:

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My supervisor Dr. Anita Kiamba

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# CHAPTER ONE

## INTRODUCTION

### *1.1 Background of the Study*

The capacity and numbers of regional organizations has increased although when it comes to effective conflict resolution, there is room for improvement. United Nations, a global organization that was formed after two major world wars has been the most successful mediator in both interstate and intrastate conflicts.<sup>1</sup>

Majority of regional organizations attribute their success in conflict mediation to initiatives such as ensuring independence from member states, adequate resources to accomplish set goals and stringent methods stipulated in a charter. The minimal success experienced by the OAU can be attributed to lack of these three initiatives.<sup>2</sup>

It was established on May 25, 1963 in Addis Ababa and since then, it has always championed its commitment and capacity as the main organizations to intervene in cases of conflict within Africa. Since states within the continent regard peace and security as the keystone for solidarity and cooperation, settling disputes through negotiation, mediation and conciliation are key components of the charter of the OAU.<sup>3</sup>

In 1993, a new way of solving disputes was embraced which saw conflicts resolved through prevention, management and resolution mechanisms. This happened when MCPMR was established under the auspices of the OAU.

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<sup>1</sup> Hansen E, et al, 'IO Mediation of Interstate Conflicts', Moving Beyond the Global versus Regional Dichotomy, Vol 52, (2008) pp 295-298:295

<sup>2</sup>Hansen E, et al, 'IO Mediation of Interstate Conflicts', Moving Beyond the Global versus Regional Dichotomy, Vol 52, (2008) pp.297-298

<sup>3</sup> Charter of the OAU, preamble, par 5

The OAU together with the UN have been successful in resolving various conflicts within the continent. For example, the border conflict that resulted in loss of human and displacement of people on May in 1998 between Eritrea and Ethiopia was resolved through co-operation between the OAU and the UN.<sup>4</sup>This shows that with time, the nature of conflict in Africa necessitated the need for the OAU to evolve and even adopt partnerships with the UN in order to gain capacity of dealing with complex conflict situation within the continent.

History shows that by the time the AU was established, the continent had already become notorious for conflict.<sup>5</sup> Most of these problems however are as a result of the Berlin conference outcome in 1884 that resulted in boundaries being drawn based on territories occupied by colonialists. This resulted in some groups or tribes being literally divided while others who had no cultural affinity to one another being joined thus creating a recipe for interstate and intrastate conflict.<sup>6</sup> Scholars such as Connie Peck attribute this complete disregard for pre-existing cultural ties and political boundaries during the conference as the complication that gave birth numerous conflicts in Africa.

When the OAU evolved to the current AU, it transformed into more powerful organization with ‘teeth’ that it previously lacked to intervene during dire conflict situations. The Introduction of the PSC equipped the AU with the necessary tools to deal with issues threatening the stability of Africa. It enables the AU to apply various measures including intervention when responding to potential or even violent conflicts.

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<sup>4</sup>Biswaro J, *The role of regional integration in conflict management & resolution in Africa* (2013) pp.261-263.

<sup>5</sup>Agu S, & Okeke B, ‘The African Union and the Challenges of Conflict Resolution in Africa’, *British Journal of Arts and Social Sciences*, Vol 14, (2013) p. 281

<sup>6</sup> Peck C, *Sustainable Peace, The Role of the UN and the Regional Organizations in preventing conflict*(Rowman & Littlefield publishers Inc, 1998) p. 156.

This has improved the situation in Africa because by the year 2010, there were only 4 wars going on in the continent compared to the 20, which were there in the previous 20 years according to Ambassador Ruhakan Rugunda, a former president of the Security Council.<sup>7</sup>

Despite these successes in conflict resolution by the regional organization (AU), violent uprisings have been observed in Africa against sit-tight and despotic leaders notably from countries such as Algeria, Tunisia, Libya and Egypt to mention a few.

All these took place despite the introduction of an Early Warning System (EWS) in the AU.<sup>8</sup> Violence broke out in various places across Kenya on 30<sup>th</sup> December 2007 right after the presidential election results were announced. It was reported that 350,000 people were forcefully displaced and rendered homeless, while some were killed. This was viewed as a culture of impunity where perpetrators exploited a cycle of election violence observed in 1992 and 1997 general elections. A report produced by a commission set up to inquire about the post election violence suggests that Kenyans were divided along ethnic lines. The end of this sporadic violence was arrived at through mediation that saw a power agreement deal brokered to be shared by the incumbent Mwai Kibaki and Raila Odinga.<sup>9</sup>

This study, therefore, seeks to evaluate the role regional organizations have played in conflict resolution by focusing on the intervention of the AU and how it fared in intervening in the disputed 2007 presidential election in Kenya.

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<sup>7</sup> Agu S. & Okeke, B., 'The African Union and the Challenges of Conflict Resolution in Africa', *British Journal of Arts and Social Sciences*, Vol 14, (2013) pp.281, 284

<sup>8</sup> Yoh, J, *The Institutional Role of the Organization of African Unity in Conflict Resolution in Africa*, PhD, University of South Africa, 2008

<sup>9</sup> Philip W, 'Commission of Inquiry into the Post Election Violence Report, (2009)

## ***1.2 Statement of the Problem***

How effective are regional organizations when it comes to resolving state conflicts? The African Union's intervention in the 2007 disputed presidential election in Kenya will be the focus of this study and it seeks to answer the questions below:

- a) What mandate do regional bodies have in conflict resolution?
- b) Are regional organizations best suited for resolving conflicts?
- c) What are some of the most effective and sustainable intervention framework for regional bodies in conflict resolution?

## ***1.3 Objectives***

The research objectives of this study are as follows:

- a) To document the mandate and strategies employed by the regional bodies in conflict resolution and prevention in Kenya during the 2007 post poll chaos;
- b) To evaluate the capacity and impact of regional organizations in conflict resolution;
- c) To recommend effective and sustainable intervention framework for regional bodies in conflict resolution.

## ***1.4 Literature Review***

In this section, key terms and concepts will be defined, followed by review of literature from past studies that relate to this study. The key points to be highlighted include the genesis of regional organizations globally and regionally. Focus will be on the African Union, its genesis, roles and mandates in conflict resolution and the effectiveness of regional organizations in resolving conflict.

### 1.4.1 Evolution of Regional Organizations

The emergence of regional organizations can be traced back to the invention of multilateral conferences during the closing year of the congress of Vienna in 1815. This involved governments of states convening a multilateral conference (three or more states), setting an agenda and discussing the problems that arose. After decisions had been made, what followed is the implementation of those decisions by the participating states.

If the implementations were correctly applied, nothing remained to be done, however, this was not a common occurrence, and therefore follow-up conferences were convened where new ideas and decisions were made.<sup>10</sup>

This process reproduces itself and evolves into an ongoing cycle and because of further common problems and solutions, the result was a process of institutionalization of multilateral conferences as an ad hoc matter. This further led to the creation of regional/intergovernmental/international organizations (IGO's) with a regularly meeting general conference and a permanent secretariat. This secretariat has an international staff holding permanent appointments and headed by a secretary general.

This creation of a permanent secretariat is what changed the previous series of conferences into an organization. These organizations now convened the conferences more regularly (and later it became systematic), a function previously performed by the heads of states.<sup>11</sup>

The preparation for these conferences gave these organizations the power to negotiate the preliminary agenda, deciding on the venue, transport arrangements and accommodation for some delegates, ensuring the meeting rooms have all the essential services with regard to

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<sup>10</sup>Reinalda B, *RoutledgeHistory of International Organizations: from 1815 to the Present Day*. (Routledge, Taylor & Francis Group, 2009) pp. 10-12:10

<sup>11</sup>Claude I, *Swords into Plowshares, The Problems and Progress of International Organization*, (Random House, 1964) p. 175

conferencing and following up on the conference by publishing and circulating documents and keeping track of the deliberations.<sup>12</sup> By 1910 Murphy highlights that the general conferences organized by the secretariat outnumbered those ad hoc conferences called by head of states.<sup>13</sup>

Ikenberry who combines realist and liberal-institutionalist views, argues that the creation of international institutions takes place after the end of major wars (1815, 1919 and 1945) when a new superpower emerges and creates power imbalance. This is often between weak and powerful nations. The hegemon may then resort establishing means by which every state will use their powers responsibly thus not provoking the possibility of another war. These strategies and mechanisms are driven by Intergovernmental Organizations who appear to reassure the weak states by having the leading states restrain themselves from domination.<sup>14</sup>

The main argument presented by Ikenberry shows evidence of sophisticated power games by the UK and US after the major wars. They established principles of order that applied to both of them but by doing this, they also had to restrain the use of power and capacity that they had.<sup>15</sup> These strategies resulted in the inception of the United Nations as an International organization.<sup>16</sup>

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<sup>12</sup>Reinalda, B., *RoutledgeHistory of International Organizations: from 1815 to the Present Day*. (Routledge, Taylor & Francis Group, 2009) p.11

<sup>13</sup>Murphy S, *Humanitarian Intervention: The United Nations in an Evolving World Order* (University of Pennsylvania Press, 1996) P. 12

<sup>14</sup>Ikenberry J, *After Victory: Institutions, Strategic Restraint and the Rebuilding of Order After Major Wars*, (Princeton University Press, 2001) P.15

<sup>15</sup>Reinalda, B., *RoutledgeHistory of International Organizations: from 1815 to the Present Day*. (Routledge, Taylor & Francis Group, 2009) p.12

<sup>16</sup>Ikenberry, J., *After Victory: Institutions, Strategic Restraint and the Rebuilding of Order After Major Wars*, (Princeton University Press, 2001) p.12

Furthermore, the emergence of the United Nations is attributed to two world wars at a time when leaders made bold steps to make preventive diplomacy a reality. The sovereign states that joined this organization did so as an obligation of their membership so that they could resolve disputes peacefully.<sup>17</sup> Article 33 of the United Nations Charter explicitly outlines ways of dealing with disputes. It stresses on prioritizing peace when resolving any conflict in addition to resorting to other regional agencies such as ECOWAS but whatever means these parties execute, peace should be a priority.<sup>18</sup> Therefore, it is evident conflict between states played a key role in establishing Intergovernmental Organization such as the UN. It is worth mentioning that there were multilateral conferences held to help deal with common issues facing the 'would be' member states prior to forming these Intergovernmental Organizations.

These intergovernmental organizations play different roles depending on the aim of their creation. However, in some instances their roles can also change when the need arises. A good example is ECOWAS, which for 15 years did not deviate from its development agenda mandate of the sub-region yet it stepped in to help resolve conflict in Liberia during the 1990 civil war. It can be further argued that the presence of Nigeria who provided the monetary support to the peacekeeping initiative provided ECOWAS with the much needed capacity to intervene. The Second perspective is also Nigeria's strategic interest by wanting to have a politically stable neighbor so that the conflict in Liberia doesn't spill over to other countries in the region (Nigeria included).<sup>19</sup>

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<sup>17</sup> Peck, C., *Sustainable Peace, The Role of the UN and the Regional Organizations in preventing conflict* (Rowman & Littlefield publishers Inc, 1998) p.3

<sup>18</sup> UN Charter, Article 33

<sup>19</sup> Adeleke A, 'The Politics and Diplomacy of Peacekeeping in West Africa: The Ecowas Operation in Liberia' *The Journal of Modern African Studies*, Vol. 33 (Cambridge University Press, 1995), pp. 569-593:569

Tavares observes that there are thirty eight regional organizations that have a regional peace and security mandate.<sup>20</sup> However one of the key areas that should be examined is their scope and capacity.

Conflict is a global challenge therefore making conflict resolution a key mandate of regional organizations. Hansen, et al note that design, scope, membership and institutionalization all determine whether an organization is intergovernmental or regional.

For example global organizations such as the UN or League of Nations are widely inclusive and their members are heterogeneous unlike the AU that has a narrow focus and is exclusive.<sup>21</sup>

#### **1.4.2 The Evolution of African Union**

In the 19<sup>th</sup> century, cultural and spiritual affinity among Africans was exhibited worldwide in their poetry and Music. This movement further developed and as a result, the Pan-African movement led by Marcus Garvey and W.E.B Du Bois was born.<sup>22</sup>

This movement was instrumental in the struggle for independence against colonialism in Africa right after the Second World War. Several conferences were organized where visions and goals of the Pan-African Movement were re-articulated. Some of these include independence from colonialism, strong brotherhood between states and limited sovereignty to reduce interference in the affairs of states. These activities took place during the start of the 20<sup>th</sup> century.

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<sup>20</sup> Tavares R, *Regional Security: The capacity of international organizations*, (London: Routledge, 2010) p.2

<sup>21</sup> Hansen, et al, 'IO Mediation of Interstate Conflicts', *Moving Beyond the Global versus Regional Dichotomy*, Vol 52, (2008) p.296

<sup>22</sup> Munya P, "The Organization of African Unity and Its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation" *Boston College Third World Law Journal*, Vol 19 (Boston College, 1999) PP. 540-543: 540



The non-interference as noted by various scholars became contentious later on when conflicts in the continent became increased and were intra-state in nature. The road to continental unity experienced a few obstacles because African states found became grouped based on regions and ideologies what was incidentally results of the pan-African conferences.

An example of such groups that preceded the OAU is the Brazzaville Group. However, in 1963 at a Summit in Addis Ababa for African leaders, the OAU was born. This happened despite differences in ideology because on faction preferred a united continental government unlike the other pushing for independent states forming a continental body. The OAU Charter therefore emerged as the compromise document. Having been established on May 25, 1963.<sup>23</sup>

OAU became the primary conflict resolution agency in Africa, settling disputes through negotiation, mediation and arbitration is one of the primary principle of the charter that applies to all the member states.<sup>24</sup>

One would expect that there was relative peace and calm in the post-colonial era in Africa. However, the opposite is true and Peck explains that the potential for conflict was brewed after the Berlin conference in 1884 where colonialists drew boundaries in Africa with no regard for pre-existing ties among the Africans.<sup>25</sup> Other Scholars see lack of consistency in the political front thus constant disagreements on fundamental political principles.

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<sup>23</sup>Munya, P., "The Organization of African Unity and Its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation" *Boston College Third World Law Journal*, Vol 19 (Boston College, 1999) P.543

<sup>24</sup>Amoo S, *The OAU and African Conflicts: Past Successes, Present Paralysis and Future Perspectives*, PhD, George Mason University, 1992

<sup>25</sup> Peck, C., *Sustainable Peace, The Role of the UN and the Regional Organizations in preventing conflict*(Rowman & Littlefield publishers Inc, 1998) P.156

In addition, conflict after the colonial era which appears more organized and dangerous because of advanced weaponry, is believed to fuel conflict further with devastating effects.<sup>26</sup> Consequently, OAU had to increase its capacity to adequately deal with this menace.

Non-interference as a principle was held in high regard in internal issues of states within the continent. The threat that this posed to regional security seemed to have attracted the attention of African leaders.<sup>27</sup> By one account in the 1980s, there were over 100 million Africans living in countries in the throes of war. Therefore, a major change took place in the OAU in 1993. The conflict mechanism through mediation, conciliation and arbitration proved to be ineffective because it took close to 30 years for a new conflict resolution mechanism that took a preventive, management and resolution approach to be adopted.<sup>28</sup> It is also important to note that OAU did not have the capacity to deal with intrastate conflicts which was the most predominant in Africa in 1980s since it was mainly meant to deal with interstate conflicts among members.

In July 2002, there were fundamental transformations to the OAU. This is the era that the PSC and the Commission of the AU were formed formerly referred to as MCPMR and the OAU secretariat respectively. These fundamental changes were meant to tackle the thorny issues surrounding state sovereignty and intrastate conflicts.

With the transformation of the regional organization, a few important features were introduced. These included a mechanism that warns of an impending conflict thus enabling

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<sup>26</sup>Agu, S. & Okeke, B., 'The African Union and the Challenges of Conflict Resolution in Africa', *British Journal of Arts and Social Sciences*, Vol 14, (2013) P.283

<sup>27</sup>Amoo, S., *The OAU and African Conflicts: Past Successes, Present Paralysis and Future Perspectives*, PhD, George Mason University, 1992

<sup>28</sup> Yoh, J., *The Institutional Role of the Organization of African Unity in Conflict Resolution in Africa*, PhD, University of South Africa, 2008

the necessary bodies to build the capacity of a tactful and quality response. This system was referred to as an Early Warning System (EWS) that had previously been lacking at the now defunct OAU. This is one of the features introduced into the Peace and Security Council thus giving it an edge over the previous organization.<sup>29</sup>

Literature has established that the key reasons for establishing Intergovernmental Organizations was to prevent future wars especially between states. Furthermore, the mandate of the majority of such organizations includes but not limited to promoting peace and harmony between states although the major challenges lie on their capacities to successfully execute their mandate.

#### **1.4.3 Roles and Mandates of Regional Organizations**

Regional organizations perform certain functions depending on the authority given to them by the members. These can range from economic development to conflict resolution. However it has been observed in some cases particularly in Africa where an organization meant for economic development ended up being a third party intervener in a war.<sup>30</sup>

The AU got its mandate in providing support to UN in international peace and security during its early stages. This is properly documented in the UN Charter specifically in the Eighth Chapter. *An Agenda for Peace* is a report of the UN Secretary General that contained a number of proposals that articulated mechanisms for dealing with members who contravene international peace and security.

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<sup>29</sup>Yoh, J., *The Institutional Role of the Organization of African Unity in Conflict Resolution in Africa*, PhD, University of South Africa, 2008

<sup>30</sup> Adeleke, A., 'The Politics and Diplomacy of Peacekeeping in West Africa: The Ecowas Operation in Liberia' *The Journal of Modern African Studies*, Vol. 33 (Cambridge University Press, 1995), p.569

The report also stressed on the idea that the UN and regional organizations to work hand in hand in their operations especially during preventive diplomacy to post conflict peace building. This would be easily embraced by conflicting parties while making the burden of the council lighter thus giving it a more pivotal role.<sup>31</sup>

The involvement of regional organizations was also entrenched in Article 21 of the League of Nations when it came to solving disputes. It therefore does not come as a surprise that the UN devotes an entire chapter VIII to articulate how regional agencies should handle peace and security matters. This evolution from the two organizations clearly show the importance of having a regional agency in solving local disputes and the UN further goes to break it down to the specifics which further confirms the foresight in promoting local solutions to local problems back in 1945.<sup>32</sup> This would prevent the UN from being directly involved in a conflict and providing an alternative.

In Africa, ECOWAS was already performing this important role in Liberia while the above UN report was being produced. However, conflict management was not very effective under the defunct OAU due to its non-interference clause within its charter.<sup>33</sup> However the transformation to AU strengthened these policy weaknesses thus improving its structure when it comes to managing conflicts. The next section of this document will evaluate the role the AU in resolving conflicts.

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<sup>31</sup>Singhatey, P.J., *The Role of Regional Organizations in the Maintenance of International Peace and Security*, MA, Dublin City University, 2008

<sup>32</sup>Ibid

<sup>33</sup>Ibid

#### **1.4.4 Roles and Mandates of the African Union (AU) in Conflict Resolution**

The AU establishment meant that a lot of improvements had been made since structurally, the continent has already become accustomed to a weak regional organization. Therefore, the major obstacle to the success of the AU still remains to be resolving conflicts within the continent.<sup>34</sup> Although, there are strong signs that indicate the AU can perform much better than the OAU. This has been witnessed in cases where it has resorted to use of military intervention when peaceful means have not been fruitful.

The first such intervention by the AU was in May 2003 when peacekeeping troops from various states were deployed in Burundi to oversee the process of implementing peace agreements. The Union also deployed troops in Sudan during the Darfur conflict before the UN took over the mission in 2008.<sup>35</sup> This is an indication of the presence of ‘teeth’ that had been previously lacking whereby there was no alternative to peaceful negotiations under the defunct OAU.

The PSC empowers the Chairperson of the AU Commission to report any matter that threatens to destabilize Africa and furthermore gives the PSC the authority to intervene in a conflict with or without the consent of a member state. The rationale of these powers is to ensure that there is no grave abuse of human rights or genocide therefore protecting the civilians in any conflict within the continent.<sup>36</sup>

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<sup>34</sup>Mathiasen, F, *The African Union and Conflict Management*.[http://www.dtic.mil/cgibin/GetTRDOC?Location.retrieved 18/08/11](http://www.dtic.mil/cgibin/GetTRDOC?Location=retrieved%2018/08/11)

<sup>35</sup>Williams, P, *The African Union’s Conflict Management Capabilities*, (2011)

<sup>36</sup> Yoh, J, G, N, *The Institutional Role of the Organization of African Unity in Conflict Resolution in Africa*, (University of South Africa, 2008) 417

The AU has components that help it execute its mandate effectively. Some of these include a system that gives warning before conflict gets worse, the AU commission, a Committee that includes the Military, the African Standby Force and a Special Fund. All these components working interdependently provide the recipe that addresses the peace and security needs within Africa.<sup>37</sup> The PSC is further mandated to perform certain actions while consulting the Chair of the AUC. Some of these functions include anticipating and preventing disputes.

Furthermore, it is mandated to generally promote post war activities especially in serious cases where loss of human life has taken place in the form of genocide. Other forms would include instituting various forms of sanctions where governments have been unconstitutionally overthrown with the aim of bringing political stability and ensuring human life is protected.<sup>38</sup>

#### **1.4.5 Effectiveness of the African Union (AU) in Conflict Resolution**

Early scholars indicated that the conflicts in Africa are as tragic as they are complex and therefore observe that the AU (former OAU) cannot make it alone, hence it needs external powers such as the UN since both organizations have strengths and weaknesses.<sup>39</sup> This will ensure that the two bodies complement each other.

Language and other traits associated with culture have been identified as some of the main sources of conflict within groups.<sup>40</sup> Furthermore, widespread conflict within Africa has hampered to a greater degree any meaningful development. A lot of energy and resources have

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<sup>37</sup>Keenan, J, *Terror in the Sahara: The Implications of US imperialism for North and West, Review of African Political Economy*, (2004)

<sup>38</sup>UN, *A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change*, (New York, 2004), p.1

<sup>39</sup>Amoo,S., *The OAU and African Conflicts: Past Successes, Present Paralysis and Future Perspectives*, PhD, George Mason University, 1992

<sup>40</sup>Halebsky S, *Mass Society and Political Conflict: Towards a Reconstruction of Theory*, (London: Cambridge University Press, 1976) p.101

been channeled to either conflict or its resolution at the expense of economic, social and political growth.<sup>41</sup>

The thorny issue of reducing or completely eradicating the number of violent conflicts arising sporadically within the continent is among the top most priority of the AU. This has resulted in making the region very volatile and depicts a picture where violence is an acceptable way of life.<sup>42</sup>

The AU was therefore established to help sort the thorny issue of conflicts in Africa. Development took a backseat as a result of the scourge of conflict thus prompting leaders within the continent to act. This includes and is not limited to the power to intervene during violent crises.

However, the main challenge has always been the practicality of this consciousness thus the international community has to step in to provide logistical support to this regional body.<sup>43</sup>

In 2008, a UN force of 5,650 half of which comprised of an AU force was sent in Burundi for a peace keeping mission and also a force of 8,000 was sent to Darfur to form a hybrid of AU/UN totaling 26,000 as well. In 2012, a force comprising of 3,300 military personnel was sent to boost the Malian army failed because of insufficient funding and poor logistical planning. The UN would later on step in with a force three times (9,500) the one of AFISMA in size. This shows that the AU is still not strong enough to resolve conflicts on its own however on the case of Mali, a study by Oluwadare attributes economic interests by the

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<sup>41</sup>Oche O, *From Dispute to Dialogue: Essays on Conflict and Conflict Resolution*, (Lagos: FOG Ventures, 2006) P.1

<sup>42</sup>Agena G, "The African Union (AU) and Mediation Efforts in the Crisis in Darfur Region of Sudan" *Nigerian Journal of Social Sciences*, (2011) P.19

<sup>43</sup>Agu, S. & Okeke, B., 'The African Union and the Challenges of Conflict Resolution in Africa', *British Journal of Arts and Social Sciences*, Vol 14, (2013), p.287

French government to this UN led mission instead of strengthening AFISMA.<sup>44</sup>

How has AU performed? A permanent representative to the UN, Rugunda compared the simultaneous 20 wars within Africa in 1990 to only 4 in 2010. However, this was before the famous 'Arab uprising' took place in Egypt, Tunisia and Libya.

Conflict resolution scholars such as Okeke and Agu stress that the major impediments to making the AU effective lies with lack of extensive external support and inability to ensure compliance with AU's decisions within its membership.<sup>45</sup>To further determine the effectiveness of this body, this study shall use the intervention strategy adopted by the AU during the 2007 post poll chaos witnessed Kenya.

This is a scenario where the country was polarized along ethnic lines before the election and when the winner was announced, spontaneous forms of violence were witnessed at various violence hotspots within the country. The result was loss of life where 1,500 were reported dead, 600,000 displaced and property destroyed.

The chaos necessitated the former UN secretary general to intervene in a bid to mediate the stalemate between the two opposing sides thus leading them towards an agreement that saw them form a coalition government. This saw Mwai Kibaki and Raila Odinga agree to share power as brokered by Kofi Annan.<sup>46</sup>This study shall use this Kenyan experience to evaluate AU's performance in conflict resolution.

Literature has established that most regional organizations were established to deal with interstate conflicts but not intra-state conflicts. However, intra-state conflict has become the most common nature of conflict after the major world wars. Therefore, understanding the

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<sup>44</sup>Oluwadare A, *The African Union and the Conflict in Mali: Extra-Regional Influence and the Limitation of a Regional Actor*, PhD, (National Open University of Nigeria, 2013)

<sup>45</sup>Agu, S. & Okeke, B., 'The African Union and the Challenges of Conflict Resolution in Africa', *British Journal of Arts and Social Sciences*, Vol 14, (2013), P.287

<sup>46</sup> Philip W, '*Commission of Inquiry into the Post Election Violence Report*, (2009)



nature of conflict determines the success of resolving it whether through intervention or diplomacy.

Most conflicts, as literature suggests, revolve around class, status and power. Another aspect is external support. Most successes by the Union can be linked to support by global organizations such as the United Nations. This also shows that AU has challenges in getting sufficient funds for its activities.

Strategic interests by member states that are hegemonic such as the case of Nigeria's intervention in the Liberia civil war in 1990 shows that a country's economic power and willingness to financially support a regional organization will determine the success of an operation. Apart from diplomatic relations between states, this also raises the issue of independence or neutrality by the regional organization especially when it comes to resolving an inter-state conflict.

### ***1.5 Justification of the study***

History shows that civil wars were common after the cold war.<sup>47</sup> Most of these conflicts have occurred in developing countries in Africa.<sup>48</sup> Previous studies of International organizations suggest that democratic membership, high institutionalization and binding management practices are key if regional organizations are to resolve a conflict.<sup>49</sup> The OAU evolved into the African Union (AU) and this came with a few changes in its structure that members felt would equip the organization better to handle conflicts in the continent.

The AU as literature has established experienced success in cases where a host nation

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<sup>47</sup> Jackson R, 'The Dangers of Regionalizing International Conflict Management: The African Experience', *Political Science*, Vol 52, (2000) p. 43

<sup>48</sup> Park J, 'Conflict Management and Mediation Theory: South Africa's Role in Burundi's Civil', *Conflict International Area Review*, Vol. 13, (2010) P. 182

<sup>49</sup> Hansen, et al, 'IO Mediation of Interstate Conflicts', *Moving Beyond the Global versus Regional Dichotomy*, Vol 52, (2008) pp. 318-319:318

experiencing civil conflict invites the organization to help bring in peace. However, in cases where the host does not invite the regional organization, has the intervention been successful? What about political will of the member states, does it play a critical role? This study is important in the sense that it will provide a basis in which the African Union can effectively strengthen its intervention mandate in resolving conflicts. It will also analyze how local conflict attracts regional bodies and international community attention. This will fill a research gap on the performance of this regional body when it comes to intra-state conflicts.

The findings will provide a basis for strengthening the capacity of regional organizations in conflict resolution. The findings will also provide scholars in the field of conflict studies with knowledge about the successes and failures of various conflict resolution strategies. Ultimately, this study strives to add to the body of knowledge by availing academic information to scholars in the International studies discipline and finally provide a basis for other researchers for future research on any gaps that will be established since elections occurs periodically.

## ***1.6 Theoretical Framework***

This study will use the neo-liberalism theory. This theory will provide the basis for explaining and predicting phenomenon and to make decisions useful to this study.

### **1.6.1 Neo-liberalism Theory**

In the 1970s, a period that saw the emergence of international institutions both number and variety, the neo-liberalism theory came up to challenge the neorealist hypothesis of states coming together since anarchy would be the biggest obstacle. However, Robert O, Keohane, disputes this realist approach about the consequences of anarchy by giving the examples of existing international institutions such as UN and the NPT (Non- Proliferation Treaty).<sup>50</sup>

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<sup>50</sup>Keohane, R.O., *After hegemony: Cooperation and Discord in the World Political Economy*, (Princeton, NJ: Princeton University Press, 1983) p. 3

When it comes to world politics, both neo-liberalism and realist approaches view states as single and rational actors because of the international anarchical system as opposed to classical liberalism.

On one hand, realists stress that international cooperation is only possible when backed by a hegemon under to enforce rules and norms. While on the other hand, neo-liberals argue the potential for this cooperation is much greater than the realism approach. This potential for international cooperation originates from mutual interdependence.

When states put less focus on power politics and military capacities then focus on interstate cooperation, focus shifts to increasing capacities to the economic sector. Furthermore, they shift from becoming autonomous in world politics thus becoming mutual interdependent.<sup>51</sup>

Neo-liberalism further disagrees with realism on the assumption that states focus on relative gains. Since the states share common interests and are more interested in cooperation, their main focus is to pursue absolute gains. However, according to Keohane, these interests do not automatically translate into collaboration. The primary constraint is the lack of autonomy to enforce rules and fear of getting double crossed by partners as explained in game theory.<sup>52</sup>

Cooperation can be facilitated by an institution such as the UN since it has the capacity to establish a framework that contains rules of engagement and sanctions whenever the need arises.

The premise of cooperation as more likely under the condition of interdependence has been severely criticized by neo-realists, arguing that neoliberals underestimate the importance

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<sup>51</sup> Keohane, R.O. & J. Nye, *Power and Interdependence: World Politics in Transition*, (Boston: Little, Brown, 1977) p. 7

<sup>52</sup> Diez, T., Bode, I, & A.F. Costa, *Key Concepts in International Relations*, (Los Angeles: SAGE Publications, 2011) pp. 130-134

of power in world politics.

This study will make use of liberalism and neo-liberalism key concepts to interpret data and also provide a basis for explaining and predicting phenomenon i.e. making practical intelligent decisions.

This study will therefore investigate the role that regional organizations play to resolve conflict using the AU and the post election experience in Kenya during the 2007 general elections.

### ***1.7Hypotheses of the study***

The hypothesis that this study seeks to test is as follows:

1. Regional organizations play significant roles in conflict resolution
2. The AU is not well equipped to deal with Intrastate conflicts

### ***1.8Methodology of the Study***

#### **1.8.1 Research Design**

Research being a scientific and a systematic process, it requires it be conducted under certain conditions. These conditions include collecting data then analyzing it while focusing on the main aim of the study.<sup>53</sup> Therefore, a research design ensures that you integrate the above components of a study, which is collection and analysis with an aim to address the research problem.

It is almost like a blueprint highlighting and specifying how data should be collected,

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<sup>53</sup>Kothari. C, *Research methodology methods & techniques*, (New Delhi: New Age International, 2004) p.31

measured and analyzed. This is a descriptive study because it seeks to explain the role of regional organizations in resolving conflict.<sup>54</sup>

### **1.8.2 Type of Data**

This study will examine legal, policy and institutional framework documents highlighting operations of African Union and how these explain the nature of its intervention in Kenya's 2007 post election violence. Therefore, various reports documenting the operations of the AU will be analyzed in this study.

### **1.8.3 Collection of Data**

Data collection is the gathering of specific information with the aim of either, proving, refuting or clarifying some facts.<sup>55</sup> The research should be aware, that the type of data determines the method of collection. Primary data collection for example differs from secondary data collection.

The data that will be analyzed in this study are documents from the African Union website, reports about the AU activities and Media reports through content analysis. This primarily outlines the process of examining anything that can be counted in text of any form or media forms such as Television, radio programs, films, pictures and live performances such as plays and concerts.<sup>56</sup>

It is worth noting that prior to 1940, content analysis was primarily quantitative in nature but after 1950, it shifted to qualitative analysis though the differences between the two are not very big.<sup>57</sup>

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<sup>54</sup>Bryman. A, *Social research methods*, (Oxford: Oxford University Press, 2008) p.46

<sup>55</sup>Kombo, Donald & Tromp, *Proposal and Thesis Writing: An Introduction*, (2006) pp. 10-45.

<sup>56</sup>Walliman. N, *Your research project: Designing and planning your work*, (London: Sage Publications, 2011) pp. 180-181

<sup>57</sup>Kothari, C., *Research methodology methods & techniques*, (New Delhi: New Age International, 2004) p. 32

This study seeks to establish the role regional organizations play in resolving conflict by examining relevant documents regarding the peace and security organ of the AU. This is important because they will be used to make conclusions regarding the strategies employed by this organization when resolving conflict, evaluating its capacity and finally give effective recommendations and sustainable intervention framework for regional organization in conflict resolution. Therefore it is not concerned so much with the quantification of content but the quality of content, thus it will be a qualitative analysis of documents. Most research scholars associate content analysis with the examination of mass-media outputs, however this is not cast on stone, since this form of qualitative analysis has a broader applicability.<sup>58</sup>

The other issue is authenticity of the materials as well as reducing biasness. The AU is a reputable regional organization with a membership of 54 countries. The use of published and unpublished academic works will reduce biasness in the study and give more credibility to the findings. This method of study is a very transparent form of research and its unobtrusive nature gives it an edge to other forms of research because it doesn't require the same level of ethical scrutiny.

## ***1.9Chapter Outline***

### **1.9.1Chapter One**

This chapter gives an introduction to the research study by giving an overview. It then reviews literature from previous studies regarding the role regional organizations play to resolve conflict. The theory is highlighted and the methodology explained.

The research method to be applied in this study is content analysis.

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<sup>58</sup> Bryman, A., *Social research methods*,(Oxford: Oxford University Press, 2008), p.305

### **1.9.2 Chapter Two**

This chapter will look at the mandate and strategies employed by regional organizations in conflict resolution and prevention in Kenya during the post election violence.

### **1.9.3 Chapter Three**

This chapter will deal with the capacity and impact of regional organizations in conflict resolution.

### **1.9.4 Chapter Four**

This chapter will deal with effective and sustainable intervention framework for regional bodies in conflict resolution.

### **1.9.5 Chapter Five**

This chapter concludes the study by summarizing the key areas of the study, giving recommendations and touching on areas that would guide future studies.

## CHAPTER TWO

### REGIONAL ORGANIZATIONS

#### *2.1 Introduction*

Conflicts and crises, while structurally different in some important ways are closely and even symbiotically related. Conflicts are organic and dynamic and have a distinct lifecycle. That lifecycle of conflict is illustrated in the conflict cycle, which begins during periods of relative peace. The challenge during this part of the conflict cycle is one of peace management; if the peace management is not undertaken properly, the cycle moves on to a crisis, during which time the challenge is one of crisis management. If this is not done properly, the cycle moves on to the stage of violence; once violence breaks out, the challenge becomes one of conflict management which, if successful, leads to peace agreements, followed by periods of post-conflict reconstruction, which, in turn, if properly handled, can lead back to peace, thus completing the cycle as described by Mwagiru.<sup>59</sup>

Peaceful management of conflict plays a key role in law and diplomacy. This philosophy encompasses two ideas. The first one explains that in the normal course of interactions, actors in the system should always intervene and manage the conflict using peaceful means using international, regional, national or sub-national means. The second one highlights that whenever violent conflict occurs, peaceful methods should be used to bring the violent conflict to an end.<sup>60</sup>

International governmental organizations (IGO's) perform various functions and may be categorized according to breadth of membership or scope of purpose.

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<sup>59</sup>Wanyande, P., Omosa, M. & C. Ludeki, *Governance and Transition Politics in Kenya*, (Nairobi: University of Nairobi Press, 2007), P.133

<sup>60</sup>Mwagiru, M., *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya*. (Nairobi: IDIS, 2008), P.35



One of these functions is provision of peacekeeping services and this may not be strictly described as collective security. <sup>61</sup>Organization of African Unity (OAU) helped maintain peace, providing third-party pressure to be brought against member states that might otherwise have gone to war.

The United Nations (UN) Charter explicitly endorses regional peacekeeping organizations. <sup>62</sup>This has seen a UN-AU hybrid operations conducted to resolve conflict using military means. Although this study focuses on AU, it is important to include UN to fully understand this regional body with regard to conflict resolution activities. Furthermore, this will help in highlighting the strategies employed and mandate of the African Union in resolving conflict.

## ***2.2 Mandate and Strategies employed by Regional Organizations***

This study shall briefly look at various regional organizations in order to understand their roles in conflict resolution. The first regional organization is the OSCE whose activities slightly differ from AU because of the nature of conflict experienced in Europe. This is the European counterpart of AU. Its main activities as has been observed have been mainly preventive making use of quiet diplomacy in a bid to avoid conflicts escalating and gaining momentum. This regional organization stems its authority the UN Charter, which authorizes such arrangements as an avenue of resolving disputes prior to intervention by the UN Security Council.

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<sup>61</sup> Papp, D.S., *Contemporary International Relations: Frameworks for understanding*, (New York: Macmillan, 1984), p.53

<sup>62</sup> Barash, D.P. & C.P., *Webel. Peace and Conflict Studies*, (Los Angeles: Sage, 2009) p.301

The OSCE's aim to contribute to global security can be traced from the UN Charter. Furthermore, its principles are drawn from the first chapter of the UN Charter where maintaining peace and security are prioritized.<sup>63</sup>

The second organization is NATO (North Atlantic Treaty Organization) that has membership from North America and Europe. It is one of the most successful regional bodies and has been involved in joint operations with the UN.<sup>64</sup> However it doesn't consider itself a regional organization as far as regional arrangement in the UN Charter is concerned. Therefore, the Council is tasked to revise the charter to include intergovernmental organizations like NATO, OIS and EU.<sup>65</sup>

Africa has experienced quite a number of violent conflicts due to a host of reasons with one of them being a consequence of the Berlin agreement in 1883-1884 that saw communities with no affinity or cultural ties being bundled up together to form a country and boundaries drawn because of the colonialists interests. Therefore quite a number of regional organizations exist today in Africa. Gaining independence for countries within Africa at different periods meant that democracy was not automatic in all countries. This is reflected in the major regional organization within Africa because for a long time it was considered inactive especially with regard to responding to violent conflict within member states. However, a transformation that took place within the organization that saw it rebrand from OAU to AU also came with a lot of improvements especially in terms of policy. For instance, key changes such as advocating

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<sup>63</sup>The Helsinki Final Act, 1 August 1975. (<http://www.hri.org/docs/Helsinki75.html>)

<sup>64</sup> NATO, *The North Atlantic Treaty*, 4 April 1949. (<http://www.nato.int/docu/basic/txt/treaty.htm> )

<sup>65</sup> UN Security Council Report  
([http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.2071503/k.737B/Update\\_Report\\_No\\_3br18\\_September\\_2006.htm](http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.2071503/k.737B/Update_Report_No_3br18_September_2006.htm)).

for stability, security and peace within Africa is contained in the Constitutive Act.<sup>66</sup>

The establishment of the PSC within AU was necessitated by the mandate to fulfill provision of peace and security within the continent. This elaborate setup of the AU was as a result of the realization that conflict contributed to the most problems within and between countries in Africa.<sup>67</sup>

The peacekeeping force that was given the task to protect the incumbency of Samuel Doe is the ECOWAS Ceasefire Monitoring Group. Some of the major challenges facing these groups include lack of financial independence and in this case, the regional organization depends on Nigeria when it comes to logistical support such as military and finances. In addition, there is lack of trust between Anglophone and francophone countries.

One of the major causes of rivalry among states that have membership within a regional organization is if a member is perceived to be dominant or exerting authority over other members. This is the case when it comes to SADC where South Africa is perceived to be dominating over other members similar to Nigeria in West Africa.

It is evident that most of these regional organizations are politically oriented however, some of them also have an additional economic angle and therefore act depending on the situation at hand. Two examples of such organizations are ECOWAS discussed above and IGAD. Somalia and Sudan have been the greatest recipients of IGAD's activities with very minimal success. These included appointment of special envoys to broker peace agreements between warring factions, which in most cases is always the incumbency against rebels such as SPLM in Sudan.<sup>68</sup>

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<sup>66</sup>African Union, Constitutive Act of the African union ([http://www.au.int/en/sites/default/files/ConstitutiveAct\\_EN.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf), 2000), last updated 31st January 2016

<sup>67</sup>Singhatey, P.J., *The Role of Regional Organizations in the Maintenance of International Peace and Security*, MA, Dublin City University, 2008

<sup>68</sup>Singhatey, P.J., *The Role of Regional Organizations in the Maintenance of International Peace and Security*, MA, Dublin City University, 2008

As it has been established, international governmental organizations (IGOs) perform various functions and may be categorized according to breadth of membership or scope of purpose. Regionalism in peacemaking has not been successful because of state sovereignty thus restricting its effectiveness.<sup>69</sup> An example of such is the crisis that occurred in Burundi in April 2015. In May, there was a coup attempt by army officers which failed thus paving way for elections that were held in July where there the president was re-elected and the opposition leader terming the exercise as a joke. The crisis left approximately 440 people dead and 240,000 displaced according to the UN.

When violence broke out in Burundi in December 2015, the PSC strongly condemned it then proceeded to pledge sending a 5,000 peacekeeping force without consulting the government. However, its officials in favor of a more political solution abandoned those plans.<sup>70</sup> This happened despite having a clause under article 7 of the protocol authorizing AU to intervene.<sup>71</sup> This shows that the AU's intervention during conflict has a strong legal backing. How do these relate to the post poll chaos witnessed in Kenya in 2007/2008? This is the focus of this study.

There are several instruments that form the legal framework of the AU which outline the basis of response when faced with conflict. Examining these instruments against the backdrop of post poll violence in Kenya will form the basis of this study.

### **2.2.1 Constitutive Act of the African Union**

This generally dictates the rules of engagement as stated within the document. Article 3(f) is very elaborate on matters of promoting peace, security and stability within the continent.

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<sup>69</sup> Barash, D.P. & C.P., *Peace and Conflict Studies*, (Los Angeles: Sage, 2009) p. 301

<sup>70</sup> Nkosi, M., *Has Africa Union let down Burundi?* BBC News(<http://www.bbc.com/news/world-africa-35462079>), last updated 1<sup>st</sup> February 2016

<sup>71</sup> African Union, *Peace and Security Council* (<http://www.au.int/en/organs/psc>), last updated 31<sup>st</sup> January 2016

Furthermore, Article 3(g) focuses on promoting democratic principles and institutions, good governance and public participation. These are examples of principles found to be the reasons behind some successful regional organizations such as NATO.

On the resolution of conflicts, Articles 4(e & h) favor resolution of conflicts by peaceful means as prescribed by the Assembly. However, in cases where gross violation of human rights has taken place, the AU has the authority to intervene to resolve the conflict to prevent further loss of human life.

A member state also has the possibility to invite the AU to intervene should a conflict situation get out of hand in order to restore peace as per Article 4 (j) while Article 9(e) gives the mandate to the AU Assembly when it comes to overseeing the implementation of the AU policies and ensuring that members are compliant.<sup>72</sup>

The intervention of the AU chairperson in Kenya set the stage for the mediation process after ceasefire. Extraordinary sessions can only be held when any member states makes a request or as per Article 6(3) that pegs approval on a 2/3 majority of members. No member state invoked this article during the crisis in Kenya.<sup>73</sup> The resolution related to the crisis in Kenya was passed at a scheduled ordinary session almost a month after the post-election violence began.<sup>74</sup> This underlines the importance of prevention as compared to intervention since sufficient consensus is likely to be attained in a prevention-empowered union.

### **2.2.2 Lome Declaration**

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<sup>72</sup> African Union, *Peace and Security Council* (<http://www.au.int/en/organs/psc>), last updated 31<sup>st</sup> January 2016

<sup>73</sup> African Union, *Constitutive Act of the African union* ([http://www.au.int/en/sites/default/files/ConstitutiveAct\\_EN.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf) , 2000 ), last updated 31<sup>st</sup> January 2016

<sup>74</sup>Laibuta, M., *The African Union and Kenya's Constitution Building Process*, Sweden: International Institute for Democracy and Electoral Assistance, 2014.

On 10<sup>th</sup> – 12<sup>th</sup> July 2000, African leaders met in Togo to repudiate unconstitutional change in governments. The crisis in Kenya had the potential to escalate into an unconstitutional change in government (UCG). As a result, landlocked countries like Rwanda, Burundi and Uganda that depend on the sea port in Kenya suffered losses because it was not possible for goods to be transported to and from the port in Mombasa.

The Assembly further laid out principles to guide democratic practices of governance in member states. These principles were inherited from the OAU to become guiding principles to the AU. According to these principles, member countries should adopt a constitution that is democratic in nature, respect it, ensure there is separation of powers and judiciary is independent and in addition guarantee free and fair elections as well as fundamental rights and freedoms among other modern democracy practices.

A glance at the run up of events to the 2007 elections shows that Kenya did not show signs of having democratic values and principles. However, the AU couldn't intervene since Kenya was not facing a constitutional crisis as per the Lomé Declaration before December 2007. The constitution then was not conducive for any kind of reforms to take place. For example, appointment of judicial and Electoral commission officers was the sole function of the executive, which complicates the fundamental principles of a healthy democracy. This also raises the issue whether the AU should micromanage its membership to adhere to constitutional practices and rule of law.<sup>75</sup>

### **2.2.3 Protocol establishing the AU PSC**

In 2002, the PSC was established as the body to prevent, manage and resolve conflicts. It is also used to give early warnings in order to ensure that there is adequate time to respond to conflicts and crises within the continent.

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<sup>75</sup>Laibuta, M., *The African Union and Kenya's Constitution Building Process*, Sweden: International Institute for Democracy and Electoral Assistance, 2014.

Article 7 of the protocol elaborates situations that require preventive measures during conflict and undertaking peacemaking initiatives including intervention when the situation becomes grave. Generally, the protocol addresses all issues regarding management of conflict whether by peaceful means or using the military option with sole aim of bringing stability.

On the Kenya situation during the 2007/2008 elections, a request to monitor the situation in Kenya was made by the PSC however, there is no evidence to confirm if these reports were ever formulated and done.<sup>76</sup>

#### **2.2.4 African Charter on Democracy, Elections and Governance**

This is a Charter that was adopted on May 2004 in Addis Ababa that seeks to evaluate and promote good practices when it comes to governance, elections and democracy. The main challenge has always been to gauge the quality of these propositions in member states during a constitutional or violent crisis.

In order to give the desired effect, these practices are binding because Article 4 shows an element of commitment because it highlights members pledge to promote democracy and respecting human rights. In addition Article 5 echoes this commitment by placing this duty to the people showing that sovereignty belongs to the people.

When member states recognize this, it underlines their commitment to respecting these agreements.

Therefore, the success of this charter to a great extent depends on the initiative taken by states to make the necessary changes in their governance, laws and policies.<sup>77</sup>

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<sup>76</sup>Laibuta, M., *The African Union and Kenya's Constitution Building Process*, Sweden: International Institute for Democracy and Electoral Assistance, 2014.

<sup>77</sup> AU, *The African Charter on Democracy, Elections and Governance*, ([http://www.au.int/en/sites/default/files/treaties/7790-sl-charter\\_on\\_democracy\\_and\\_governance.pdf](http://www.au.int/en/sites/default/files/treaties/7790-sl-charter_on_democracy_and_governance.pdf), 2007)  
Last updated 1st February 2016

Some of these measures include disseminating the provisions of this Charter wide enough for implementation that mirrors the Charter's fundamental principles. State parties should also be on the frontline in promoting political will which is a necessary condition for incorporating the Charter's commitments and principles in their national policies and strategies. While at the continent level it is the AU's duty to develop benchmarks for implementing these principles and commitments. In Kenya, it came into force in 2012.

#### **2.2.4.1 African Peer Review Mechanism**

It was established in 2003 as a means to improve the quality of governance and adopting policies that promote political stability in states within Africa.<sup>78</sup>

In 2005, the APRM team visited Kenya and the results from the information gathered showed that the country exhibited vital signs of civil unrest.<sup>79</sup> This made Kenya one of the few countries that have enlisted themselves for this review process. The report further showed that poverty, unemployment, lack of friendly credit facilities and an imbalanced gender ration when it comes to making important decisions are examples of what ails Kenya.

Although Kenya had initiated and accomplished numerous programs to improve the lives of youth and women, there was still a lot to be done.

The team cited Kenya's lack of resolving most socio-economic issues triggered the post-poll conflict. Some issues were traced back to colonial legacy, historical injustices such as imbalanced development in different parts of Kenya, the delay of promulgating a new constitution, lack of faith and good will in public institutions coupled with alleged rampant corruption, the political parties did not cut across ethnic divisions, under-representation of women and youth in key positions within the government and the institutions that appeared to

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<sup>78</sup> NEPAD, African Peer Review Mechanism (<http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about>) last updated 1<sup>st</sup> January 2012

<sup>79</sup> Laibuta, M., *The African Union and Kenya's Constitution Building Process*, Sweden: International Institute for Democracy and Electoral Assistance, 2014.



be strong then were accused of weak implementation when it came to various programmes and policies that would change the lives of the citizens.

Therefore, had Kenya acted upon APRM proposals and recommendations, the crisis could have been averted. Moreover, the implementation of reports, policies and decisions by the AU need to be re-examined.

This Chapter has looked at the mandate of regional organizations and gone further to explain the legal instruments the AU since it is the focus of this study. The next section examines the AU's capacity in resolving conflict.

## CHAPTER THREE

### THE AFRICAN UNION CONFLICT MANAGEMENT

#### *3.1 Introduction*

This section evaluates capacity and impact of the AU in relation to resolution of conflict. It will examine strengths and weaknesses of this regional body while using previous conflicts as examples since the organization was instituted.

#### *3.2 Capacity and Impact of Regional Organizations*

The capability and strength of a regional organization in conflict management is dependent on the nature of the laws it is anchored on and even better if they do not require legislative enactments. This enables a regional organization to function and get authority to exercise a specific mandate. The AU has adopted a more specific legal protocol that supervises and dictates how PSC operates. This protocol established the PSC and there are no constitutional provisions.<sup>80</sup>

The history of AU and OAU are tied to each other since it is evident that the AU inherited strengths and weaknesses of the OAU. Some of the major problems the AU faced in its first decade in operation are, first, the AU tried to reorganize Africa's peace and security blue print when there was a lot of civil strife and armed conflicts. In addition, AU did not have the financial capacity or political influence to either execute forceful interventions in dire cases or serious sanctions to deter member states from getting into deeper conflict situations. If issues within the continent weren't enough, the AU also got involved in debates regarding the nature of the relationship between UN and various regional organizations.

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<sup>80</sup>Fanta E., *The Capacity of African Regional Organizations in Peace and Security* (Paper presented in workshop on Transforming Political structure: Security, Institutions and Regional Integration Mechanisms, 16-17 April 2009, Florence)

Structurally, the AU has set up an executive organ that is charged with formulating and implementing key political decisions that touch on conflict prevention, peacekeeping or enforcement and is not inclusive of all member states.

### **3.2.1 Conflict Prevention**

Prevention is always better than cure and in the context of conflict, having an early warning system has been recognized as one of the most effective ways of preventing conflict. In the continent, the AU has had its fair share of success and failures as a result of the early warning system.

Most of the PSC's initiatives in preventing conflict have been reactive thus not functioning as initially engineered. However, there is still room for improvement on the Continental Early-Warning System (CEWS), the essential ingredients are falling into place as exhibited by *the situation room* in Addis Ababa that is centrally located to collect and analyze data. Furthermore, there are units that are charged with observing and monitoring then transmitting data to the situation room.<sup>81</sup>

The AU situation room has the capacity to produce wide range of information covering the whole continent with support from external donors and the UN situation center. The information gathered mainly involves upcoming threats that could put civilian lives in danger and political instability within the continent for the PSC to take the necessary action.

It is worth noting that this is substantial progress, however resource capacity is still constrained thus becoming a major barrier to efficient and timely information processing.

The three main challenges facing the CEWS include, incompatibility with the regional

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<sup>81</sup> Williams P., *The African Union's Conflict Management Capabilities*, PhD, University of Wales, Aberystwyth, 2011

economic communities most of which have an advanced early warning mechanism. The second barrier is receiving intelligence that is insufficient. The lack of a network of embassies and a place to gather information shows that there is a need for more political liaison offices within the AU. Furthermore, the lack of intelligence sources leaves the AU with only media and leaders as the only source of information.

The third challenge is analysis and synthesis of this information then consequently using it to influence decisions within the PSC. For instance, the CEWS was not able to provide well synthesized information for the PSC to act early enough in the run up to 2007 election in Kenya. This goes to further show how CEWS has a complicated and important job because it is mandated to provide information rather than evaluate and synthesize it to steer the PSC policymaking process.

### **3.2.2 Peacekeeping**

Worldwide, only a few regional organizations engage in peacekeeping operations. The reason behind this is because not all have the authority and are mandated to undertake such responsibilities. The AU however has the authority and mandate to engage in peacekeeping activities but only within its jurisdiction.<sup>82</sup>

There is evidence to show that the AU is making progress especially in the area of peacekeeping by establishing the Africa Standby Force (ASF). The force began field training for the first time in December 2015. This force was set up to boost the continental capacity and reduce over reliance on external sources in peace keeping across the continent.<sup>83</sup>

On the bright side, the AU within its relatively short period in existence has been

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<sup>82</sup>Fanta E., *The Capacity of African Regional Organizations in Peace and Security* (Paper presented in workshop on Transforming Political structure: Security, Institutions and Regional Integration Mechanisms, 16-17 April 2009, Florence)

<sup>83</sup> BBC NEWS, African Standby Force starts first military exercises, (<http://www.bbc.com/news/world-africa-34570755>) last updated 19 October 2015

involved in complex peacekeeping operations compared to its predecessor the OAU. However, some of its structural weaknesses are similar to what the OAU faced and these include reliance on external funding and lack of adequate number of professionals. Despite all these shortcomings, the AU has been able to pursue more active peacekeeping operations.<sup>84</sup>

One of the challenges in peace operations is the uneven levels of troops contribution by member states. This hampers the regional organization capacity and effectiveness because not all member states contribute and even for those who do, it is not reflective of the huge membership of 54 countries. Some countries prefer to contribute their troops to UN even as AU tries to boost its capacity.

Nonetheless, the peace operations that have taken place in the recent past can be attributed to a small committed group of AU members. These include South Africa during the operations in Burundi, Comoros in Darfur, Rwanda, Nigeria and Senegal who primarily became the AMIS force and Kenya, Uganda and Burundi creating the AMISOM. Ethiopia being the home of AU has done exceptionally well overall especially in providing troops for AMISOM, an operation that took place in Somalia. This shows that there is room for improvement considering the total membership number of the African Union which stands at fifty-four.

The lack of sound financial capacity means that the AU has to find an alternative source of financing. To a great extent, the UN has been funding the African Union because the funds received from those members who pay is insufficient. This therefore, puts this conflict managing regional body at a tough place especially when it comes to independence or neutrality. Furthermore, this cripples the AU's capacity to execute its mandate in all areas for

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<sup>84</sup> Williams P., *The African Union's Conflict Management Capabilities*, PhD, University of Wales, Aberystwyth, 2011

instance, inability to adequately equip its personnel in conflict areas with tools such as airlift capabilities and training for its staff. It is therefore necessary for the AU to be adequately funded and equipped by its members in order for it to be the problem solver to African Problems before the international community is involved.

Still within its membership a few other issues are evident. Fanta cites a case of complication when a host state has sympathizers on the council not unwilling to support to AU's position. Sudan and Ethiopia are good examples of such cases in 2004 (AMIS) and 2006 (AMISOM) respectively. The consequences of such issues are that they end up being too politicized and potentially losing political will and support from some member states.

Finally, to a great extent, the AU initial response to conflict can be viewed as one of its strengths but this is due to the hybrid arrangement with the UN. Therefore, it takes the first steps to resolve a conflict before handing over to the UN. The downside of this over reliance to UN is that the AU does not adequately focus in building its own security architecture to become independent in the long run.

### **3.2.3 Peace Enforcement**

There are guidelines highlighted in the United Nations Peace Support operations that dictate how forces should operate during intervention. These guidelines highlight how issues of consent, impartiality, self-defense, and legitimacy among others should be executed.

It is worth noting that the sixth and most ambitious scenario transcends classical peacekeeping and envisages an ASF force intervening in the case of genocide.<sup>85</sup> This has yet to be tested, however the closest scenario would be the crisis in Burundi where the AU had initially intended to deploy a peacekeeping force, despite the government's opposition.

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<sup>85</sup> Fanta E., *The Capacity of African Regional Organizations in Peace and Security* (Paper presented in workshop on Transforming Political structure: Security, Institutions and Regional Integration Mechanisms, 16-17 April 2009, Florence)

However, its officials to favor a more political solution abandoned those plans.<sup>86</sup>

Although AU is the continent's organization that fosters the spirit of Pan-Africanism, ECOWAS is the most experienced when it comes to military deployment. Some of the challenges that ECOWAS has experienced which include but not limited to lack of capacity leaves the African Standby Force as the sole military outfit capable of successful peace enforcement but it is yet to be fully tested on this front.

### **3.2.4 Peace Building**

Many regional organizations lack the building blocks of peace building. Some have little experience in the area of operations in relation to peace building but lack proper legal mandate, have a low organizational capacity and a weak structure. This therefore leaves African Union as the only organization with the desired experience and capacity albeit the challenges it is facing. This has led to the production of a handbook dealing with Post-Conflict Reconstruction and Development. This is tremendous progress despite being under staffed in this department.<sup>87</sup>

Furthermore, the ASF still needs capacity building especially on peace building matters. This is crucial because currently, the norm is to hand over to UN or a hybrid operation. There has to be efforts to increase its capacity to the level of being able to execute peace building and humanitarian assistance among its other mandates. However, as it continues to grow, it will boost the peace support operations within the continent.

The real test that APSA now faces is whether it has the ability to resolve the underlying causes of conflict within the continent. This will be a situation that requires members to go

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<sup>86</sup> Nkosi, M., *Has Africa Union let down Burundi?* BBC News(<http://www.bbc.com/news/world-africa-35462079>), last updated 1<sup>st</sup> February 2016

<sup>87</sup>Fanta E., *The Capacity of African Regional Organizations in Peace and Security* (Paper presented in workshop on Transforming Political structure: Security, Institutions and Regional Integration Mechanisms, 16-17 April 2009, Florence)

against a culture that has been brewed within the PSC.<sup>88</sup>

The AU has in the past imposed sanctions approximately nine times to its members. First, the membership is suspended then the country is a short period of 180 days to conform to its own constitution, failure to which a few individuals are faced with travel bans for the country to conform to the desired change.

Reports indicate that the nature of sanctions that the AU has applied may not be enough to spark change in behavior. Instead, they are possibly meant to be symbolic enshrined within a broader peacemaking strategy since the PSC's substantive discussions take place in a private space.

Sometimes, the PSC structure itself causes dilemma to AU. For example, the PSC may encounter scenarios where unconstitutional changes of government result in democratization. This includes countries such as Tunisia and Egypt where the incumbency was toppled through popular protest. The dilemma now remains whether to recognize the new government or the toppled government.

The PSC has struggled in cases where sitting presidents blatantly abolished presidential term limits or stuck to the office after manipulating election results. Some of these countries include Algeria, Zimbabwe and recently Burundi.

Ultimately, the PSC is not properly equipped to enforce most of these targeted sanctions. To address this gap, the PSC is establishing a sanctions' committee to determine entities to be sanctioned after careful monitoring and evaluation. In so doing, the PSC seems to be borrowing a leaf on many EU procedures on sanctions.

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<sup>88</sup> Williams P., *The African Union's Conflict Management Capabilities*, PhD, University of Wales, Aberystwyth, 2011



### ***3.3 African Union Successes in Conflict Resolution***

In 2003, a peacekeeping mission was deployed to Burundi during a civil war. This was AU's first mission which came at a time that saw a peaceful solution fail thus necessitating deployment of peace keeping mission to protect, disarm, demobilize and re integrate combatants. The troops protected returning politicians to create a conducive environment for them to run the then form of government before eventually handing over to the UN in 2004. The mission consisted of troops from South Africa, Mozambique and Ethiopia.

Prior to the Lusaka accord in Congo, there had been civil unrest caused rebels backed by Uganda and Rwanda fighting against the then government who had the support of Angolan, Namibian and Zimbabwean governments. The peace agreement in 1999 addressed the concerns of the warring factions.

Kutesa further explains that after the agreement, the forces of the neighboring countries withdrew however, there was still tension between Rwanda and DRC because suspects who committed the genocide in Rwanda in 1994 were believed to be living in Congo.<sup>89</sup>

Later on, in 2009, joint troops from Rwanda and DRC were able to launch an assault on the rebels who were led by Laurent Nkunda, thus being able to reduce their power and arresting Nkunda. A similar operation with Uganda bore fruit when the Lords' Resistance Army was attacked with joint troops from Uganda, Sudan and DRC.<sup>90</sup> All these joint operations were as a result of a focused regional organization with the aim of promoting harmony among these countries that previously were at loggerheads.

The civil war in Darfur is also another example of efforts made by the AU to quell

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<sup>89</sup>Kutesa, S.K, *Peace and Conflict Resolution in Africa*, (Paper presented by the Ugandan Foreign Affairs Minister in JICA, Tokyo, Japan, June, 2009)

<sup>90</sup>Kutesa, S.K, *Peace and Conflict Resolution in Africa*, (Paper presented by the Ugandan Foreign Affairs Minister in JICA, Tokyo, Japan, June, 2009)

conflict. The circumstances that led to the Darfur Peace Agreement are as a result of mediation efforts by the AU.<sup>91</sup> This further shows that despite having structural weaknesses coupled with legal inconsistencies, there are successful missions executed by the African Union.

### ***3.4 Capacity Challenges facing the African Union***

Regional organizations often fail to live up to desired expectations in conflict resolutions because of several obstacles related to their capacities. These challenges will be identified and discussed below.

#### **3.4.1 Political**

Just like other successful regional organizations in conflict management, one of the most important elements is politics. These include issues such as consensus on what peacekeeping operations entail, a united front within PSC especially in the objectives, supporting peacekeepers in the field and cooperating host conflict states. There is room for improvement for the AU in these critical areas.<sup>92</sup>

In addition, the lack of common values has in many occasions brought the political differences among the AU members to the surface. This has forced the regional organization to turn a blind eye to various violent conflicts.<sup>93</sup> This lack of a united PSC would render the AU's desire to quell conflict through mediation or forceful intervention almost impossible. This is due to inability to of the regional organization to offer logistical support to forces, monitor their conduct and generally be proactive to ensure everything goes as planned to give

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<sup>91</sup>Oguonu C N and Ezeibe C, African Union and Conflict Resolution in Africa, *Mediterranean Journal of Social Sciences*, Vol 5, No 27, (2014) pp 325-332

<sup>92</sup> Williams P., *The African Union's Conflict Management Capabilities*, PhD, University of Wales, Aberystwyth, 2011

<sup>93</sup>Wulf H., *Regional Organizations capacities for Conflict prevention*, (Institute for Development and Peace, University of Duisburg- Essen, 2009).

the desired effect which is peace.

### **3.4.2 Bureaucracy**

The success of managing conflict depends on the strength of the structure put in place to deal with issues arising both on the field and back at the base of operations. In the case of AU, it is imperative that there are structures in place to ensure that peacekeeping and peace making initiatives are successful. However, some key structural weaknesses that ail the AU include, poor ICT structures, insufficient physical infrastructure, a lot of red-tape and weak management systems. When it comes to capacity challenges such as understaffing and weak funding ail the AU.<sup>94</sup>

The PSC being the main pillar of APSA is at the heart of conflict management within Africa. An assessment conducted in 2010 shows the AU is understaffed thus hindering from realizing its full potential. However there were proposals put in place to approve new posts that are vital to the PSC secretariat. This however can be improved and boosted when members are more committed to make APSA fully operational.<sup>95</sup>

The results from the above assessment show that certain weaknesses poses great danger to AU and that they begin from the office to the field during missions. Missions go through various stages such as planning, deployment, operations and withdrawal. Therefore, these challenges have a great impact to the nature and nature of missions that AU would undertake at any given time.

### **3.4.3 Military**

In the field during operations, the AU continues to struggle to equip the military personal with tools required for complex operations. One example of a possible unpreparedness was evident in the early phases of AMISOM when troops from Burundi lacked

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<sup>94</sup>Williams P., *The African Union's Conflict Management Capabilities*, PhD, University of Wales, Aberystwyth, 2011

<sup>95</sup>AU, *Moving Africa Forward: African Peace and Security Architecture 2010 Assessment Study*

the most basic military equipment. Other assets such as mortar radar system are lacking in complex operations within Africa in countries such as Sudan and Somalia who are still experiencing civil unrest and terrorism.<sup>96</sup>

More recently, an attack on Kenyan soldiers by the terrorist group Al-shaabab in El-adde, Somalia shows how ill equipped the African Union is since lack of resources forced the Kenyan military to mobilize its own logistics from Nairobi in responding to the ambush.<sup>97</sup>

Furthermore, a lack of troops with special sets of skills such as gathering intelligence, medicine and engineering forces the regional organization to rely on donors from the west. They offer this support by funding, training and taking equipment directly to the field during operations thus bypassing the control or management by the AU. This became more predominant after the success of the AMIB concept in 2003.

#### **3.4.4 Civilian**

In any peace operation, the civilians play a very important role. These are the people who are skilled in the rule of law, justice and corrections officers and have the capacity to train the locals in these areas. The AU is lacking these people, the ones who have mediation capacity. These are important people to have in any regional organization because in conflict management, the approach to peace should be multidimensional and not an over reliance to military capabilities. The AU should also invest in evaluating information from previous operations whether they were successful or not because this helps in approaching the next operation with good lessons from experience.<sup>98</sup>

Furthermore, sending Thabo Mbeki to resolve the dispute between Gbagbo and

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<sup>96</sup>Williams P., *The African Union's Conflict Management Capabilities*, PhD, University of Wales, Aberystwyth, 2011

<sup>97</sup>Agutu N, Amisom failed to give resources to help Kenyan soldiers after al Shabaab attack, *The Star*, (Nairobi), 21 January 2016

<sup>98</sup>Williams P., *The African Union's Conflict Management Capabilities*, PhD, University of Wales, Aberystwyth, 2011

Ouattara failed because he was already pro government as Oguonu and Ezeibe explain their journal of sciences. Similarly, Raila Odinga from Kenya also appeared to be favoring military action as opposed to be neutral for the mediation role. Therefore the AU panel's strategy appeared to have hit a snag since members were already divided yet it should be the most neutral party to any conflict.<sup>99</sup>

### **3.4.5 Infrastructure**

To adequately live up to its dream, the AU needs a proper framework and infrastructure to sustain peacekeeping and mediation endeavors in the field. These include secure accommodation facilities and provision of health services at level II/III hospitals to the wounded troops. The AU also needs to run something similar to UN's Department of Field Support.

### **3.5 Discussion**

Regional organizations still remain a collection of nation – states with various objectives such as fostering peace, security and even economic power in a bid to reduce or prevent conflicts.

Although regional organizations can boast of various successes, they have also faced various challenges confirming that not all practical measures always bear fruit. The failures always point to a lack of political will as a result of historical grudges or differing attitudes.<sup>100</sup>

Even though the inability to intervene either through diplomatic or military means is often cited as key reasons to blame the ineffectiveness of regional organizations, it is worth noting that these are just symptoms of bigger issues. These include the fear of governments to release state sovereignty to regional organizations and lack of common values.

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<sup>99</sup>Oguonu C N and Ezeibe C, African Union and Conflict Resolution in Africa, *Mediterranean Journal of Social Sciences*, Vol 5, No 27, (2014) pp 325-332

<sup>100</sup>Wulf H., *Regional Organizations capacities for Conflict prevention*, (Institute for Development and Peace, University of Duisburg- Essen, 2009).

Conflict management in Africa through regional organizations efforts have been successful when the conflicting parties implement agreed positions and overlooking external interference and internal constraints. The AU can be said to have played a vital role in conflict resolution through mediation, peacekeeping or even raising the alarm for the international community to intervene. However, the regional body also faces quite a number of challenges such as inadequate funding for example in the year 2006, only 22% of states paid their yearly contributions, internal disagreements among members that spills over to the peace keeping mission and poor logistical support during missions.

In addition, many countries within Africa still experience extreme poverty situations brought about by famine and internal conflicts. This affects their ability to contribute to AU in any kind such as troops, financially or even in kind. This leaves the AU with the international community and regional institutions as a source of economic support, which is not always a guarantee. The results of such challenges are often seen when there are multiple conflict spots. The AU will in most cases take a back seat then solely rely on UN's assistance.

One of the most effective ways of ensuring that there is consensus within AU is to have minimum requirements for membership as observed with other successful regional organizations worldwide. These requirements should include but not limited to basing membership on stable democratic governments that adhere to deliberations that strengthen the AU thus promoting stability. This will force governments to clean up their mess before joining the regional organization and when they eventually join, they will be compelled to follow and support the regional organization efforts in restoring peace within the continent.

A few states have been suspended for undemocratically ousting their democratically elected leaders. These are such as Mauritania, Guinea and Madagascar. This is a commendable action by the AU in some cases, democratically elected leaders are brought into power through undemocratic means through popular means such as the Tunisia and Egypt case.

## CHAPTER FOUR

### AFRICAN UNION'S INTERVENTION FRAMEWORK

#### ***4.1 Introduction***

The previous chapters have tackled various strategies used by the AU to manage, prevent and resolve conflict. The various policies have been examined and even their effectiveness investigated. The capacity of the AU has also been extensively examined as part of the objectives for this study. Lessons from the Post-poll violence in Kenya have been highlighted when explaining the successes and challenges faced by the AU.

The African Union has come a long way from the era of non-intervention in intrastate conflicts to intervention especially when there is a serious case of human rights violation and loss of life. Therefore this chapter will link the previous chapters by analyzing various strengths and challenges that riddle the African Union in conflict resolution

The chapter will focus on the intervention framework employed by the AU and in addition to Kenya, other countries where the AU has intervened during conflict will also be used as examples in order to give the analysis a holistic approach.

#### **4.1.1 The African Union and Responsibility to Protect**

Intervention by regional organizations and states may be hampered by sovereignty. However, there is a way around this legally. It is a principle meant to override the use of sovereignty as an excuse for lack of intervention by states and regional organizations.<sup>101</sup> It is referred to as the 'responsibility to protect (R2P).'

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<sup>101</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', Goettingen Journal of International Law, Vol 4, No. 1 (2012)pp.49-92

It was established in 2001 with a main focus is to stop or pre-empt any form of conflicts that cause harm to the general population by the state or if the state is incapable of stopping it.<sup>102</sup> This may manifest in the form of war crimes or ethnic cleansing, religious fanaticism that may end up turning into a blood bath, genocide etc.<sup>103</sup> In addition, intervention may be through the international community who are deemed to have a residual responsibility, unlike regional organizations who need a go ahead from the UN Security Council.

This concept is grounded in existing law and institutions although it does not have binding legal obligations. The principle presents a form of law that gives the international community powers to intervene during violent crises. Therefore it can be classified as an emerging norm because the General Assembly has in the past endorsed it.<sup>104</sup> It circumvents sovereignty, which is mostly used as an excuse for lack of interventions by the international community, states and regional organizations.

The principle should not be interpreted as abandoning the pre-existing principle of non-intervention as critics of this principle would possibly claim. Furthermore, it does not infringe on territorial integrity. On the contrary it actually promotes sovereignty by giving it to the people rather than its opposition.<sup>105</sup>

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<sup>102</sup>International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect' available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (last updated December 2001)

<sup>103</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', *Goettingen Journal of International Law*, Vol 4, No. 1 (2012)pp.49-92

<sup>104</sup>Orford, A, *International Authority and the Responsibility to Protect*, (Cambridge: Cambridge University Press, 2011).

<sup>105</sup>Kuwali, D, *The Responsibility to Protect: Implementation of Article 4(h) intervention*. (Leiden:MartinusNijhoff Publishers, 2011)



It also respects state sovereignty as it helps to safeguard international stability thus preventing unwarranted conflicts. Therefore, this principle only aims to cease or prevent crimes against humanity.<sup>106</sup>

The state has both national and international responsibilities including the duty to protect its population. Protection of populations is increasingly becoming an area of focus and a lot of value is placed onto it by the international community.<sup>107</sup>

The four significant contributions the principle to protect has made include a shift from humanitarian intervention to protecting populations stuck in conflict areas. The second one is a new interpretation of sovereignty where the state is charged with a responsibility to protect its citizens rather than control them. The third contribution is clarifying what the principle exactly means and finally the fourth contribution mandating that legal and legitimate ways of using coercive means if it becomes necessary.

The AU has the authority to intervene if a conflict situation becomes grave and this is not subject to a request or an invite from the territorial state, in fact it may only be aimed at the perpetrator of the atrocities whether it is the government or not. This may come in the form of troops especially if the nature of the conflict involves gross violation of human rights or genocide.<sup>108</sup>

The UN gives authority to regional organizations to enforce peace and this is where AU gets grounds its legal mandate for conflict intervention. Therefore, establishment of AU has contributed to peace within Africa and these come in the form of brokered peace deals,

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<sup>106</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', *Goettingen Journal of International Law*, Vol 4, No. 1 (2012)pp.49-92

<sup>107</sup> Rome Statute of the International Court, Article 6-8

<sup>108</sup> African Union, *Constitutive Act of the African union* ([http://www.au.int/en/sites/default/files/ConstitutiveAct\\_EN.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf) , 2000 ), last updated 31st January 2016

peacekeeping and consensual interventions. In addition, the emergence of R2P principle and its eventual adoption can be traced to non-indifference within the AU as observed by the UN General Secretary.<sup>109</sup>

The AU has not been effective when it comes to forceful intervention during violent crises as stipulated in the R2P principle and as stipulated in the Constitutive Act of AU in scenarios that peace deals and consensual interventions are not adequate. The examples of Darfur and Somalia were subject to consent by the states. Williams highlights that the AU has appeared to be reluctant to forcefully intervene when needed to such as the Libya case. It is therefore possible to infer that the clause of non-interference by OAU is still haunting the AU even in cases where human rights are violated.<sup>110</sup>

The responsibility to protect might have raised expectations that are challenging to fulfill in practice as Gray explains. That this principle shows a universal acceptance of protecting populations as a responsibility, the only challenge is the lack of a guarantee to act. Case in point is Sudan where AU only intervened after getting consent from the government.<sup>111</sup>

Given its right to intervene, the AU was expected to lobby for strong and conclusive intervention to end the violence in Darfur thereby acting where the international community had failed. For Libya, the AU could have taken the greatest responsibility by ensuring that the civilians are protected from military attacks that are indicators of crimes against humanity.

When it comes to implementation of forceful intervention, the AU has been very reluctant as opposed to when the situation requires a peaceful and consensual approach. This is evident even when the peaceful and consensual approach is not adequate or even if it is

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<sup>109</sup> United Nations General Assembly Department of Public Information, *General Assembly Debate, supra* note12.

<sup>110</sup> Williams, P.D. 'The Responsibility to Protect and the Crisis in Darfur.' *Security Dialogue*, 36, 1, (2005) pp. 27-47

<sup>111</sup> Gray, C.D., *International Law and the Use of Force*, (Oxford: Oxford University Press, 2000).

inappropriate.<sup>112</sup>

The Constitutive Act has a framework that dictates elements of consensual intervention. It has a provision that allows AU's intervention based on a request by a member state to help restore peace. However, this gives the territorial state powers to regulate the nature of interventions. Therefore the regional organization or state can only act within the confines of the agreement with the territorial state failure to which it becomes a form of forceful intervention.<sup>113</sup>

There is a political and legal dilemma affecting the African Union when it comes to implementing its forceful intervention mandate. This has been coupled by the inability or lack of willingness to incorporate responsible sovereignty in its legal frameworks thus further complicating this situation. However, numerous efforts have been made to address this dilemma that manifests in the form of intervention for humanitarian purposes without undermining state sovereignty.<sup>114</sup>

The Constitutive Act reaffirms non-interference principle while the right to intervene if there are elements of genocide is found in Article 4(h). This shows how much the provisions within the PSC counter each other. On one hand, the Union wants to protect territorial integrity while on the other hand it wants to act in the case when a state is the perpetrator. This tension within the AU legal framework could be as a result of the failure to establish a solution to address the issue of intervention for humanitarian without undermining state sovereignty.

Contrary to the African Union, the R2P concepts seeks to sort out the problematic dilemma between state sovereignty and intervention for humanity by conceptualizing them as

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<sup>112</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', *Goettingen Journal of International Law*, Vol 4, No. 1 (2012)pp.49-92

<sup>113</sup> African Union, *Constitutive Act of the African union* ([http://www.au.int/en/sites/default/files/ConstitutiveAct\\_EN.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf) , 2000 ), last updated 31st January 2016

<sup>114</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', *Goettingen Journal of International Law*, Vol 4, No. 1 (2012) pp.49-92

complementary duties.

The R2P was developed on three pillars that are, prevent, react and rebuilt. The first pillar ensures that conflicts are addressed before they escalate. This is a responsibility of states.<sup>115</sup> It is on this ground that AU found its moral ground to intervene in the Kenyan electoral conflict that was bound to engulf many of its innocent citizens.

#### ***4.2 The AU intervention in Kenya***

When states fail to take action in a mass violence situation, the responsibility is normally transferred to the international community. This forced the UN Secretary General to use diplomacy and politics to attempt addressing the political crisis in Kenya at the beginning of 2008.

Ban Ki Moon issued a statement that expressed concern regarding the ongoing violence and thus called for the population to practice restraint and calm. Meanwhile, Louise Arbour, the then UN High Commissioner for Human Rights reminded the then government to commit to its international human rights obligation. Furthermore, the UN Security Council was also called upon to react by Bernard Kouchner, French Foreign and European Affairs Minister.<sup>116</sup>

The first people who attempted to resolve the crisis through dialogue were South Africa's Archbishop, Desmond Tutu and US Assistant Secretary of State Jendayi Frazer. Former African presidents also joined this team to try and resolve this stalemate. None of these individuals was able to successfully broker a peace agreement.

All of them arrived in Kenya ahead of the then AU Chairman, John Kufuor. However

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<sup>115</sup> International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect' available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (last updated December 2001)

<sup>116</sup>ICRtoP, The crisis in Kenya (<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya> ,2009)  
Last updated 31st January 2015

on the 10<sup>th</sup> January 2008, the parties in conflict agreed to discussions with Kofi Annan, Graca Machel from Mozambique and Benjamin Mkapa from Tanzania.<sup>117</sup>

Negotiations and discussions with both conflicting parties resulted in a power-sharing agreement signed on 28<sup>th</sup> February 2008. This model of diplomatic action is what led to the resolution of a post poll conflict that saw approximately 1,300 people dead and 600,000 internally displaced.

African Union played a crucial role to stop the violence and negotiating a final constitutional text. The long-term solutions were identified as constitutional, institutional and legal reforms although the mediation process was not executed within the confines of Kenyan law. It was primarily a political process hence nothing took place in the national assembly. As a result, two commissions were formed to investigate and report on various aspects of the crisis.<sup>118</sup>

One of the most important aspects of the intervention in Kenya was that it was consensual. Therefore, there was no threat in sovereignty, which is one of the challenges of responsibility to protect.<sup>119</sup>

Intervention by Kofi Annan shows the importance of external engagement because the violence in Kenya de-escalated. Furthermore, this is not only a good example of a responsibility to protect but it shows that joint efforts between regional (AU) and multilateral organizations can lead to a speedy success. This could be attributed to being the main reason

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<sup>117</sup>ICRtoP, The crisis in Kenya (<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya> ,2009)  
Last updated 31st January 2015

<sup>118</sup>Laibuta, M., *The African Union and Kenya's Constitution Building Process*, Sweden: International Institute for Democracy and Electoral Assistance, 2014.

<sup>119</sup>Thakur, R. 'Law, Legitimacy and United Nations.' *Melbourne Journal of International Law*, Vol 11, No.1, (2010)

that made the opposing parties in the post poll chaos in Kenya to come together in a round table discussion. They felt the pressure from the international community and AU compelling them to come up with an amicable solution.<sup>120</sup>

Mr. Annan highlighted the importance of mediating when faced ethnic conflict. In fact, he emphasized that mediation is the only solution. This may not have been easy since it took him slightly over a month to convince the opposing parties on importance of working together for the sake of peace in the country.<sup>121</sup>

The application of the principle of responsibility to protect and consequently its observation by the AU in the Kenyan electoral conflict saw the watering down of the non-interference principle thus enhancing the capacity of the regional organization in conflict resolution.

The intervention by the African Union consisted of the use of chairman Kufuor's good offices, and the support of the mediation that was conducted by Kofi Annan. Good offices are a way in which a third party intervenes in order to try and avoid a conflict escalating, facilitating the parties' movement towards negotiations, or the use of any other peaceful means to manage the conflict.

Good offices can be undertaken by the parties' invitation, or the third party can undertake the task without such an invitation. Whatever the case, the person using good offices should be accepted by the parties in conflict, otherwise it would be impossible for the good offices to yield positive results.<sup>122</sup> Furthermore, the AU's preamble amplifies its determination to manage or stop conflict resulting in a peaceful atmosphere within Africa.

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<sup>120</sup> Odhiambo, L, African Union's Intervention in Kenya's Post election violence in 2007/2008, Master Thesis, University of Nairobi, 2014

<sup>121</sup> Roger .C., African Genocide Averted, New York Times (<http://www.nytimes.com/2008/03/03/opinion/03cohen.html/>), March 3, 2008

<sup>122</sup> United Nations, *Handbook on the Peaceful Settlement of Disputes between States* (New York: United Nations, 1992).

When it comes to intervention, there are quite a number of perspectives and these simply highlight how a member can request Au's intervention, deal with human rights issues, ensure there's adequate security and even rejecting calls to overthrow sitting governments.<sup>123</sup>

It is correct to conclude that the AU has experienced a lot of success when it comes to peaceful negotiations like in Kenya and Consensual intervention, which was the case in Burundi in 2003.

### ***4.3 Analysis of the AU Intervention Framework***

Ironically, the AU has put a lot of focus on intervention after consent unlike military intervention thus acting inconsistently with the provisions of Article 4 (h), which allows and encourages forceful interventions when it is necessary. Kabau explains that the reluctance by AU to execute forceful intervention when consensual interventions are not appropriate shows the continued challenges associated with traditional concepts of state sovereignty.<sup>124</sup> The attack on civilians in Libya is an example of the inconsistency between the AU's intervention mandate and the principle of responsible sovereignty.<sup>125</sup>

The inconsistency between the traditional model of sovereignty in Africa and authority to intervene in grave circumstances during a conflict is a major drawback for AU. The Constitutive Act of the AU in Article 4(j) explicitly gives authority to the AU to intervene in grave circumstances when there is blatant abuse of human rights such as genocide. However,

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<sup>123</sup> African Union, Constitutive Act of the African union ([http://www.au.int/en/sites/default/files/ConstitutiveAct\\_EN.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf) , 2000 ), 31st January 2016

<sup>124</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', Goettingen Journal of International Law, Vol 4, No. 1 (2012) pp.49-92

<sup>125</sup>Twinomugisha, W, *The African Union's Response to the Libyan Crisis of 2011*, Master Thesis, University of The Witwatersrand, 2013

the same AU seems to be preserving some of the traditional elements of sovereignty thus lacking to provide guidance when it comes to state sovereignty and intervention for humanitarian purposes.<sup>126</sup>

These traditional elements can be found in Article (g) of the Constitutive Act where interference is prohibited by a state in the domestic affairs on another state. In addition, Article 4(f) explicitly endorses the principle of non-interference while Article 4(e) outlines the importance of respecting the sovereignty and territorial integrity of members of AU.<sup>127</sup> This further amplifies lack of clarity and consistency between intervention and interpretation of sovereignty. Could this be the reason as to why most solutions to conflict are dependent on joint efforts of the international community, regional organization and consent from territorial state?

#### **4.3.1 Challenges Faced by the African Union**

The Civil wars experienced in Africa during the era of the AU have demonstrated the importance of having joint efforts during conflicts between the UN Security Council and the PSC. This is in the form of sharing information, emergency consultation, having joint meetings on a need basis and active participation in Security Council meetings on matters affecting Africa. It is worth noting that the AU has more clout to intervene when conflict threatened since its inception in 2002. Nonetheless, the AU is faced by various constraints that limit its effectiveness in executing its mandate.

#### **Resource Constraints**

African countries are not backing the AU adequately when it comes to resources yet

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<sup>126</sup> K. Kindiki, 'The African Peace and Security Council and the Charter of the United Nations', *Law Society of Kenya Journal*, 1, no. 77(2005)P.91

<sup>127</sup> African Union, Constitutive Act of the African union ([http://www.au.int/en/sites/default/files/ConstitutiveAct\\_EN.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf) , 2000 ), last updated 31st January 2016



this is one of the key measures of effectiveness. The conflict in Libya crisis for example, shows that the Union did not raise enough financial and human resource to enable protection of civilians.<sup>128</sup> The attack on Kenyan Soldiers by the terrorist group Al-shaabab in El-adde, Somalia shows how ill equipped the African Union is since lack of resources forced the Kenyan military to mobilize its own logistics from Nairobi in responding to the ambush.<sup>129</sup>

### **Lack of consensus among African Union members**

The AU can blame the political and legal dilemma ailing its legal framework especially on intervention matters for the lack of action during violent crises. Therefore the only remaining factor that would enable the Union intervene (forcefully if need be) is political will among members. Since implementation requires political will from the members.

### **Lack of Impartiality**

The AU's ability to act as an honest broker in crises has been doubted. For example in Libya, AU's impartiality or credibility could be questioned considering Gaddafi was one of the top financiers of the union.<sup>130</sup>

### **4.3.2 A Way Forward for AU**

There are areas that the AU can improve to strengthen it especially when it comes to responding to the continents security crises.

The R2P principle offers a significant reference point for resolving the sovereignty and intervention dilemma because it informs the AU how standards of power and mediation for

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<sup>128</sup>Twinomugisha, W, *The African Union's Response to the Libyan Crisis of 2011*, Master Thesis, University of The Witwatersrand, 2013

<sup>129</sup>Agutu N, Amisom failed to give resources to help Kenyan soldiers after al Shabaab attack, *The Star*, (Nairobi), 21 January 2016

<sup>130</sup>Twinomugisha, W, *The African Union's Response to the Libyan Crisis of 2011*, Master Thesis, University of The Witwatersrand, 2013

humankind ought to be interpreted.<sup>131</sup> This also includes acknowledging the lack of political will but working towards an approach that would ensure that there is political will. Consequently, this will eliminate the political dilemmas of intervention as witnessed in Libya and Burundi.

Still borrowing from R2P principles, the AU in a bid to respect people's sovereignty, should intervene when their government is not willing or has no capacity to represent their sovereignty. This also comes handy when the government is the oppressor, which is not uncommon in Africa.<sup>132</sup>

The interpretation and even execution of state sovereignty ought to be complementing values of intervention to save and protect human life. This is the sort of interpretation that should guide the AU legal framework when it comes to sovereignty and intervention. This would give the AU more reasons to intervene in conflict situations and also discourage or justify non-intervention due to the current legal framework.

One of the proposed ways of making such progressive resolutions feasible is to peg responsibility to resolutions made regarding sovereignty and intervention. This will compel the AU to act and even intervene in serious conflict situations.

This move would make the AU more active and less of a prisoner to legal dilemma. As a result, Article 4(h) of the constitutive Act will be implemented that stipulated situations under which forceful interventions is permissible.<sup>133</sup>

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<sup>131</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', *Goettingen Journal of International Law*, Vol 4, No. 1 (2012) pp.49-92

<sup>132</sup>Thakur, R. 'Law, Legitimacy and United Nations.' *Melbourne Journal of International Law*, Vol 11, No.1, (2010)

<sup>133</sup>Kabau, T, 'The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions', *Goettingen Journal of International Law*, Vol 4, No. 1 (2012) pp.49-92

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### *5.1 Conclusion*

The role of regional organizations in resolving conflict is a mandate that is recognized by the UN as this study has established. This mandate is articulated in the UN Charter. Furthermore, the roles that regional organizations perform are dependent on needs of the members and apart from conflict resolution, some regional organizations such as ECOWAS and EU perform trade and regional integration functions.

In a bid to stop the post poll chaos and allow for mediation in Kenya, the application of the R2P principle watered down the non-interference principle by the AU. This shows that dilemma in the legal instruments within a regional organization can enhance or weaken the capacity of a regional organization in resolving conflict.

The capacity of a regional organization in conflict resolution can also be determined by how it successfully executes forceful intervention in a case where serious human rights violation is taking place. For example, In Libya, the African Union was not able to forcefully intervene but warned of any external (foreign) intervention. However, the UN went ahead to intervene through NATO which ensured that Gaddafi's rule was brought to an end although there was no post-war plan to return the country back to peace.

The financial and structural capacity is a main determinant of the success of a regional organization in conflict resolution. In most cases as the study has established, the AU and ECOWAS raise the flag and intervene initially only for the UN to take over the mission at a later stage because they are better placed financially and structurally.

The principle of the responsibility to protect is one of the most proposed ways of solving the dilemma between sovereignty and intervention in conflict resolution. This ensures that the sovereign rights of citizens are protected regardless of whether the perpetrator is the

government or a terrorist organization.

In addition, the findings from this study have shown that regional organizations play significant roles in conflict resolution as evidenced by the mandate given to them by the UN. The study also found that the AU is not well equipped to handle conflict especially forceful intervention. This however does not mean that the changes that have occurred since its inception in 2002 haven't made an impact but there is room for improvement. One of the areas of improvement could be improving the membership payment and alternative funding strategies.

## ***5.2 Recommendations***

The objectives of this study have been met and the hypotheses tested in relation to the African Union and therefore this study recommends further research on the role that democratic membership plays in the success of a regional organization in conflict resolution. This can help in getting the elusive political will in some regional organizations such as AU.

This study further recommends an in-depth analysis of the legal instruments of the AU. This will help unearth the legal dilemma within the institution. Finally, this study established a gap and recommends research in the area of effective peace building after forceful intervention in conflict torn nations.

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