


UNIVERSITY OF NAIROBI
INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

“The Role of Civil Society in Post-Conflict Peacebuilding and Reconstruction: The Case of Kenya Post 2007 Elections”

Name : Felix Odhiambo 

Registration Number : R50/76901/2009

University of NAIROBI Library



0532160 0

A Research Project Submitted in Partial Fulfillment of the Degree of Masters of Arts in International Conflict Management (ICM)

R / - 6000 AD

14

12

6300

098

DECLARATION

This is to solemnly declare that this thesis is my original work and has never been submitted by anybody for examination at any university.

Signature:.....
FELIX ODHIAMBO OWUOR

Date:.....10/11/2011.....

This is to confirm that this thesis has been submitted for examination with my approval as the candidate's Supervisor.

Signature:.....
PROF. MARIA NZOMO

Date:.....12 Nov 2011.....

DEDICATION

This project is dedicated to my late father Mr. Fanuel Owuor Ngoto, whose commitment to education instilled in me the ambition to attain a Masters Degree.

ACKNOWLEDGEMENTS

Completion of my Masters project has been made possible with the help and assistance of many people for whom I am profoundly grateful. A special thanks goes to Professor Maria Nzomo, my project supervisor who reviewed every draft, encouraged and synchronised my thoughts into a presentable format. Special mention also goes to the entire academic staff of the Institute of Diplomacy and International Studies (IDIS) who exposed me to International Conflict Management, its various facets, dynamics and practical manifestations in different parts of the world. In this regard, special thanks goes to the director of IDIS, Prof Mukami Mwangi who nurtured my ideas and pushed me to be a critical, analytical and reflexive thinker.

I would also like to thank my employers during this period, The Electoral Institute for the Sustainability of Democracy in Africa (EISA), and the National Democratic Institute (NDI), who not only enabled me to pay for my studies, but exposed me to the workings of governance, democracy, elections human rights and the operations of civil society organisations which had profound relevance to the subject of my research.

Finally, I would like to thank all the friends and family members who encouraged, helped, motivate, and reviewed the different drafts. Special thanks goes to Martha Mutisi, who critically reviewed the drafts and debated all aspects of conflict management issues with me.

TABLE OF CONTENTS

1.0 Chapter 1 : Introduction	
1.1 Research Objectives.....	1
1.2 Research Questions	2
1.3 Context and Background	3
1.4 Statement of the Problem	4
1.5 Justification of the Study.....	5
1.6 Hypothesis	7
1.7 Research Methodology.....	8
1.8 Data Collection Methods	19
1.9 Research Methodology	25
2.0 Chapter 2 : Elections in Kenya and the Evolution of Civil Society Organisations	
2.1 Multi Party Elections in Kenya	28
2.2 2007 Elections and Post Election Mediation	34
2.3 Evolution of Civil Society in Kenya	39
3.0 Chapter 3 : Role of Civil Society in Peacebuilding and Reconstruction Post 2007	
3.1 Introduction.....	42
3.2 Civil Society Role in the Constitutional Reform Process.....	39
3.3 Role of Civil Society in 2012 General Elections in Kenya	44
3.4 Role of Civil Society in Relations Building	48
3.5 Civil Society Role in Engaging with other Actors	50
3.6 Civil Society and Women Empowerment	51
3.7 Challenges of Civil Society in Peace Building	54
4.0 Chapter 4: Challenges of Civil Society in Peacebuilding and Reconstruction	
4.1 Introductions	10
4.2 Civil Society and Political Parties	65
4.3 Confrontational Strategies of the Civil Society Organizations	68
4.4 Donor Dependency	70

4.5 Liberal Approaches by Civil Society	72
4.6 Structural and Organizational Handicaps	74
4.7 Unresolved Structural Causes of Conflict	74
4.8 Lack of Transparency by Civil Society Organizations	76
5.0 Chapter 5: Summary, Conclusions and Recommendations	
5.1 Overall Summary of the Study	77
5.2 Lessons Learnt	78
5.3 Conclusions and Recommendations.....	94

LIST OF KEY ABBREVIATIONS

AU	- African Union
CJPC	- Catholic Justice and Peace Commission
CMP	- Conflict Management Panels
COE	- Committee of Experts
DANIDA	- Danish International Development Agency
DFID	- Department for International Development
DPC	- District Peace Committee
EAC	- East Africa Community
EISA	- Electoral Institute for the Sustainability of Democracy in Africa
EALA	- East African Legislative Assembly
ELOG	- Elections Observation Group
FES	- Friedrich Ebert Foundations
GPA	- Global Political Agreement
ICG	- International Crisis Group
IDPS	- Internally Displaced Persons
IFES	- International Foundations for Electoral Systems

IRI	- International Republican Institute
KAF	- Konrad Adenauer Foundation
KEDOP	- Kenya Domestic Observation Program
KIA	- Kenya Institute of Administration
LEAP	- Local Empowerment for Peace Project
NCCK	- National Council of Churches of Kenya
NCIC	- National Cohesion and Integration Commission
NEMU	- National Elections Monitoring Group
PPLC	- Political Parties Liaison Committee
PVT	- Parallel Vote Tabulation
SADC	- Southern Africa Development Community
SIDA	- Swedish International Development Agency
SUNY	- State University of New York
TJRC	- Truth, Justice and Reconciliation Commission
UNDP	- United Nations Development Program
UNICEF	- United Nations (International) Children's Fund
USAID	- United States Agency for International Development

IRI	- International Republican Institute
KAF	- Konrad Adenauer Foundation
KEDOP	- Kenya Domestic Observation Program
KIA	- Kenya Institute of Administration
LEAP	- Local Empowerment for Peace Project
NCCK	- National Council of Churches of Kenya
NCIC	- National Cohesion and Integration Commission
NEMU	- National Elections Monitoring Group
PPLC	- Political Parties Liaison Committee
PVT	- Parallel Vote Tabulation
SADC	- Southern Africa Development Community
SIDA	- Swedish International Development Agency
SUNY	- State University of New York
TJRC	- Truth, Justice and Reconciliation Commission
UNDP	- United Nations Development Program
UNICEF	- United Nations (International) Children's Fund
USAID	- United States Agency for International Development

CHAPTER 1

INTRODUCTION TO THE RESEARCH PROJECT

Abstract

The political landscape in Kenya has undergone a dramatic transformation since independence. Much of post-independent Kenya has been riddled by a struggle for economic growth, social development and political transition. Attempts to develop, sustain and consolidate democratic governance have often been accompanied by ethnic manipulations, patron-client relationships and violence, hence the resurgence of ethnic conflicts and massive violence after the 2007 Presidential elections. The aftermath of the post-election violence in 2007 created a situation that required post conflict peacebuilding and reconstruction initiatives in order to bring the country back on the road to recovery and peace¹. This research analyses the role of civil society in peacebuilding in Kenya. Examining the literature on civil society and its various roles, the study is based on the conceptual framework of Lederach (1997) who presents the peacebuilding pyramid as a model for underscoring that sustainable peacebuilding cannot be left to the warring parties alone, but that civil society is pivotal to peace processes. Using both primary and secondary means of data collection, the study is of a qualitative orientation, which employs a single case study in order to understand the topic in detail. The overall study aim is to understand the role and place of civil society in peacebuilding during the various stages of conflict from its emergence, escalation to de-escalation. The study ends with a series of recommendations on enhancing the efforts of civil society in peacebuilding.

¹ Waki Commission Report on the Inquiry on Post Election Violence, 2008

1.0 Introduction

Following periods of violent conflicts, many societies face challenges for post-conflict reconstruction and healing. The important activities in post-conflict reconstruction are performed by various entities including government, international agencies and local civil society organizations, among others. In many cases, governments lack adequate human and material resources for undertaking sustainable and effective peacebuilding processes. The challenge of post-conflict reconstruction is too huge to be left to governments alone, hence the increasingly important role played by civil society. The research examines the contributions of civil society towards peacebuilding in Kenya, since the 2007 post-election violence. This study is in agreement with an observation by Jesopp, Aljets and Chacko (2008) who posit that,

“From South Africa to Sierra Leone, civil society organizations (CSOs) have played important roles in the peace processes of their countries.”²

This study is premised on the notion that the involvement of civil society and Kenyans in the charting of the country's way forward will enhance and strengthen the peace process. A detailed overview of research is as follows:

1.2 Study Aim

The aim of this study is to bring about an understanding of the role of civil society in peacebuilding and post-conflict reconstruction in Kenya.

² Jessop, Maria, Aljets, Diana, Chacko, Betsie. (2008). The Ripe Moment for Civil Society. *International Negotiation*, Volume 13, Number 1, 2008, pp. 93-109(17)

1.2.1 Research Objectives

The following are specific objectives of the research:

- To examine the role played by civil society in peacebuilding and reconstruction in Kenya after the 2007 post-election violence;
- To analyse the nature and forms of civil society activity in Kenya since 2007 with a view to isolating lessons learnt and best practices.
- To examine the different forms of intervention that civil society has used to address the current post-conflict reconstruction and peacebuilding challenges facing Kenya.

1.2.2 Research Questions

The major research questions explored in this project are:

- What are the typologies and areas of focus of civil society organizations involved in peacebuilding in Kenya?
- What has been the impact of civil society's peacebuilding and post-conflict reconstruction activities in the context of the formal peace process in Kenya?
- How effective is civil society in undertaking peacebuilding and post-conflict reconstruction activities in Kenya?

1.3 Context and Background to the Problem

Following the announcement of Presidential elections results held on 27th December 2007 in Kenya, which indicated that the incumbent President Mwai Kibaki was the winner, there were outbursts of violence from supporters of Raila Odinga of Orange Democratic Movement (ODM).³ Soon, the electoral violence turned into ethnic clashes, and by the end of the month, more than one thousand people had lost lives, while thousands were displaced and there was massive destruction of property. Kenya was at crossroads.⁴ The unprecedented violence and destruction of property prompted the African Union to appoint a Panel of Eminent African Personalities to mediate the post elections crisis. The mediation panel was led by former Secretary General Kofi Annan assisted by Graca Machel and former Tanzanian President Benjamin Mkapa. Following mediation efforts, the two belligerents and their respective parties signed an agreement the National Accord and Reconciliation Act, NARA, which established the Government of National Unity in Kenya. The post-election violence in Kenya left society scarred and marred, and as a strategy of moving forward, a multi pronged approach involving the individuals, the state and civil society embarked on activities to restore normalcy. Civil society has been at the forefront of peacebuilding and reconstruction efforts in Kenya, and this study intends to unpack the nature of the organizations their activities, function, methods, and impact, especially in the context of a formal peace processes and an Agreement.

³ The election violence was preceded by suspicions that the elections had been rigged. Supporters of ODM disputed the election results.

⁴ The violence triggered by the flawed electoral process should be analyzed in its context of longstanding conflict over natural resources, livelihoods, government unaccountability, human rights violations and highly unsatisfactory modes of governance and political participation. For details, see Kriegler and Waki Reports

1.4 Statement of the Problem

Within peacebuilding and post conflict reconstruction, the debate as to the effectiveness and relevance of civil society has persisted. For many players, the role of the State that represent Track I diplomacy,⁵ has been the norm and the acceptable practice given the many advantages and resources that are at the disposal of the state to mitigate and intervene in post conflict environment. Increasingly, the importance of civil society initiatives in post conflict peacebuilding and reconstruction work has been acknowledged since the mid 1990s, partly as a result of the ineffectiveness of the state and politicians to bring lasting peace, and partly due to the tangible programs and grassroots interaction that the CSOs have managed to introduce. Civil society is critical in peacebuilding throughout all stages of the conflict. As such, civil society is an area of great interest to the scholars and practitioners in the peace and conflict discipline. It is necessary to understand civil society and its participation in peacebuilding. It is also imperative to ascertain the role of civil society in ensuring that citizens exercise their democratic right. Given the shortcomings of the states in peacebuilding and reconstruction work, is it sufficient to leave such endeavors to the state without participation and collaboration with the Civil Society Organisations?

⁵ Track I Diplomacy describes negotiation and peacemaking initiatives that are conducted at the highest levels, including by diplomats, political elites and military leaders. The notion of categorising peacebuilding into tracks was initiated by Diamond and MacDonald (1997), who discuss the thesis of multi-track Diplomacy, arguing that peacebuilding is undertaken at multiple levels by several "tracks" including government, civil society, private sector and grassroots communities. For details, see Diamond, Louise and MacDonald, John. W (1997). *Multi-Track Diplomacy: A Systems Approach to Peace*. Hartford, CT: Kumarian Press.

1.5 Justification of the Study

The study focuses on civil society and its role in peacebuilding and post-conflict reconstruction. Carnegie Commission (1997)⁶ posits that “Many elements of civil society can work to reduce hatred and violence and to encourage attitudes of concerns, social responsibility and mutual aid within and between groups. In difficult economic and political transitions, the organizations of civil society are of crucial importance in alleviating the dangers of mass violence.”⁷ Indeed, civil society has had a growing influence on the political and development landscape in Africa; hence it is an entity that requires interrogation and empirical investigation. The idea of civil society has achieved prominence in political and developmental discourse over the past three decades, particularly in connection with issues of democratization, development and peacebuilding.

Furthermore, the complex reality of contemporary conflict requires a thorough analysis of the context in which reconstruction is taking place. In essence, post-conflict assessments are imperative for societies recovering from violent conflict as these will inform policy as well as roadmaps towards sustainable peace. Not only will the study identify the functions of civil society within peacebuilding and post-conflict reconstruction, but it will also ascertain the composition of civil society in Kenya. It is important to have an idea of the various typologies and forms of civil society in Kenya to avoid duplication and to promote collaboration among civil society organisations.

⁶ Carnegie Commission (1997). Preventing Deadly Conflict. Report to the Carnegie Commission. New York: Carnegie Corporation.

⁷ The Carnegie Commission produced annual reports focusing on preventing deadly conflict. For details, see the report of the Carnegie Commission on Preventing Deadly Conflict.

The study on civil society's role in peacebuilding is cognizant of the theory of multi-track diplomacy⁸ developed by Diamond and MacDonald (1997), which acknowledges the role of various entities in sustaining and enabling peace. Therefore, it has become imperative for peacebuilding to be seen as a nested activity which flourishes when multiple actors are involved. Since the signing of Kenya's peace agreement which ushered in the coalition government, there have been significant civil society actors who overtly or covertly have been engaged in coagulating the peace processes in Kenya. The realization of the prominent role of civil society leads Jessop and Chacko (2008:93) to posit that,

“While negotiators, government officials, militaries and rebel groups come and go, civil society remains. Peace ultimately belongs to the people who survive the conflict; therefore, there is a compelling need to understand how and when civil society can play an effective role in the peace process.”

The study was made more necessary because since the 1990s, there has been an increased interest on the part of Western governments in funding civil society in Africa (Barkan 1994; Diamond 1995a; Mark Robinson 1995, 1996a, 1996b; Carothers 1997)⁹. Paradoxically, the increase in civil society peacebuilding initiatives during the last decade has not been matched with attendant increase of researches that focus on the nexus between civil society, peacebuilding and post-conflict reconstruction¹⁰. There has been little systematic analysis of the specific roles of civil society in the context of violent conflict, socio-political turmoil. This is true even with

⁸ The theory defines peace processes as having been characterized by belligerents, much to the neglect of other groups. Although Track I, which includes governments and Track II, which includes diplomats are the main focus or analysts of peace process, it has become apparent that peacebuilding which is top-heavy often lead to unsustainable peace agreements.

⁹ Increased funding towards civil society organisations is based on the conceptions that governments have not been using donor funds efficiently and effectively. In addition, the focus on CSOs is also based on the neo-liberal thinking which underscores the importance of multiple actors in the governance and peacebuilding arenas.

¹⁰ Currently, there is limited research on this link. In fact, today, now most peacebuilding research has been limited to describing civil society actors and their activities, or describing the role of civil society in other spheres of life such as economic development.

the Kenyan case study. Although in Kenya, civil society has actively participated in peacebuilding, very few studies have taken stock of these activities. The study will address the dearth of information on specific roles of civil society in peacebuilding.

The study could not have been more responsive to contemporary developments. Currently, Kenya is going through a transition after periods of turmoil,¹¹ and this study provides an opportunity to involve other players into the peacebuilding equation, apart from the government, opposition and political elites. It is important to know how civil society is performing in the realm of peacebuilding so that wherever possible its approaches to peacebuilding can be enhanced or developed in order to achieve sustainable peace in Kenya.

1.6 Hypothesis

The research project proceeds from the premise that there are in existence numerous civil society organization in Kenya involved in implementing credible interventions in conflict mitigation, post conflict peace building and reconstruction. The researcher hypothesizes that civil society organizations have played immense and substantive roles in peacebuilding and that they are undertaking these processes in a concerted and collaborative manner. The research also conceives that civil society organizations in Kenya will remain an integral part in sustainable peacebuilding processes, complementing the efforts of government, private sector and private citizens.

¹¹ Currently, Kenya is in transition towards a fully-fledged democracy. Since April 2008, Kenya has put in place a government of national unity (GNU), also known as the grand coalition cabinet with the expectation that the transitional process will facilitate constitutional reform and the conduct of free and fair elections.

1.7 Literature Review

Civil society has been in existence for a long time however, many scholars have attempted to define and offer clarity to the meaning and operation of civil society organisations. The work and intervention of civil society coupled by their evolution over a long period of time has necessitated numerous literature on CSOs. Given their relevance in the society, such literature have, to a larger extent, enhanced understanding and shaped the operation of the civil society organizations.

1.7.1 Defining Civil Society

Although civil society is not a new phenomenon, the concept does not lend itself to an easy definition. The Greek Philosopher, Aristotle is the one who first popularized the concept of civil society in academic literature, defining it as a “public ethical community of free and equal citizens under a legally defined system of rule.”¹² Another philosopher, Hegel too defined civil society as “that political space interposed between the state and the family.”¹³ Antonio Gramsci (1927), a classical scholar distinguishes between civil society and political society¹⁴, arguing that civil society exists outside the arena of political interests. This is a rather dated perception of civil society given the reality that in contemporary society, the distinction between political life and civil life is blurred.

However, other classical scholars contend that civil society is that entity within social reality, which is separate from the state and family. Tocqueville claims that civil society is

¹² Aristotle could not separate between civil society and the state, arguing that the state and civil society are intertwined and conceiving civil society as a form of political party that served the state.

¹³ Hegel transformed the meaning of civil society, insisting that civil society arose as a result of the rise of a modern liberal state. Hegel distinguished civil society from the state and posited that civil society essentially stood for the satisfaction of individual interests and private property.

¹⁴ Gramsci defines political society as encompassing institutions that are political in nature, and these include political parties, the police, the judiciary, parliament, among others.

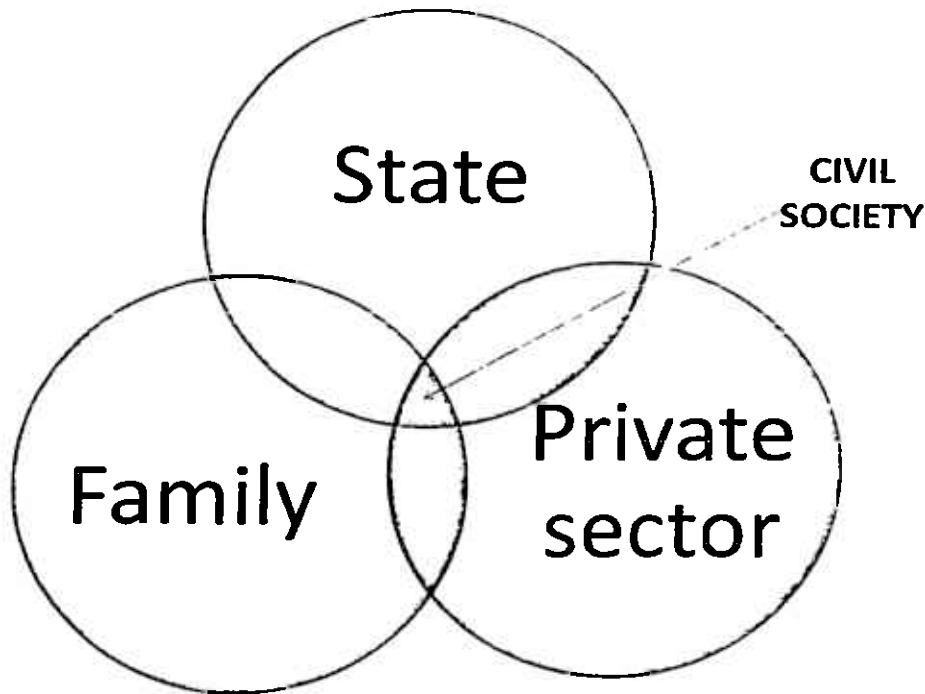
thought to be separate from the state and political parties. thus referring to a largely autonomous sphere of freedom. Modern scholars have tended to go along with the definition that distinguishes civil society from other entities in society, emphasizing how civil society organizations are counter-hegemonic in nature. Larry Diamond (1999) defines civil society as,

“...the realm of organized social life that is open, voluntary, self-generating, at least partially self-supporting, autonomous from the state, and bound by a legal order or set of shared rules.”¹⁵

The London School of Economics (1999) defines civil society broadly as “un-coerced collective action around shared interests, purposes and values”. Makumbe (1998) defines civil society as “the segment of society that interacts with the state, influences the state, and yet is distinct from it.” Thus, civil society can be regarded as a “third sector,” distinct from government and private enterprise. The “first sector,” that is government, has the primary responsibility of providing public goods, which by their very nature cannot be provided by business. Such public goods include among others, state security, education, health and clean environment. The “second sector”, which is business, produces purely private goods. for private consumption whose main motive is profit. In this regard, civil society is the “third sector” comprising “intermediary institutions” such as professional associations, religious groups, labour unions and citizen advocacy organizations. Civil society in turn acts as a link between the state and citizens, in promoting values, accountability, voice and disseminating information, giving expression and direction to social, cultural and political needs of members of society.

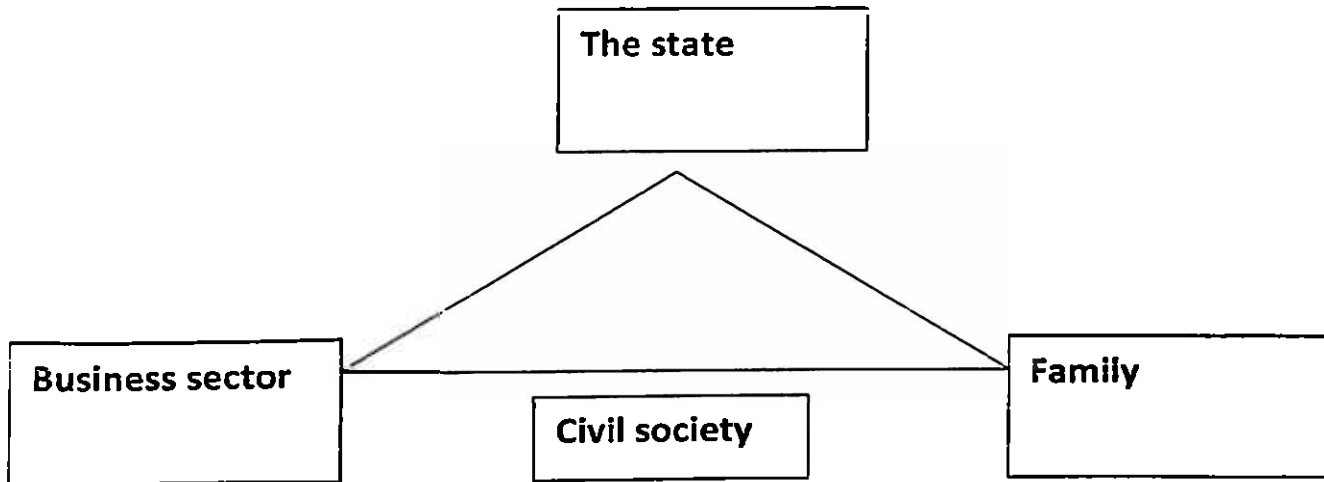
¹⁵ Diamond, Larry. (1999). *Developing Democracy: Towards Consolidation*. Washington DC: John Hopkins University Press. pp221

Figure 1. Civil Society's Relationship with the state, family and private sector ¹⁶



¹⁶ The above diagram is based on the author's conception of the triangular space which civil society finds itself in (i.e. that space which is outside the family, private sector and the state).

Figure 2. Civil Society as the Triangular space between state, business and family¹⁷



Civil society not only reflects the diverse interests and values of different constituent elements of society, but also enables members to articulate their aspirations. Civil society takes many forms and shapes. It ranges from small voluntary organizations to huge institutionalized entities. Civil society includes nongovernmental organizations (NGOs), the media, religious groups, trade unions, women's groups, youth groups and interest groups. Civil society is not a new phenomenon in Kenya, having emerged as a struggle for decolonization and subsequent democratization. In colonial Kenya, associational life was dominated by movements of resistance against British penetration and occupation, which were characterized by urban and rural protests and subsequently full-scale uprisings and ultimately liberation warfare. Mamdani (2002) argues that the history of civil society in colonial Africa originated from colonialism. The

¹⁷ The above diagram is based on the author's conception of the triangular space which civil society finds itself in (i.e. that space which is outside the family, private sector and the state).

experiences of Africans during colonialism drove them to form associations and political parties that sought to champion liberation and equality.¹⁸

1.7.2 Defining Peacebuilding

The term “peacebuilding” was popularized after 1992 when Boutros Boutros-Ghali, defined peacebuilding as a range of activities meant to “identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.”¹⁹ Distinguishing between positive peace and negative peace, Johan Galtung (1967) emphasized that peacebuilding goes beyond ending hostilities but towards rebuilding and reconstruction of society to address root causes of conflict.²⁰ In essence, peacebuilding involves long-term activities within economic, social and political realms that aim to build capacity for reconciliation, societal growth and stability (Lederach, 1997). As such, peacebuilding is a triadic transition from war to peace, from authoritarianism towards participatory development and from economic transition which involves rebuilding fragile or debilitated economies. Below is a diagram that outlines the nature of peacebuilding:

¹⁸ Examples of such notable historical civil society organizations include the Kenyan African National Union (KANU) and the African National Congress (ANC) in South Africa.

¹⁹ Boutros-Ghali who was then the United Nations Secretary General presented the report, *An Agenda for Peace* (Boutros-Ghali, 1992) to the UN Security Council. For details, see. Boutros Boutros-Ghali, B. (1992). *An agenda for peace*. New York: United Nations

²⁰ Johan Galtung, also known as the father of peace studies, makes a distinction between negative and positive peace. Negative peace refers to the mere absence of physical violence and cessation of hostilities. On the other hand, positive peace describes the complete positive content of a peaceful and secure world, which includes restoration of relationships, economic and human development and revitalisation of institutions, among other things.

Figure 1: Categories of Peacebuilding²¹



Peacebuilding and post-conflict reconstruction are geared towards transformation from violence towards a society that promotes peace. Thus, peacebuilding therefore refers to those activities which are designed to consolidate peace in post-conflict countries in order to avoid a relapse into conflict. However, “peacebuilding” has become a broad and expansive term. In *Agenda for Development* (2004), then UN Secretary General, Kofi Annan said peacebuilding required “sustained, cooperative work on the underlying economic, social, cultural and humanitarian problems.”²² Peacebuilding is espoused by scholars like John Paul Lederach (1997) who says it occurs at top, middle and grassroots levels. Lederach defines peacebuilding using his model of the peacebuilding pyramid, which is a well cited source for most practitioner approaches to peacebuilding. It seeks to address the multiple and deep-rooted cause of conflict and encompasses the entire range of interventions designed to facilitate the establishment of durable peace and prevent the recurrence of violence. These include conflict prevention.

²¹ Source: Barry Hart (2008) (Ed). *Peacebuilding in Traumatized societies*. Maryland: University Press of America.

²² Anan. Kofi. (2004) *An Agenda for Development*. New York: United Nations

management, transformation, and peacekeeping. Peacebuilding includes a broad range of activities such as socio-economic development, poverty reduction or democratization efforts. Peacebuilding approaches have shifted from a pure focus on security and peacekeeping, to establishing the socio-economic conditions for peace. This has been spurred by evidence on the linkages between poverty and conflict (Collier et al. 2003).²³

1.7.3 Civil Society in Peacebuilding and Post-Conflict Reconstruction

According to Catherine Barnes in the Global Partnership for the Prevention of Armed Conflict (GPPAC)'s 2006 report underscores eight major roles played by civil society. It acknowledges that civil society plays important roles

“...at every point in the development of conflict and its resolution: from surfacing situations of injustice to preventing violence, from creating conditions conducive to peace talks to mediating a settlement and working to ensure it is consolidated, from setting a global policy agenda to healing war scarred psyches...”²⁴

The changing approaches to peacebuilding and post-conflict reconstruction have opened space for civil society participation. In a World Bank- commissioned study, Paffenholz and Spurk (2006) identify the multiple peacebuilding roles played by civil society including the protection of citizens, monitoring for accountability, advocacy and public communication, community building, and intermediation and facilitation between citizens and state.

²³ Paul Collier is one of the scholars who espouse the theory on the economics of war and peace. The argument is that rather than violent conflict being primordialially explained, it is usually a result of economic conditions such as poverty, inequality and inept development.

²⁴ Barnes, Catherine, 2006. Global Partnership for the Prevention of Armed Conflict. *Agents for Change: Civil Society Preventing War and Building Peace*. Issue Paper 2. September 2006.

The occurrence of conflict and state fragility calls for the intervention of civil society (Diamond, 1999). The lack of state capacity to control parts of its territory or to deliver public services often prompts civil society to fill the vacuum, by delivering humanitarian and development assistance as well as making efforts to promote an end of the conflict. The theory of multi-track diplomacy and peacebuilding, developed by Diamond and McDonald (1998) recognizes the role of non-state actors, including civil society in peacebuilding. In his earlier works, Putnam (1994) presents what he calls the “civic community index” as a measuring stick of civic involvement, arguing that communities where civic involvement and associational life is higher, tend to be more successful and prosperous.²⁵ However, extant literature acknowledges the “uncivil” nature²⁶ of civil society in some instances. For example in Bosnia-Herzegovina, civil society organization became instrumentalized by political elites on the basis of ethnicity, a development which led to the ‘de-civilization of society’ (Paffenholz and Spurk 2006). In similar circumstances, Putnam (2001)²⁷ identifies how Rwanda’s civil society carried existing prejudices during the genocide, with some civil society actors actively participating in the violence. Despite these ignoble developments in civil society, the role of civil society in peacebuilding keeps being underscored by many scholars and practitioners. There are various peacebuilding roles of civil society discussed in literature. The Carnegie Commission on Preventing Deadly Conflict (1997)²⁸ states that,

“...the prevention of deadly conflict is, over the long term, too hard, intellectually, technically and politically, to be the responsibility of any single institution or

²⁵ For details, see Putnam, Robert D. 1994). *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton NJ: Princeton University Press.

²⁶ Uncivil here refers to the less virtuous activities that some civil society organizations are engaged in, including corruption, co-optation and abuse of power, among other things.

²⁷ Putnam has been involved in several writings on civil society. His seminal work on civil society, *Making Democracy Work*, emphasizes how some civic associations hindered democratic consolidation.

²⁸ Carnegie Commission on Preventing Deadly Conflict. 1997. Preventing Deadly Conflict. Final Report. New York: Carnegie Cooperation of New York. p xiv

government, no matter how powerful.” Similarly, in its 5264th meeting, the United Nations Security Council acknowledges the role of a vibrant and diverse civil society in conflict prevention and peaceful settlement of disputes.²⁹

Thus, it is widely acknowledged in literature that civil society plays multi-faceted roles in the realm of peacebuilding. One such role is early warning for conflict prevention. Civil society can monitor the conflict situation and make recommendations to decision makers, provide information to advocacy groups, and provide inputs for early warning. This civil society function is relevant in all conflict phases and its impact is maximized when all actors coordinate closely. In sub-Saharan Africa, early warning systems of regional organizations such as West African Network of Peacebuilders (WANEP)³⁰, African Centre for the Constructive Resolution of Disputes (ACCORD)³¹ and Mano River Union³², has provided immense efforts towards conflict prevention. In addition, civil society often plays the advocacy role in order to promote peacebuilding. Advocacy is one of the core functions of civil society in peacebuilding (Aall 2001; Paffenholz 2003). Civil society not only articulates the interests of social groups, especially marginalized groups in conflict, but it also puts pressure on the domineering party, especially the state, to end the conflict. During conflict civil society tends to advocate for peace agreements, against violence and human rights violations and for broad based participation in the

²⁹ Security Council Meeting, 20 September 2005. The Role of Civil Society in Conflict Prevention and Pacific Settlement of Disputes. S/PRST/2005/42

³⁰ The West African Network for Peacebuilders (WANEP) is a regional civil society organisation that is based in West Africa, with headquarters in Ghana. WANEP realizes its vision and mission in the sub region through strategic programs aimed at strengthening the capacity of peacebuilding organizations

³¹ The African Centre for the Constructive Resolution of Disputes (ACCORD) is a civil society organisation based in South Africa and it operates in more than 12 African countries. ACCORD specializes in conflict management, analysis and prevention and intervenes in conflicts through mediation, negotiation, training, research and conflict analysis.

³² The Mano River Union (MRU) is a regional association established in 1973 between Liberia and Sierra Leone. In 1980, Guinea joined the union. The goal of MRU was to foster economic cooperation among the countries. Increasingly, MRU's objectives have also centred around the promotion of peace and security in the region.

peace process. The Liberian Women Peace Initiative is an example of a civil society organization that engaged in successful advocacy to end civil war. In her analysis, Orjuela (2004) analyses the role of civil society in the post-conflict phase, emphasizing that civil society advocacy tends to focus on implementation of the peace agreements, or specific conflict issues such as violence, gender, or the need for a culture of peace. Orjuela (2003) also spells out the possible role of civil in contributing to peace processes by addressing *ethnic divides*, addressing *politics* with popular mobilization and advocacy work, as well as addressing *economic issues* through reconstruction and development.³³ In fact, civil society has the potential to promote reconciliation, as well as monitor and reform political and military elites. In addition, civil society actors may constrain the use of violence by conflicting parties, as happened in Angola in 1998, when the mobilization of the church and networks of traditional local leaders managed to pressurize one of the belligerents, the Popular Movement for the Liberation of Angola (MPLA) to stop retaliating to the National Union for the Total Liberation of Angola (UNITA) by hurting civilians.

Furthermore, civil society aims to inculcate a culture of peace in divided conflict societies by promoting attitude change toward peaceful conflict resolution and reconciliation. Lederach (2001) conceives civil society as an integral part of reconciliation. Lederach explores the role civil society plays in reconciliation in post-conflict societies and sees reconciliation as a dynamic, adaptive process of rebuilding interpersonal and community relationships.³⁴ Most civil society activities include dialogue projects, reconciliation initiatives, peace education, exchange programs and peace camps, conflict resolution training and capacity building. Such activities lead to increased levels of contact, interaction and communication across geographic, religious,

³³ Orjuela discusses the role of civil society in Sri Lanka. For details see: Orjuela, Camilia. (2003). Building Peace in Sri Lanka: A Role for Civil Society?, *Journal of Peace Research*, Vol 40, Issue No 2, pp195-212

³⁴ Lederach, John Paul. (2001). "Civil Society and Reconciliation." In Crocker, Chester A., Fen Osler Hampson and Pamela Aall, (Eds), *Turbulent Peace: The Challenges of Managing International Conflict*, Washington, D.C: United States Institute of Peace Press.

ethnic, cultural and class divides. However, Aall (2001) notes that such activities be sporadic and uncoordinated, which further limits the potential to achieve sustainable peace.³⁵

Another important role played by civil society is facilitating peace processes and participating in negotiations. Literature on civil society recognizes that through their social networks, civil society organizations are positioned to help parties reach an agreement. The civil society in Liberia, specifically the Women in Peacebuilding Network (WIPNET), played a significant role in influencing parties to reach a peace agreement in Ghana in 2003, after 14 years of civil war. Civil society can play this role because in most cases, members of CSOs are more influenced by the desire for sustainable peace than by a desire for power. Civil society also plays important roles in helping to sustain agreements reached by the parties, including through raising awareness and educating the public about the agreement itself. The changing nature of conflict demonstrates the imperative need for civil society's involvement in peacebuilding. This is the basis of this study- to examine various roles played by civil society before, during and after conflict.

³⁵ For details, see Aall, Pamela. (2001) What do NGOs bring to the Peacemaking? In Crocker, Chester A., Fen Osler Hampson and Pamela Aall, (Eds), *Turbulent Peace: The Challenges of Managing International Conflict*.. Washington, D.C: United States Institute of Peace Press.

1.8 Theoretical Framework

This study conceptualizes civil society as arena or space where people not only express diverse values but also interact, debate, discuss and ultimately seek to influence society's socio-economic and political processes. Theoretical debate about the role of civil society is informed by peacebuilding theorists such as Lederach (1997) and Diamond and MacDonald (1997) who conceive peacebuilding as a multilayered process involving multiple actors. The two conceptual frameworks enable the researcher to situate civil society in the context of other actors.

1.8.1 Multi-Track Diplomacy: A Theoretical Perspective

Using a systems theory approach³⁶, multi-track diplomacy conceives peacebuilding processes as a living system. The concept of multi-track diplomacy was developed by Louise Diamond and John MacDonald (1996), following writings by Joseph Montville (1982) who made a distinction between Track One Diplomacy (official, governmental action) and track two Diplomacy (unofficial, nongovernmental action). Diamond and MacDonald (1996) further expanded the track of peacebuilding into 9 sections, asserting that there are other important facets of peacebuilding apart from government and non-state actors. As such, the theory of Multi-track Diplomacy looks at the web of interconnected activities, individuals, institutions, and communities that operate together for a common goal of creating and maintaining peace. Multi-

³⁶ Systems theory underscores the trans-disciplinary study of systems. Systems theory is an outcome of theorising by many social thinkers, but one notable systems theorist was Talcott Parsons, a sociologist. He produced a general theoretical system for the analysis of society that came to be called structural functionalism. For details, see Parsons' major published works, *The Structure of Social Action* (1937), *The Social System* (1951), *Structure and Process in Modern Societies* (1960), *Sociological Theory and Modern Society* (1968), and *Politics and Social Structure* (1969).

track diplomacy recognizes that sustainable conflict transformation and peacebuilding cannot be left solely to governmental entities, but must be expanded to include non-governmental actors, civil society and other informal channels. Multi-track diplomacy calls for a holistic and comprehensive approach to peace which calls for the expansion of the peacebuilding web to include a host of actors outside Track I³⁷. Multi-track diplomacy incorporates all aspects of peacebuilding and operates at all levels from the ground-level work of private citizens to the top-level meetings of state heads. Since peacebuilding seeks to address the underlying causes of conflict, build relationships and mend broken relationships in conflict-affected societies, actors in this regard come from various entities, including academia, non-governmental organizations (NGOs), community based organizations, religious leaders and the media, among others. According to Diamond and MacDonald (1997), there is interdependence and parity of esteem in all the nine tracks.

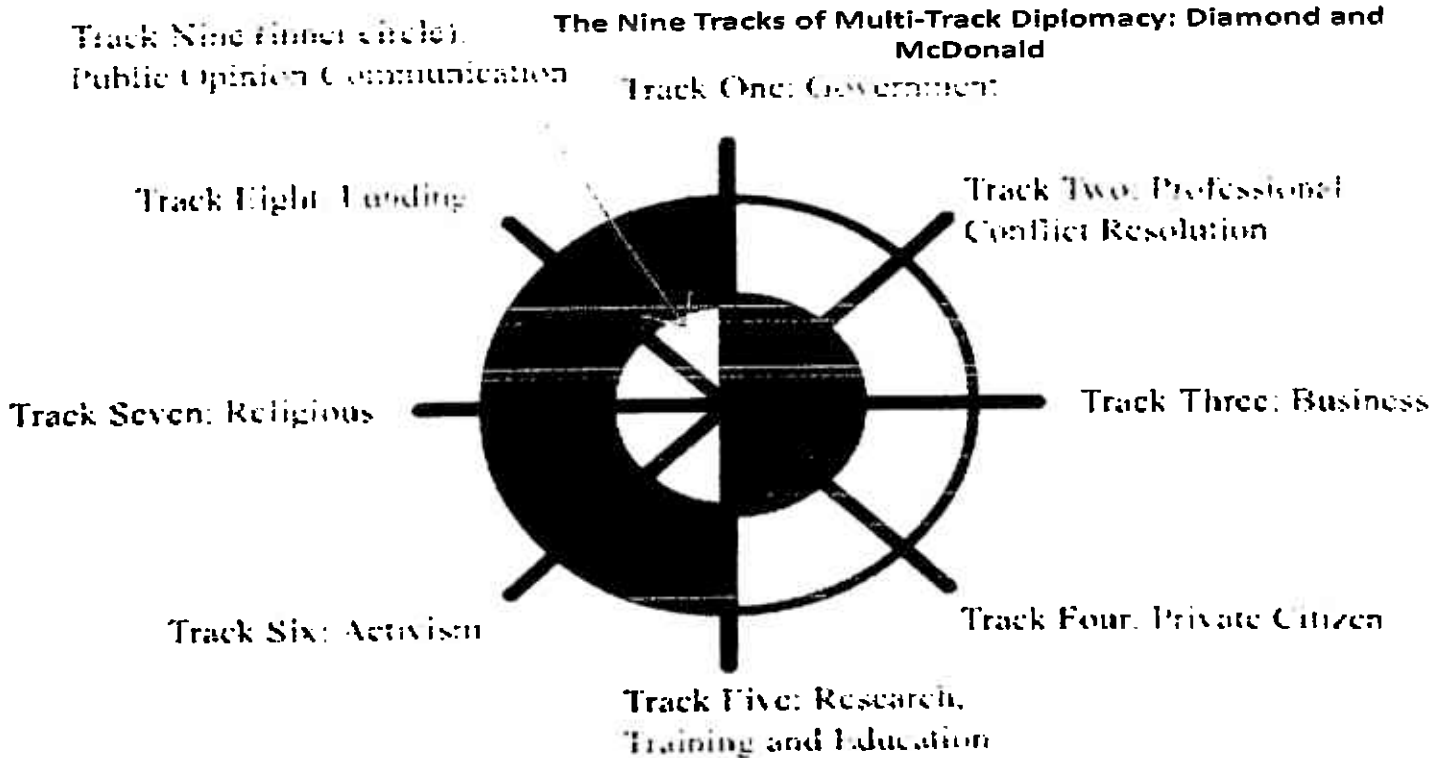
Figure 3: Multi-Track Diplomacy Illustrated³⁸

Source: Diamond and MacDonald, 1997

³⁷ The theory of multi-track diplomacy underscores the synergies between various different peacebuilding actors and processes and categorises the various peacebuilding actors into tracks. Track 1 comprises diplomatic, political and military actors in peacemaking. Track 2 is composed of unofficial non state actors that nonetheless have huge influence on the state, diplomats and in certain cases, the military leaders. In essence, no one track is more important than the other. Each track has its own resources, values, and approaches, but since they are all linked, they can operate more powerfully when they are coordinated.

³⁸ As the list of actors in peacebuilding continues to expand, so will the diagram depicting multi-track diplomacy.

The Nine Tracks of Multi-Track Diplomacy: Diamond and McDonald



Multi-track diplomacy is a useful tool in understanding how actors such as civil society contribute towards peacebuilding. This conceptual framework is credited for highlighting newer diplomacy approaches by utilizing and identifying of new players and dynamics in conflict and its resolution. In fact, the theory of multi-track diplomacy has found support among other scholars in peacebuilding including Saunders (1999) who also argues for multiple voices in peacebuilding. Slaughter (2004) concurs with this analysis, arguing that political power is no longer concentrated only in national government but that it is shared over multi-levels and with multiple new partners. In fact, multi-track diplomacy has become an increasingly important tool for diplomats, government, NGOs and other civic actors who work in the peacebuilding and development realms. However, the theory is criticized for merely outlining the layers of peacebuilding and describing their activities without questioning the challenges of coordinating

the various actors in the peacebuilding realm since they sometimes have conflicting philosophies and approaches.

1.8.2. The Peacebuilding Pyramid: A Theoretical Perspective on Peacebuilding

Lederach (1997) underscores that peacebuilding should have space for diverse actors, from the state to civil society. Lederach argues that if peacebuilding is top heavy, it is unlikely to be sustainable. Using the peacebuilding pyramid, Lederach categorizes actors in peacebuilding into ranks and makes the point that each level is uniquely positioned to pursue certain types of peace building activities.³⁹ At the top level are diplomats, political elites and the military leaders. These are not only powerful, but they have the legitimacy of representing their constituencies and are therefore highly visible. However, they are often the creators of conflict and are the least affected by the destructive effects of conflict. In addition, as a result of their prominence and high profile, top level leaders are often locked into positions regarding the conflict's substantive issues. The middle-level actors include non-government organizations and other civil society actors. These are numerous in number and they have flexible modes of operation and as such, they are capable of influencing both top leaders and grassroots actors. At the bottom level of the pyramid exist the grassroots actors and members of local communities who often experience a day-to-day impact of conflict. These are important actors in peacebuilding because they are aware of their environment and are better informed of the vision of their post-conflict society. Lederach emphasizes that it is usually the grass-roots actors who are the decisive force for peace

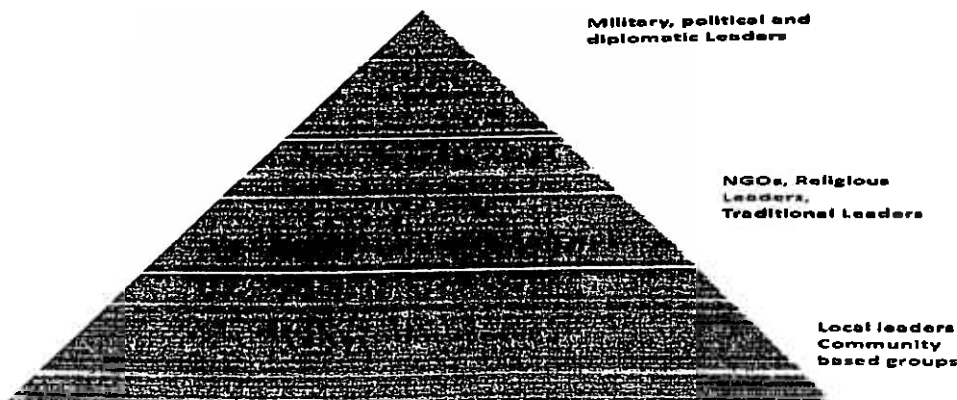
³⁹ John Paul Lederach's peacebuilding pyramid allows practitioners and scholars to determine which the appropriate approach to building peace, who acts on each level, and what actions are best taken at each level. Each level is uniquely positioned to pursue certain activities within peacebuilding. For details, see: **Lederach, John Paul. "Structure: Lenses for the Big Picture." In Lederach, J.P. *Building Peace: Sustainable Reconciliation in Divided Societies*. Herndon, VA: USIP Press, December 1997. Pages: 37-61.**

process because they are the ones who are most affected by ongoing violence and would therefore be compelled to find solutions to their challenging situations.

In the peacebuilding pyramid, Lederach stresses that mid-level and grassroots levels are important in supporting peace agreements which would have been conducted at the top level. While mid-level empowerment will impact on both the macro and grassroots levels by engaging in processes such as dialogue, problem-solving workshops and advocacy for peace. In addition, middle-range actors have a certain degree of influence on the elites and they can effectively serve as a link between the state and the population. Most importantly, middle-range actors Lederach also emphasizes the role of the grassroots level in a range of peacebuilding activities such as local healing, economic empowerment, community based mediation and support for peace initiatives. Thinking of peacebuilding in terms of a pyramid provides a simple way to describe the numbers of people involved at each level (See Figure 3 below for detailed conceptualization of the peacebuilding pyramid).

Figure 3: Lederach’s Peacebuilding Pyramid

Source: Lederach, John Paul. (1997), Building peace: Sustainable Reconciliation in Divided Societies, p. 39.



However, the peacebuilding pyramid is often criticized for being too simplistic and descriptive instead of focusing on the challenges of bottom-up peace processes. Goodhand and Lewer (1999) underscore that despite the good intention of most actors in peacebuilding, the process is not that easy. The authors use Sri Lanka as a case study to highlight the “anarchy of good intentions.” wherein they pointed out the difficulty and complexity of peacebuilding vis-à-vis human capacity.⁴⁰ Furthermore, Sentongo and van Raalten (2007) propose the Conflict Intervention Model as an alternative framework that cuts through the different layers within a society in conflict. Whereas Lederach ranks actors and processes in three tiers of the pyramid, the Conflict Intervention Model shows that the combination of these efforts forms, as a whole, the intervention process.⁴¹

⁴⁰ For details see. Goodhand, Jonathan and Nick Lewer, (1999). “Sri Lanka: NGOs and peace-building in complex political emergencies,” *Third World Quarterly*, Vol 20, Issue no. 1, pp 69-87

⁴¹ Sentongo, Ashad and Judith van Raalten (1997) introduce the conflict intervention model as a framework for critiquing Lederach’s peacebuilding pyramid. For these authors, the intervention process is visualized by the upside-down pyramid (see above figure 2. 4) that is fueled by external factors (see figure 2. 4.0) that influence the process. Main actors who have the power to intercede are members of the international community, and other outside parties that have a stake in the peace process. For details, see Sentongo, Ashad and Judith van Raalten (1997). *From Conflict to Coexistence - An Intervention Model*. *Peace and Conflict Monitor*. University for Peace, Costa Rica.

1.9 Research Methodology

The methodology for the research was designed as set out below.

1.9.1 Research Design

The study on civil society in post-conflict reconstruction processes in Kenya was more inclined to the qualitative research design. Qualitative data is generally descriptive and narrative in nature because the aim is to understand the case in detail. According to William (2002), the purpose of qualitative research is to study social problems in their context by interacting with the respondents in the natural settings.⁴² The research methodology for this study was trifurcated. The first step comprised a detailed literature review process where the author read reports, legislations, statements and newspaper articles about civil society in Kenya. The second aspect of the methodology involved interviews, focus groups and consultative meetings with members of civil society and government departments that interacted with such civil society. The third segment of the research methodology involved data analysis which included the exercise of 'meaning-making' (Abrams, 2008) processes to make sense out of the data collected.⁴³ Overall, the researcher subscribed to the do no harm thesis (Anderson, 1999),⁴⁴ whereby every effort was made to ensure that participants were not endangered as a result of their participation in the research process.

⁴² Qualitative research methodology is selected because allowed for deeper contextual understanding of the role of civil society in peacebuilding in Kenya.

⁴³ Laura S. Abrams. What's Your "N": Representation and Meaning Making in Qualitative Research with Transient Youth. Paper presented at the Society for Social Work Research. Washington DC. 17-20 January 2008.

⁴⁴ For details, see Anderson, Mary. B.(1999). *Do No Harm: How Aid Can Support Peace or war*. London: Lynne Rienner.

1.9.2 Study Population

The population for this study comprises of various civil society actors, including members of the public, political leaders, political parties and government (constitutional commissions) and religious leaders involved in peacebuilding and post-conflict reconstruction processes in Kenya.

1.9.3 Sampling

Purposive sampling⁴⁵ was used to identify relevant individuals and organizations that are both knowledgeable about, and active in ameliorating the current situation and aftermaths of the post-election violence of 2007.

1.9.4 Data Collection Methods

This study used mixed methods to obtain information about the role of civil society in peacebuilding and post conflict reconstruction. Both primary data and secondary data were utilized. Primary data is that data which is observed or collected directly from first-hand experience and it includes data obtained from interviews, focus group discussions, observations and experiments. Secondary data is the data that has been collected by and readily available from other sources and these include reports, statistical analyses, newspapers, proposals and other related documents. The methods for data collection are outlined below:

⁴⁵ Purposive sampling targets a particular group of people because they possess a quality that a researcher is interested in.

1.9.4.1 Semi- Structured Interviews

The study benefitted substantively from semi-structured interviews with individuals from civil society organisations. Semi-structured interviews are conducted with a fairly open framework which allow for focused, conversational, two-way communication. In a semi-structured interview, not all questions are designed and phrased ahead of time and listed on the research instrument. The semi-structured interview allows both the interviewer and the person being interviewed the flexibility to probe for details or discuss issues. Unlike the questionnaire or structured interview where detailed questions are formulated ahead of time, the semi structured interview starts with more general questions or topics and then proceeds to a more specific and detailed format (See the Interview Guide attached as Annexure). The semi-structured interview allowed the research to explore emergent themes from the conversation rather than relying only on concepts and questions defined in advance of the interview. Although there is room for flexibility, the questions tend to be asked in a similar order and format to make a form of comparison between answers possible. However, there is scope for probing for further and more detailed information from the interviewee. A total of 20 interviews were conducted with representative of civil society organizations. To structure this conversation, an interview guide was used and issues covered in structured interviews included the type of programs and the experiences of civil society organisations in implementing their activities, their relationship with the state as well as outcomes of their activities. Interviews with civil society groups and activists-NGOs, grassroots organization and religious organizations provided greater breadth for amassing descriptions of situations.

1.9.4.2 Focus Group Discussions (FGDs)

Focus Group discussions (FGD) produce data and insights that would be less accessible without interaction. The purpose of the FGD is to gain knowledge about a particular issue by engaging in a conversation with a group of people who have significantly similar attributes or situations. Four focus group discussions (FGDs)⁴⁶ were conducted with 6-8 civic actors in each group. Approximately 24 members of the civil society community were targeted for FGDs. FGDs were conducted in Nakuru, Nairobi and Kisumu which were some of the areas that witnessed a lot of violence during the post election violence.

1.9.4.4 Document Review/ Secondary Data:

The collection and examination of secondary documents⁴⁷ forms the integral element in qualitative research as these are important for triangulation and for enhancing content validity. A secondary source interprets and analyzes primary sources. These sources are one or more steps removed from the event. Analysis of secondary sources of data such as newspapers, NGO reports, speeches and reports such as the Waki Commission and Kriegler Commission Reports as well as government documents helped the researcher to ascertain the performance of CSOs in peacebuilding and post conflict reconstruction. The researcher also made reference to policy documents such as the NGO White paper as well as relevant legislations on elections.

⁴⁶FGDs elicit a range of experiences and opinions among members of the community, apart from clarifying issues raised through the use of other research methods.

⁴⁷ These documents include media articles on the Kenyan conflict, opinion pieces and commentaries on the current situation in Kenya and ongoing peacebuilding and post-conflict reconstruction initiatives.

1.9.5 Data Analysis

Data analysis involves the process of making linkages between themes, ideas and concepts from the data. Data was analyzed by referring to the research questions, objectives and literature. The study makes conclusions based on the data coming from the field. Since the study of civil society's role in peacebuilding is somewhat novel, this study concludes by posing further questions for research.

CHAPTER 2

Multi Party Elections in Kenya and Evolution of Civil Society Organisations

2.0 Introduction

This Chapter examines the historical background of multi party elections in Kenya and brings out factors that made multi party elections in Kenya conflictual. The evolution of the CSOs in Kenya is also examined and especially their organisations and structures.

2.1 Multi Party Elections in Kenya

On 27th December 2007, Kenya held its fourth multi party elections since the country reverted back to multi party politics in 1992, from the stand point of democratization, the 2007 elections brought out one telling fact: that periodic elections are not by themselves a guarantee for sustainable democracy⁴⁸. For a country that had enjoyed peace and tranquility since independence, the post election violence that erupted following the announcement of results and the subsequent swearing in of the incumbent President Mwai Kibaki came as a shock both to the national as well as the international community, as Kenya was widely believed to have transited from an authoritarian to a more stable democracy.

The post election violence reinforced the distinction between negative peace and positive peace as expounded by Johann Galtung (1969).⁴⁹ While the country enjoyed a semblance of

⁴⁸ Denis Kadima; politics of party coalition 2006, pg 179

⁴⁹ Negative peace refers to the absence of physical violence or war. A situation of negative peace is synonymous with fragility. That peace is usually unsustainable or not durable. On the other hand, positive peace means so much more than just absence of direct violence. It describes conditions where human beings are able to exercise their full potential through the presence of enabling socio-economic and political conditions.

peace, entrenched structural inequalities and imbalance existed that could not guarantee sustainable peace. The history of failed constitutional reform, ethnicity and polarisation that existed since independence, unequal natural resource allocation, election fraud, among others conspired to elevate the 2007 clashes to a level that surpassed the previous elections of 1992, 1997, and 2002.

As mentioned from the foregoing, the history of election conflict in Kenya was not limited to the 2007 and 2008 post elections violence. The struggle for the restoration of multi party democracy was in response to the authoritarian regimes that had characterized President Kenyatta and Moi governments. The period between 1964 and 1992 was marked by systematic amendment of the constitution whose net effect was the emasculation of other organs of state namely, the Judiciary and parliament and the centralization of power in the hands of the executive⁵⁰. This period was further characterized by the institutionalization of a monolithic system of government and the curtailment of fundamental rights and freedoms, including the freedoms of association and assembly (Kadima, Owuor 2006).

The dictatorial regimes established since independence naturally prompted a reaction from Kenyans. However, attempts to challenge the status quo were often met with serious repression. The new world order that was precipitated by the collapse of the Soviet Union in 1989 gave the reforms initiative new impetus in Kenya. In particular, the combined pressure from the civil society organizations among them; the religious organizations, political action groups, and nongovernmental organizations forced President Moi to succumb to internal pressure and repeal Section 2A of the constitution⁵¹ that had made Kenya a *de facto* one party state.⁵²

⁵⁰ Research on Electoral Environment in Kenya, 1997 IED.

⁵¹ Section 2A of the Kenya Constitution defined the country as a one-party state.

Although hailed as an important milestone in the quest for democratic consolidation in Kenya, the repeal of Section 2A was regrettably not accompanied by constitutional, legal and administrative framework that was reflective of a true multi party political dispensation. The country embraced multi-partyism with laws that were designed to perpetuate the incumbent KANU regime in power. For example, laws like detention without trials, Chiefs Authority Act, Public Order Act, that gave unbridled power to the provincial administration were never repealed.

The 1992 and 1997 elections in Kenya were thus held against the foregoing backdrop. Owing to the legal principle of retrospective application of the law⁵³, the incumbent President Daniel Arap Moi was not barred from contesting both the 1992 and 1997 elections despite the fact that he had been in power for 14 years. The possibility of losing power for the first time since 1963 prompted the KANU regime to engineer the fragmentation of opposition parties in Kenya. The Forum for the Restoration of Democracy (FORD) that had spearheaded the reform campaign split into FORD Kenya and FORD Asili⁵⁴. For the most part, the majority of Kenyas' political elites equated multi-partyism with the proliferation of political parties. The effect of this misconception saw opposition parties scramble for registration as parties in Kenya.

The political environment preceding the 1992 general elections could not guarantee free, fair and peaceful elections. Other than the legal and constitutional environment that was heavily skewed in favour of the ruling party, the proliferation of political parties made it easy for the incumbent party to win with minority votes. In the absence of a solid ideology and platforms to rally the voters, political parties resorted to ethnicity as the clarion call for mobilizing the

⁵² A de facto one party state is that political system where laws or practices prevent the opposition from legally getting power.

⁵³ Matters that were not offensive cannot be criminalized by the enactment of a new law.

⁵⁴ Denis Kadima; Owuor Politics of Party Coalition, 2006

voters⁵⁵. This was evident in the zoning of the country on the basis of party strongholds. The voting patterns and outcome of 1992 mirrored very closely the political party strengths. In the period preceding the elections, ethnic clashes erupted in parts of Coast and Rift Valley provinces that disenfranchised the voters. The Akiwumi Report on ethnic clashes and electoral violence clearly pointed to the manipulation of ethnic affiliations for political gain. Faced with a splintered opposition, President Moi and KANU narrowly won the elections and proceed to rule a thoroughly divided country given the polarization that had preceded the 1992 elections. The voting pattern largely took an ethnic dimension with President Moi winning in Rift Valley Province and in areas that was inhabited by the pastoralist communities. Kenneth Matiba and Mwai Kibaki garnered votes mainly from Central and Mount Kenya regions that are populated by the Kikuyu community, while Jaramogi Oginga Odinga who came fourth won mainly in Nyanza province where his Luo community reside.

The dynamics of the 1997 elections was no different from the 1992 elections. President Moi who had served one term was eligible to run for the last time to complete his two five year terms. Between 1993 and 1997, the ruling party KANU embarked on a systematic strategy of engineering defections⁵⁶ from the opposition parties to join KANU- a move that further weakened the opposition parties. Remarkably, the skewed electoral playing field prompted the political parties and civil society to demand reforms as a pre condition to participating in the 1997 elections. A combined pressure between civil society and the political parties led to the massive demonstration that was unprecedented in Kenya's history. President Moi yielded to the

⁵⁵ Wachira Maina, IED 1997. Energizing the electoral process in Kenya, pg 180.

⁵⁶ Defections or floor crossing entailed members of the opposition parties joining KANU thereby boosting its parliamentary majority.

pressure and allowed for the formation of Inter Parties Parliamentary Group (IPPG)⁵⁷ that facilitated minimum constitutional and legal reforms that enabled the 1997 elections to be held. Like in 1992, the political and electoral environment was characterized by polarization, ethnicity and electoral violence that undermined the process. The conduct of the Electoral commission of Kenya (ECK) that was charged with the responsibility of managing and supervising elections was also wanting⁵⁸. Faced with a disjointed opposition, President Moi and KANU won the 1997 elections with minority votes (40% of the votes). Despite winning the elections, massive irregularities were noted in the political and electoral environment and electoral violence in Rift Valley, Nairobi and Coast Provinces. During the violence, people lost their lives and majority were displaced leading to the disenfranchisement of many voters, as many people were forced to leave areas that they had registered. Like in 1992, the 1997 elections outcome also took ethnic and geographical dimension with the leading presidential candidates winning in their home turfs. Another remarkable feature of 1992 and 1997 elections was the extent to which the constituencies boundaries had been delimited to favour the ruling party KANU through gerrymandering. Indeed, while KANU won approximately 40% of the votes in both elections, the party garnered majority Members of Parliament defeating the opposition parties that had a combined tally of over 60%.

The 2002 General Elections marked the turning point in Kenya's democratic development and signaled a change from the past. President Daniel Arap Moi, who had been president for 24 years, was ineligible to contest the election after serving the limit established in 1992 of two-five year terms. The decision by President Moi to step down significantly opened

⁵⁷ IPPG was rejected by many CSOs who regarded it as peacemeal reforms that did not address the demand for comprehensive reforms.

⁵⁸ Wachira Maina re energizing electoral process in Kenya, 1997; IED Publication.

political space. Contrary to previous years, the opposition managed to unite under the banner of the National Rainbow Coalition (NARC) under the leadership of President Kibaki and Odinga. In addition to their aim to remove KANU from power, the NARC platform was centered on an ambitious reform agenda which advocated for the development of a new constitution, the revitalisation of state structures, free primary education, measures against corruption and crime, economic revival, poverty reduction and national reconciliation⁵⁹.

Allegations of vote-buying and discrepancies in the electoral register notwithstanding, Kenyans were able to freely express their will through the ballot in the 2002 general election and the result was hailed as a sign of major democratic progress in the country. President Kibaki of NARC emerged with a decisive victory over his KANU opponent, Hon. Uhuru Kenyatta. In addition, The NARC coalition secured 56 percent to KANU's 29 percent of the 224 member National Assembly seats⁶⁰.

Unfortunately, shortly after the election, a major fissure formed within the coalition when Raila Odinga was not appointed Prime Minister and fewer than the stipulated 50 percent of the minister positions were given to Liberal Democratic Party (LDP) members.⁶¹ These divisions grew during the debate over the creation of a new constitution. The LDP faction of NARC accused President Kibaki of reneging on the promise of delivering a new constitution within the first 100 days of NARC government. The parties also faced practical difficulties arising from the management of coalition government⁶². Central to the debate were last minute additions that had the potential of strengthening the executive power, and provisions which made it easier to amend

⁵⁹ Kadima, D. (2006) Politics of Party Coalition, pg 154

⁶⁰ Kadima, Owuor Politics of Party Coalition: National Rainbow Coalition (NARC)

⁶¹ Both tenets agreed to during the formation of the coalition.

⁶² The NARC coalition was the first real coalition the country had.

the constitution. A block of NARC members joined with an LDP faction and members of the official opposition party, KANU, to advocate for a no-vote, officially forming the Orange Democratic Movement (ODM) to campaign against its passage in a national referendum. ODM mounted a strong national campaign and in November 2005, the new constitution was rejected by over 58 percent of the voters. In reaction, President Kibaki dissolved the Cabinet and reconstituted a new one which left out LDP members who had supported the no-vote. The embattled president offered positions to members of Ford-people and KANU, forming the Government of National Unity (GNU).

Those who had driven the ODM no-vote campaign formalised their alliance in the Orange Democratic Movement-Kenya (ODM-K), led by Odinga and Hons. Kalonzo Musyoka, Uhuru Kenyatta, and William Ruto, among others. As the race for President intensified, major disagreements formed within ODM-K over who to nominate as their presidential candidate. After two contentious nominating events, Odinga left ODM-K to revive the ODM banner, taking with him other LDP and KANU remnants from the Rift Valley, Coast, Western, North Eastern and Nyanza provinces. Hon. Musyoka took control of ODM-K⁶³. This split created a weakened opposition to President Kibaki. President Kibaki in the meantime formed a new coalition, the Party of National Unity (PNU) which included a few defectors from the ODM/ODM-K split and his previous GNU.

⁶³ Assessment of Kenya Grand Coalition Government: Political Parties Perspective.

2.2 2007 Elections and the Post Election Mediation

The 2007 general elections were held against two competing dynamics. The first was the successful 2002 elections and 2005 constitutional referendum both of which were hailed as meeting the international benchmarks of free, fair and peaceful elections; the second was the tension and polarization that paradoxically emerged following the 2002 elections and 2005 referendum. As mentioned while the opposition succeeded in dislodging KANU from power, serious division emerged following the 2005 referendum that was carried forward to the 2007 elections. As was the case with the referendum, the campaigns divided the country 7 provinces against Central Province where the incumbent President Mwai Kibaki hailed from. Although the pre election period including the actual voting day was largely peaceful, problems arose during the counting and tallying processes when it was reported that the Electoral Commission officials could not be traced and allegations of falsifying the statutory electoral forms were made⁶⁴. Despite serious contestation, the ECK declared that President Kibaki had won the elections with slightly over 4.5 million votes followed by his closest challenger Raila Odinga of ODM with slightly over 4.3 million votes⁶⁵.

The announcement of presidential election result and the subsequent swearing of President Kibaki for another five years term sparked violence and demonstration all over Kenya. The violence that reportedly killed over 1.300 people and displaced over 600.000 and destroyed property worth millions of dollars manifested itself in four distinct forms⁶⁶. Following the announcement of the results and the swearing of president Kibaki, spontaneous mass protests accompanied by looting emerged in parts of Nairobi, Kisumu and other urban centers. The

⁶⁴ Daily Nation, 29th December 2007: Complaints by Samuel Kivuitu, Chair ECK.

⁶⁵ Results announced by the ECK, December 2007.

⁶⁶ David K Leonard, Owuor: Journal of African Elections, June 2009 EISA publication.

second wave of violence manifested itself in the form of attacks directed at Kikuyu community in especially Nyanza, and Rift Valley whose aim was to drive the Kikuyu community from these regions to protest the elections of President Kibaki⁶⁷. The third wave of attacks involved the police who were deployed to break down the mass protests and quell anti Kikuyu attacks and demonstration. The final form of violence manifested itself in the form of retaliatory and reprisal attacks by Kikuyu militias, mainly targeting migrant workers thought to be opposition supporters in parts of Rift Valley Province, Central Province, and the Nairobi slums (Owuor, Leonard 2009).

The escalation of violence between January and February 2008, prompted the Africa Union to appoint a team of eminent African personalities headed by former UN Secretary General Kofi Annan, former Tanzanian President Benjamin Mkapa, and Graca Machel to mediate post election violence and to find a lasting solution to the Kenyan problem. The Panel outlined a four point agenda namely; immediate cessation of violence and restoration of fundamental rights and freedoms; measures to address the humanitarian crisis and reconcile the warring communities; a political solution to the ODM-PNU standoff in the form of a transitional unity government; measures to accelerate long term institutional reforms to the judiciary, parliament, electoral system, and land tenure practices. The envisaged reforms were expected to address historical injustices touching on ethnicity, employment and income disparities.

The intervention by the Kofi Annan lead team resulted into the signing of the National Accord and Reconciliation Act on February 2008. The signing of the National Accord paved way to the establishment of the Grand Coalition Government based on 50-50 power sharing arrangement between ODM and PNU, and the creation of the position of the Prime Minister with

⁶⁷ Electoral Reforms in Africa: Challenges and Opportunities-2008- See Kenyan Chapter pp 207

two Deputy Prime Ministers. The National Accord⁶⁸ was further entrenched into the constitution, a move that accorded it constitutional powers in so far as matters of running the government was concerned as well as insulated it from frequent and arbitrary amendments.

The time when the African Union intervened in the post election violence in Kenya in 2008 underscored the ripeness of conflict theory as propagated by William Bateman. According to this theory, conflict resolution can only happen when the conflict has reached a point of ripeness when the disputants have reached a stalemate and any furtherance of the conflict could potentially hurt both parties to the conflict. Indeed as of the time Annan jetted in Kenya and commenced the mediation efforts, both PNU and ODM were evidently weary of the conflict given the fatalities that the post election violence had claimed, and the massive displacement and human sufferings it had occasioned. The mediation effort was structured around the different phases of mediation namely; pre- mediation, mediation and the implementation phase. During the pre mediation phase, the mediation team formulated and outlined its four point agenda, and conducted shuttle diplomacy between the two protagonists. Holding separate meetings with the two parties familiarized the mediation team with the expectations of both parties. The pre mediation phase also enabled the parties to nominate the team that would participate in the mediation process on their behalf. PNU and president Kibaki nominated Hons. Martha Karua, Mutula Kilonzo, and Moses Wetangula, while ODM nominated Hons. James Orengo, Sally Kosgei and William Ruto.

While the mediation phase began smoothly, the mediation team representing the two sides exhibited hard line positions that was characterized by their unwillingness to make

⁶⁸ The National Accord effectively spelt the end of violence upon its signing by the two Principals

concession⁶⁹. The mediation process was also complicated by the fact that the team could not make binding decisions on behalf of their superiors without express permission from them. Finally, suspicion and mistrust between the two parties persisted that made it extremely difficult to reach a resolution. In a bid to salvage the process, the lead mediator Kofi Annan by-passed the team and decided to engage the two Principals directly⁷⁰. The direct engagement of President Kibaki and Raila to the negotiating table finally yielded a break through that led to the signing of the National Accord and Reconciliation Act.

The intervention by the African Union and the International community essentially represented Track I Diplomacy given the involvement of the governments and inter governmental bodies. However, the implementation of the National Accord including the ambitious reforms agenda envisioned in Agenda 4 Items, promoting national healing and reconciliation and the implementation of the new constitution contemplated the involvement of civil society organizations through multi-track diplomacy approach. It is important to note that civil society and business came together to help stop the violence and to assist parties to find common ground.

Beyond the 2007 post-election violence, civil society organisations in Kenya have continued to play their watchdog role on peacebuilding and democratization. Apart from participating in post-conflict reconstruction exercise, Kenyan civil society remains influential in political discourses affecting the country. For example, civil society groups in Kenya have been quite active in supporting the ICC indictment of six key figures in Kenyan politics, now known

⁶⁹ The team erroneously thought that their role was to safe guard the gains they had realized following the 2007 elections.

⁷⁰ The two principals first met in Sagana State lodge and the continued direct engagement in Harambee House Nairobi.

as the 'Ocampo Six'.⁷¹ Soon after the ICC issued summons to the 'Ocampo Six', the government tried to seek deferral of the case and campaigned to the African Union and the United Nations Security Council. In response, civil society mobilized the Kenyan public, garnered one million signatures which opposed the government's stance. In addition, many civil society organisations held numerous protests and press conferences criticizing the government for to curtail justice processes that were designed to fight impunity.

Within the context of post election violence and the implementation of the National Accord, civil society organizations are also involved in the post conflict reconciliation and healing process. Working with the government, District Peace Committees have been formed to promote reconciliation and healing process in all the 8 provinces in the country. As part of the struggle for the enactment of the comprehensive constitution and other reforms, the CSOs organization worked at different levels to agitate for the passage of the new constitution. In this regard, the CSOs worked with parliament and political parties to campaign and provide voter education. A part from the CSOs, other constitutional bodies and commissions established by the government are also involved in peacebuilding and reconstruction work. Prominent in this regard is the National Cohesion and Integration Commission⁷².

⁷¹ The label 'Ocampo Six' comes from the notion that the ICC Chief Prosecutor, Moreno Ocampo led the indictment process which targeted six Kenyan politicians.

⁷² NCIC established as part of agenda 4 Reforms.

2.3 Evolution of Civil Society in Kenya

Between 1982 and 1991, Kenya was characterized by a *de facto* one party-state under President Daniel Arap Moi. There was virtually absence of any credible political way to challenge or confront the state. During this period, the few civil society organizations in existence filled in the gap and provided the only credible alternative to political parties⁷³. Then, civil society focused on issues such as state on reform and governance. In 1991, still during the Moi regime, a multiparty system was introduced. However, civil society in Kenya, in particular, political parties were characterized by fractionalization and fissures based on ethnicity. In addition, the state used various strategies to control and contain civil society, including repressive legislation, propaganda and cooption of activists. As such, there was perception that civil society's polarized nature was a derivation from the state's strategy of disengaging the different segments of civil society simultaneously (Azarya, 1988:6). Over the past two decades, Kenya's civil society sector has become more vibrant and broadened⁷⁴. NGO, community based organizations (CBOs) and interest groups grown extensively with a membership base of more than 1000 registered groups (Oduor-Owina and Alouka, 2004). However, there are observations that civil society in Kenya is quite variegated and stratified, with both low-level community based organization and high-level, urban-based and elite-driven organizations.

Overall, Kenya civil society organisations (CSOs) have grown substantially in number and influence over the past decades, especially since 2000. These groups play a prominent role, in public policy influence, advocacy and peacebuilding, among others⁷⁵. In December 2002, the role of civil society in Kenya's democratization process was galvanized. Kenyans country

⁷³ IED 1997, Electoral Environment in Kenya, pg 53

⁷⁴ Oloo A, Civil Society and Democratisation in Kenya, 2011.

⁷⁵ Civil Society and the state, towards effective partnership.

managed for the first time since independence to replace a government through an open and free election. The National Rainbow Coalition (NARC) mainly came into power as a result of networking and lobbying of civil society organization, which created repertoires of contention among political parties. In essence, the transfer of power from Moi was made possible by the participation of the Kenyan people in the public life, and in many occasions this was through civil society organisations. During this period, civil society in Kenya continued to provide a robust check on the government.

Despite robust achievements in catalyzing the democratization process, there were challenges confronting civil society in the aftermath of this milestone. The change in government brought with it the challenge of devising new methods of engaging government. When NARC came into power, it included former key leaders of the civil society movement as its members of parliament. In addition, other former prominent civil society leaders were invited into government departments, the judiciary, commissions and high-ranking positions within the public service⁷⁶. However, it soon turned out that the NARC government that civil society supported and helped bring into power was not delivering as effectively as citizens expected it would, and it was certainly not displaying political will to deliver on the reform agenda. The former comrades from civil society who were now in the NARC government, soon it was realized, could not effectively effect any significant change in the government reform agenda. As such, the challenge for civil society was about how to confront or cooperate with such a government. This was coupled with the reality that many CSO's were becoming weak because of the exodus of some of its members to government.

⁷⁶ Many leading figures within the CSOs joined government and assumed key positions within the NARC government.

The reorganization of civil society organizations began in the late 2000s⁷⁷, when the influence of civil society in Kenya became concretized and coagulated. For example, in the first referendum over the proposed new constitution, CSOs conducted an education campaign ahead of the referendum in which they called on citizens to vote against the proposed constitution. The constitution, which was championed by government, made provision for a strong presidency, hence its rejection by the public. Many Kenyans wanted executive powers to be shared between the president and prime minister, to prevent previous abuses of presidential authority from being repeated.

⁷⁷ Leonard, K 2009. Kenyan Chapter of EISA Journal 2008.

CHAPTER 3

ROLE OF CIVIL SOCIETY IN PEACEBUILDING AND RECONSTRUCTION IN KENYA POST 2007

3.0 Introduction

The civil society organizations in Kenya continue to play an important role in the post conflict peacebuilding and reconstruction. There is potential for sustainable peacebuilding in Kenya which is rooted in strong and deeply embedded indigenous conflict resolution mechanisms. Many civil society organisations are now employing a paradigm shift in terms of their perspectives on the role of local methods of conflict resolution. Overall, Africa has proven to be the hub of indigenous traditions for peacebuilding that facilitate healing, promote reconciliation and create foundations for re-establishing social solidarity (Bracken et al, 1995; Zartman, 2000).

This chapter details the findings of a study conducted on the role of various civil societies have played in engaging actors involved in mitigating electoral conflicts in Kenya. Several civil society national, international and locally-based organizations were studied so as to get as broad a perspective as possible. To augment the findings from the semi structured interviews conducted with the various organizations, the researcher also conducted four Focus Group Discussions (FGDs) targeting Nairobi, Kisumu, and Nakuru which were themselves epicenter of the 2008 post election violence⁷⁸. A total of 28 participants representing the various organizations participated in the FGDs. The research established the typologies of civil society organizations active in Kenya and clustered them around three distinct types namely: Women Empowerment

⁷⁸ See Waki Commission Report

Organizations; Governance, Democracy and Human Rights Organisations; Elections and Political Processes Organizations. The various clusters had sub-clusters that specifically described the expertise and competence of the various organizations.

3.1 Role of Civil Society in Preventing and Mitigating Electoral Conflicts

While most organizations have been in existence since the 1990s, the post election violence of 2008 led to the mushrooming of many organizations and the change of focus and priority areas on the CSOs that were already in existence. Reinforced by the realization that post conflict peacebuilding and reconstruction work required the establishment of sustainable mechanisms and framework to guarantee sustainable peace and to ensure that the country does not relapse into violence. By and large, the trigger that led to the election violence was the foiled election. With this in mind, the research paid particular prominence on the initiatives that were being pursued to strengthen the electoral environment. Extending well beyond election management bodies, the ability of an electoral process to achieve its democratic development objectives without conflict relies on the political actors, government agencies and security bodies, civic and media groups and national purveyors of justice to uphold their roles in the process. Just as almost all sectors of society have an interest in the outcome of an election, they have equal responsibility in promoting its integrity.

The Kenyan civil society has played a leading role in mitigation and management of electoral conflicts since the advent of multiparty democracy in the country. Their *modus operandi* has mostly been to bring together various actors involved in the electoral process like

political parties, electoral management organs, and international observers and to also raise awareness amongst the electorate.

3.2 Civil Society Role in Constitutional Reform Process.

The multi sectoral consultations that characterize the campaign for the new constitution, and the subsequent participatory process that has marked the development of the enabling legislations epitomized the Multi Track Diplomacy as expounded by Diamond and McDonald. While the negotiation of the National Accord and Reconciliation Act spearheaded by Kofi Annan and the Panel of Africans represented Track I diplomacy, operationalisation of the key reform agenda including the implementation of the new constitution envisaged close partnership and involvement of the civil society organizations.

Following years of agitation for comprehensive constitutional reforms in Kenya, this vision was finally realised on 4th August 2010 when Kenyans voted overwhelmingly in a referendum for the adoption of a new constitution. The constitutional referendum was the culmination of months of debate on the various drafts prepared by the Committee of Experts⁷⁹ that went through the various processes as outlined in the Constitutional Review Act of 2008. Among the critical phases included building consensus by the Parliamentary Select Committee and the subsequent debate in parliament which saw attempts to amend the draft rejected, and the same subjected to a referendum vote.

The campaign for the passage of the new constitution involved a combination of efforts between the state and the non state sector (Civil Society Organisations in Kenya). To avoid the polarisation occasioned by symbols during the 2005 constitutional referendum process, the

⁷⁹ Established via a constitutional amendment in 2008 to oversee constitutional reforms.

Interim Independent Electoral Commission. IIEC adopted neutral symbols (colours) to prevent post referendum political exploitation by the various actors⁸⁰. Thus the colours for the referendum was Green for the Yes and Red for the No. The campaign for the yes was led by President Mwai Kibaki who traversed the country campaigning and rallying the citizens to vote for the new constitution.

The role of CSOs during the constitutional reform process in Kenya dates back to the struggle for the restoration of multi party democracy⁸¹. As mentioned, CSO were at the forefront for agitating for the enactment of comprehensive constitutional reforms in Kenya. The adoption of the new constitution in Kenya brought a new political dispensation in the country as well as new opportunities and challenges for Kenyans and the various stakeholders charged with its implementation. To begin with, the constitution introduced raft of progressive provisions that were hailed as critical in restoring and consolidating democracy in Kenya. The Chapters on the Bill of Rights; Leadership and Integrity⁸²; Representation of the People⁸³; Two tier Legislature⁸⁴; Judiciary; Devolution⁸⁵ and Public Finance, were formulated in a manner that was intended to guarantee citizen participation as well as enhance transparency and accountability in the governance process. Of particular importance was the express provision that sovereignty resided with the people and the constitution, and not in the Executive as was previously the case. The importance of this provision was the empowerment of the people and the insulation from those who wielded power.

⁸⁰ The 2005 Referendum gave birth to two political parties, ODM and ODM-K

⁸¹ Kadima Politics of Party Coalition, 2006 pg 179

⁸² Chapter 6, of the constitution

⁸³ Chapter 7, constitution

⁸⁴ Chapter 8 of the constitution

⁸⁵ Chapter 11 of the constitution.

While the passage of the new constitution was hailed as an important milestone in Kenya's democratic path, the challenges that were posed by its implementation were daunting. The main challenge that threatened to militate against smooth implementation was the enactment of the enabling statutes in Parliament. The constitution provided, in the transitional sections, relevant legislation and stipulated the timeline with which such pieces of legislation were to be enacted. Given the fact that Kenya will hold its next general elections in 2012, transitional legislations among them: election legislation; political parties, devolved government and the judiciary, were to be enacted within the first year of its promulgation (August 2011). Owing to the disagreements in the Grand Coalition Government⁸⁶ and the division that characterise debate in parliament, expeditious meeting of timelines became an immediate challenge. Crucial time was lost while the various political sides agreed on the composition of key committees and procedural issues to govern the operation of the committees.

As part of their programmes around constitutional implementation agenda, the research established that many CSOs in Kenya were involved in a number of activities geared towards the implementation of the constitution. Indeed, it emerged that various CSOs had established thematic working groups around key constitutional issues. Within the context of political and election thematic areas organizations such EISA, NDI, IED, ICJ, FIDA, CGD and the League of Women Voters had initiated a lot of work and multi stakeholders consultation. In the Judicial Reforms Thematic area, the Law Society, FIDA, ICJ, CLARION had taken a similar lead, while women political empowerment was represented by organisations like, FIDA and The League of Women Voters among others. As pointed out by the Programmes Officer at EISA during the

⁸⁶ Disagreements within Grand Coalition government emanated from the way in which it was established "forced marriage"

interview⁸⁷. The need to facilitate the enactment of a new political parties legislation as required by the new constitution provided the rationale for EISA's conceptualisation of the "Strengthening the Institutions of Political Parties Project" in Kenya. In particular, the programme aimed at ascertaining the impact of the new constitution on the Political Parties Act, while at the same time convening facilitative dialogue forums to build consensus and the development of the Political Parties Bill in Kenya. Accordingly, activities under the Project focused on building a broad based collaborative initiative between political parties, state actors and key civil society organisations, to play a constructive role in the development and formulation of the Political Parties Bill. Key CSOs who were part of the policy dialogue included; Center for Governance and Development (CGD), Institute of Education in Democracy (IED), FIDA Kenya, National Democratic Institute (NDI) and the League of Women Voters. Following the Multi Sectoral forums, a technical committee was appointed that drafted the Political Parties Bill which was subsequently passed in parliament. The Kenyan Chapter of Transparency International (TI) has also been conducting programs aimed at the implementation of the constitution. In this regard, TI working with other stakeholders, facilitated stakeholders forum on Public Appointments (Parliamentary Approvals) Bill 2011, as well as legislation on Anti Corruption. The nexus between corruption and elections and the need to curb corruption money influencing electoral process was aptly captured by the Programmes Officer of the Transparency International who opine that *"tight Anti Corruption legislations will help to tighten the loopholes of dirty money influencing the electoral process. In 2007 money was used to bribe the youth to cause election violence and so we need to enact a Campaign Finance Legislation"*⁸⁸. Participation by the various stakeholders guaranteed public participation

⁸⁷ Interview Conducted on 27th July 2011 with Magdalena Kieti

⁸⁸ Willis Otieno, TI Governance and Policy Advisor 22nd July 2011

envisioned in the new constitution. One of the highly discredited institution in Kenya since independence has been the Judiciary. The constitution made radical proposal for reforming the Judiciary including the establishment of the Judicial Services Commission, Supreme Court and vetting of all judges. Civil society organizations that have been working in reforming the Judiciary included the Law Society of Kenya (LSK)⁸⁹, International Commission of Jurists and FIDA. The three organizations gave submissions to the Parliamentary Committee on Justice and Legal Affairs and participated in forums convened by the ministry of Justice to give input on the various legislations aimed at reforming the Judiciary. As opined by the ICJ Director⁹⁰ during the research interviews, the development of the Supreme Court Act and the Judiciary exhibited serious vested interests given the new role of the Supreme Court which will be to adjudicate over Presidential Elections Dispute. Given this reality ICJ, FIDA and LSK constantly found themselves fighting entrenched and vested interests during the process of developing the legislations on the Judiciary.

Post conflict reconstruction envisages the establishment of institutions and framework to avoid relapse into conflict. Accordingly, the participation of the civil society in the enactment of electoral legislations as part of constitutional implementation will put in place mechanisms that will not only facilitate the democratic elections in 2012, but will provide a mechanisms for dispute resolution in the event of a dispute. In 2007 elections, one of the aggrieved parties, the Orange Democratic Movement (ODM) refused to seek judicial arbitration claiming that the Kenyan Judiciary was heavily biased. All the key electoral legislations among them Elections

⁸⁹ Apollo Mboya CEO of LSK outlined the participation of LSK during the discussion on the Judiciary.
⁹⁰ George Kegoro ICJ Director

Act, Political Parties Act, Independent Electoral and Boundaries Commission Act (IEBC), the Supreme Court Act⁹¹, all met the criteria required for elections.

.2 Role of Civil Society in Strengthening the Electoral Process Post 2007

Given the failures and shortcomings of the 2007 elections, many civil society organizations have been involved in implementing activities geared towards redressing the challenges and the weaknesses noted during the 2002 to 2007 election period. CSOs interviewed confirmed the existence of multiple programmes whose objectives were geared towards improving the electoral process and putting in place mechanisms to strengthen the various aspects of the electoral circle. In this regard, the CSOs included EISA, NDI, IED, ICJ, FIDA, the League of Women Voters CGD, ELOG among others. It should however be noted that the involvement and participation of the CSOs in the electoral process is not a new phenomenon in Kenya. From the advent of multi party politics in 1991, civil society organizations have continued to play a significant role in the Kenya's electoral process. The repeal of Section 2A of the Kenyan constitution was to a larger extent necessitated by a combine pressure from the political elites and civil society that coalesced under the Forum for the Restoration of Democracy (FORD). As mentioned in the earlier chapters, the introduction of multi party political dispensation was not accompanied by comprehensive constitutional reforms that was desirous of true multi party democracy. The country embraced multi party politics with laws that were conducive for a single party state and indeed served to perpetuate the then incumbent KANU regime in power. Thus the period following the 1992 elections. Civil society embarked on massive campaign for comprehensive constitutional reforms and the repeal of oppressive laws

⁹¹ See Chapter on Judiciary- Presidential disputes will be decided by the Supreme Court.

that was used by KANU to maintain its hold on power⁹². The climax of the call for comprehensive reforms was epitomized by the call for “No Reforms No Election” clarion call that preceded the 1997 general elections. The mass protests and the destruction of property that accompanied this process inevitably led to KANU government yielding to pressure and formed the Inter Parties Parliamentary Group that negotiated minimum reforms package that facilitated the 1997 elections. While 2002 general elections was by and large peaceful and democratic, the 2007 elections brought the reality that the electoral process in Kenya was based on weak constitutional and legal framework. To actualize the reform agenda negotiated by the Kofi Annan Panel, the civil society organizations among them ICJ, Law Society of Kenya (LSK), EISA, NDI, IED and the CGD all embarked on a sustainable process of conducting civic education to campaign for the passage of the new constitution. The organizations mentioned above have also been actively involved in convening policy debates and dialogue to facilitate the passage of the election legislations envisaged in the Representation Chapters. Indeed, as a result of the partnership between EISA, ICJ and IED, multi sectoral forums were convened involving key stakeholders (both parliament and the constitutional commissions) that led to the drafting of three electoral legislations IEBC Act, Political Parties Act, and the Elections Act. The three legislations have since been passed and assented to by the President.

In the post 2007, a key activity of the Civil Society organisations in Kenya has been to engage and work with Political Parties. As traditional institutions of representative democracy, political parties play a key role in representing and aggregating the interests of the citizens. The crucial role played by political parties in Kenya is further anchored by the fact that until the new constitution was passed, participation in the electoral process could only be secured through

⁹² Such laws included the Chiefs Authority Act, Public Order Act and the Kenya Broadcasting Corporation Act

nomination by political parties. Despite the critical role that political parties play in electoral and democratic process, political parties still exhibit significant weaknesses in terms of their structures and ideology⁹³. In a bid to strengthen and institutionalize the political parties in Kenya, a number of civil society organizations have been conducting programs aimed at building the capacity of political parties. Since 2002, the National Democratic Institute NDI has been working with political parties at both the national and local level. NDI programs has strived to build the capacity of the party national organs and secretariat through training and capacity building. Through the political parties provincial workshop program, NDI rolled out a massive training for political parties branch officials and key representatives. This training was aimed at equipping the party leadership at the branch level with the requisite skills for party management at the local level. In the period preceding the 2007 general elections, NDI conducted party agents training whose objective was to train party poll watchers ahead of 2007 general elections. Following the 2008 post election violence, NDI has enhanced its political parties program to cover majority counties in Kenya. As pointed out by the NDI Program Manager during the interview, *“democratizing political parties in the counties will help forestall political conflict that arises out of lack of understanding on the role and management of political parties”*⁹⁴

EISA Kenya country office has also been actively engaging political parties in building their capacity. While it was only in 2010 that EISA formerly established an office in Kenya, the institute deployed international observers to monitor the 2007 general elections in Kenya. EISA political parties program in Kenya is part of a regional benchmarking of political parties program whose objective is to work with political parties to develop benchmarks and to strengthen democratic functioning of political parties in Kenya. This was informed by the realization that

⁹³ Kadima Politics of Party Coalition in Africa pg 187

⁹⁴ Interview with Phoebe Mungai 5th August 2011

most electoral conflicts in Kenya are caused and propagated by elements in the political class. The political scene in Kenya was also seen to be highly ethicized leading to creation and thriving of parties along based on ethnic and regional foundations as opposed to ideologies of national democratic advancement and positive change. In 2010 EISA convened a benchmarking workshop for political parties that documented and recommended benchmarks for democratic political parties in Kenya. *"Parties will only stop to exploit ethnicity and other forms of marginalisation if they embraced clear norms and standards and policy positions and ideologies that outlines their programs"* program officer at EISA⁹⁵ giving justification for the benchmarks. EISA has also been actively involved in the training of party agents in the seven by-elections in Kenya that were occasioned by successful election petitions. Both EISA and NDI have put a joint proposal to train party agents in the run up to 2012 general elections.

Of fundamental importance is the participation of civil society mounting and deploying domestic observers in preparation to 2012 general elections. Throughout the history of multi party elections in Kenya, CSOs have monitored and deployed observers to assess the various aspects and processes of elections. In 1992 elections, the CSOs in Kenya established an National Elections Monitoring Unit (NEMU) that was spearheaded by the Institute for Education In Democracy (IED). In 1997 Elections, a joint domestic election observation mission was established involving IED, the Catholic Justice and Peace (CJPC) and the National Council of Churches of Kenya (NCCK). The three organizations deployed 26,000 election observers in all the polling stations in Kenya⁹⁶. In 2002 elections, an umbrella organization called the Kenya Domestic Election Observation (KEDOP) was formed. The effectiveness of KEDOP and particularly its neutrality in light of the conduct of 2007 elections was substantially questioned

⁹⁵ Magdalena Kieti

⁹⁶ Report of the joint election observation groups (IED, CJPC and NCCK, 1997

by the various post election inquiry commissions⁹⁷. Following the experience of KEDOP civil society organizations led by IED and CGD came together to launch a new domestic elections observation group (ELOG). ELOG successfully observed the 2010 constitutional referendum and pioneered the use of Parallel Vote Count (PVT)⁹⁸. As pointed out by the Chairman of ELOG⁹⁹, the organization has since the referendum, expanded its programs and recruited many CSOs to form a broad based election observation group. For transitional democracy countries, domestic election observation has many advantages. To begin with, domestic observation mission inject credibility in the electoral process that enhance public confidence in participating in the elections. Domestic election observation mission can also be crucial in conflict situation by mitigating and preempting the conflicts before they occur. Through the use of mechanisms like PVT, election observation can also provide an alternative means of verifying the results. It should be remembered that one of the problems of 2007 elections in Kenya was the inability to effectively verify results in some polling stations. As the country approach 2012 general elections, the intervention by the CSOs could be crucial in averting violence.

Throughout the history of multi party politics in Kenya, serious suspicion abound between the political parties and the Electoral Commission. Indeed this was the case in 1992 and 1997 and was a major issue during the 2007 elections. As a strategy for establishing a platform for dialogue between political parties and the electoral commission, the research established a number of activities that were being implemented by the various CSOs to minimize the suspicion. For example, NDI was implementing a program called the Political Parties Liaison

⁹⁷ Kriegler Commission Report 2008.

⁹⁸ Quick count system relying on statistical method.

⁹⁹ Kennedy Masime, 6th August 2011

Committee (PPLC)¹⁰⁰. The purpose of the liaison committee was to establish a platform for dialogue and resolution of critical political and electoral issues that can have the potential of causing friction and violence. The liaison committees have since been launched at the national and provincial levels.

3.3 Role of Civil Society in Relations Building

All the four Focus Groups conducted confirmed breakdown of relations between the various actors following the 2007 elections and the 2008 post elections violence. Respondents in Kisumu FGD¹⁰¹ stated that the reported police killings during the post election violence had created tension between the police, political parties and the residents of Kisumu city. Similarly, the respondents in Nakuru FGD indicated that the post election violence in Nakuru affected relations in that town that was largely a cosmopolitan town. Activities of CSOs in rebuilding relations in post 2007 is therefore critical. As extant literature has shown, peacebuilding refers to the full spectrum of intervention that is designed to facilitate the establishment of durable peace and prevent the recurrence of violence. According to Lederach (1997), peacebuilding seeks to address the root causes and effects of conflict by restoring broken relationships and promoting reconciliation. One of the most critical challenges that faced Kenya in the immediate post election violence was the need to build relations and establish forums for healing and reconciliation.

¹⁰⁰ PPLC has since been entrenched into the Political Parties Act 2011.

¹⁰¹ Conducted on 11th August 2011 in Kisumu

As mentioned, the escalation of violence saw communities and people who had been living harmoniously for many years turn against each other and participate in the atrocities that were committed during the period of violence. As a strategy for building relations and promoting reconciliation, a number of initiatives have been put together both by the government and civil society. At the state level, the National Cohesion and Integration Commission (NCIC) and the District Peace Committees have been at the forefront of promoting integration at the national and the grassroots level. It is important to mention that both the NCIC and the District Peace Committees have incorporated civil society in their work plans and strategies. In the Focus Group Discussions conducted in Kisumu, Nairobi, and Nakuru, it emerged that most NGOs and CBOs in these areas were members of the District Peace Committees established under the Provincial Administration.

Coalescing under the National Steering Committee on Peacebuilding and Reconciliation, the CSOs in Kenya established a structure that has been crucial in building relations and peacebuilding. The Steering Committee brings together both state and non state actors with membership both at the national and grassroots level. Key CSOs participating in these network include PEACENET, Konrad Adeneaur Foundation, UWIANO among others. The Program Manager of Konrad Adeneaur based in Kisumu stated that through Uwiano initiative the Foundation was involved in linkages and relations building particularly around Nyanza, Western and Eldoret Region that was worse hit by the post election violence¹⁰².

As a strategy of building relations CSOs have adopted innovative methods and utilisation of the media. One such organization is Picha Mtaani. This organization is a Kenyan based youth organization started in the aftermath of the post election violence in 2008 with an aim of bringing

¹⁰² Interview conducted on the 8th August 2011

healing and reconciliation. During the interview¹⁰³, the Director of Picha Mtaani indicated that the organization was working with District Peace Committees and up to 200 community youth groups including 40 volunteers per town. Picha Mtaani intends to facilitate space for reflection through emotive street picture exhibitions that will inspire dialogue and truth telling amongst the youth in rural and urban settlements. During these road shows and photo exhibitions, audiences are encouraged to reflect on the events of the violence, victims and the negative effects with an intention of encouraging reconciliation and better ways of managing salient conflicts without resorting to violence. Road shows have been held in Kisumu, Eldoret, Nakuru and Kibera Slums in Nairobi¹⁰⁴. Picha Mtaani especially focuses on the youth as they believe these are the silent victims who are currently at the tail end of on-going peace initiatives in the country, and were mostly the executors of the violence.

3.4 Civil Society Role in Engaging with Other Actors.

Connected to the issue of relations building is the question of engaging with other actors. Civil Society Organisations have been crucial in forging relations and engaging with other actors in peacebuilding and reconstruction work. Consistent with Lederachs Peacebuilding Pyramid and multi track diplomacy¹⁰⁵, engagement with other actors is critical to sustainable development. As mentioned variously, CSOs in Kenya have employed a number of strategies in engaging with other actors. Strategies range from formalized platform of dialogue to mediation efforts at the grassroots level. Through the Political Parties Liaison Committee (PPLC) that has since been entrenched into law¹⁰⁶, NDI spearheaded a dialogue platform that brings together political

¹⁰³ Interview Conducted on 14th August 2011

¹⁰⁴ These areas were the epicenters of violence during the 2007/8 post election violence

¹⁰⁵ Diamond concept of Multi Track Diplomacy.

¹⁰⁶ PPLC was entrenched in the Political Parties Act and the Electoral Act 2011

parties. Electoral Commission and the Registrar of Political Parties. The liaison meetings have proved useful avenues of discussing critical electoral issues and building confidence in the electoral process. The liaison committees are premised on the models from South Africa and Ghana¹⁰⁷ which have been used in both countries to minimize electoral disputes. Effectiveness of PPLC and its relevance to averting conflict in 2012 general elections was recognized during the multi sectoral forums for the development of the Political Parties Act which made recommendations for the entrenchment of PPLC in the Act¹⁰⁸.

As part of engagement with other actors, the CSOs have since 2010 utilised policy dialogue platform. The Programs Director at EISA indicated that the Policy Dialogue Forums incorporated broad based collaborative network involving the Parliamentary Committee on Justice and Legal Affairs, Kenya Law Reforms Commission, Electoral Commission, FIDA, ICJ and IED among other CSOs. The Policy Dialogue Forums were crucial in building consensus on key legislations that are critical to reforming the electoral process. Through mediation forums at the national and local levels, the CSOs have initiated practical dispute resolution involving interaction with the various players. The concept of District Peace Committees essentially incorporates mediation efforts that ensure interaction and participation of the various actors. Similarly the Conflict Management Panels convened by EISA and the IIEC is based on a model that enhances interaction of the mediators with the local setting while at the same time mitigating and preempting incidences of violence through early warning. The FGDs conducted in Kisumu revealed that efforts were underway to disband known Militia groups and convert them into peace forums. To this end, a notorious vigilante group Called Baghdad Boys had been transformed to a peace forum and changed its name to Baghdad for Peace (BAFOPE). In the

¹⁰⁷ Ghana has Inter Parties Advisory Committee (IPAC).
¹⁰⁸ Political Parties Act, 2011

words of its director. i have seen the light and now i am in the mission to preach peace¹⁰⁶ In engagement with other actors, CSOs have also used lobbying and advocacy strategies. In the implementation of the constitution, TI,FIDA, ICJ, EISA, NDI and CGD have been lobbying Parliament and the Executive for the passage of the various legislations. Lobbying strategies also include preparation of opinion briefs and Bills Digests which offers clarity to the salient features of the Bills.

3.5 Civil Society and Women Empowerment

Under representation of women in leadership and position of governance continue to be a major challenge facing women across the world. While a number of Protocols at the International, and Regional levels have been enacted to facilitate women participation in leadership and decision making positions, majority of countries are yet to actualize women participation in these positions. Internationally, the Convention on the Elimination of All Forms of Discrimination Against Women and the Fourth World Conference on Women in Beijing 1995, all included provisions that required state parties to comply with, and to enhance women participation. In the SADC Region for example, the SADC Protocol on Gender and Development explicitly provides that state parties should incorporate Affirmative Action Policies¹¹⁰ as a strategy for sustainable development¹¹¹. For a long time the participation of women in position of leadership in Kenya has been wanting. It is however, encouraging to note that the new constitution attempted to address gender disparities in elective politics by providing affirmative action provisions to redress gender imbalance. With respect to women participation

¹⁰⁶ Interview conducted on 11th August 2011, respondent anonymous

¹¹⁰ Compensatory mechanism adopted to elevate those that have traditionally been marginalized and underrepresented.

¹¹¹ See Article 5 and article 12 of the SADC Protocol.

in elective position, the new constitution made three significant milestones namely; improved representation, Affirmative Action and mainstreaming of gender responsive policies. Article 97 and 98¹¹² that deals with elections to the National Assembly and the Senate made provisions for 47 seats in the National Assembly and 16 Seats in the Senate reserved for women candidates.

Despite the milestones made by the new constitution, the realization that these gains require vigilance to ensure smooth implementation has preoccupied the work of women organisations in Kenya. At the forefront of this efforts is FIDA and the Kenya League of Women Voters. While the programs of FIDA focuses on a wide range of women rights and empowerment issues, the organization has resorted to ensuring that women agenda in the new dispensation are safeguarded. To this end, FIDA participated very actively during the discussion surrounding the Judiciary and in particular lobbied to ensure that the appointments to the Judicial offices take cognizance of Affirmative Action provisions in the new constitution. FIDA assertiveness towards gender issues was demonstrated when the organization went to court to challenge the appointments to the Supreme Court Judges which they claimed failed to meet the gender requirements of the constitution¹¹³. The Kenya League of Women Voters conduct programs aimed at political empowerment of women and enhancing their participation in elective offices. While the League has been active since 1997 general elections, the organization has resorted to conduct civic and voter education aimed at equipping women candidates with knowledge on the 2012 general elections. The organization is also conducting programs to build the capacity of elected women both at the local and national level. In the run up to 2012, the League will train women candidates on elections and managing campaigns.

¹¹² Article 27 and 81 are explicit that no gender will constitute more than 2/3rd of elective or appointed public office.

¹¹³ In the said case 2 women out of 7 Supreme Court Judges were named.

The 2008 post election violence exposed the vulnerability that women suffer in violence and conflict situation. Although women seldom have anything to do with conflict, they often suffer the devastation of conflict more heavily than any other group¹¹⁴. During the post election violence for example, women calamities and suffering far outweighed men and the displacements that occurred affected women a great deal. According to the Kenya National Commission on Human Rights Report¹¹⁵, majority of IDPs in the camps are women. In response to addressing the problems of gender and conflict, a number of organisations have attempted to incorporate women issues and women in the conflict programs. The Conflict Management Panels (CMPs)¹¹⁶ being convened by EISA and the IIEC has attempted to incorporate 1/3 women in the various panels launched in the 9 regions in Kenya¹¹⁷. In this program, EISA and the IIEC have deployed and trained a pool of mediators whose main role would be to mitigate incidences of election violence and provide early warning before they occur. Organisations working under the umbrella of National Steering Committee on Conflict have also embraced gender responsive programs in their programs. Konrad Adeneaur¹¹⁸ that is conducting peace programs in Nyanza, Western and North Rift have incorporated many women in their programs and developed specific modules on women in conflict situation.

¹¹⁴ Post Election Violence in Kenya; African Journal 2008.

¹¹⁵ Kenya National Commission on Human Rights 2009 report on the IDP situation in Kenya.

¹¹⁶ EISA has also pioneered CMP program in DRC, Chad, Mozambique and Burundi.

¹¹⁷ The 9 regions are Mombasa, Kisumu, Nairobi, Nyeri, Embu, Kakamega, Eldoret, Garissa and Nakuru.

¹¹⁸ Hanna Carlson Program Coordinator Konrad Adeneaur report.

CHAPTER 4

CHALLENGES OF CIVIL SOCIETY IN POST CONFLICT PEACEBUILDING AND RECONSTRUCTION

4.0 Introduction

The work of the Civil Society Organisations in the post election environment has not been free from challenges. All the organizations interviewed among them ICJ, EISA, FIDA, TI, CGD, LSK, Picha Mtaani, ELOG, The League of Women, Konrad, IED among others pointed to the myriad of problems and challenges that militate against the performance and effectiveness of the CSOs in Kenya. This chapter presents a critique of the findings, paying attention to the limitations, gaps and dilemmas faced by civil society as it participates in peacebuilding processes in Kenya. Some of the notable challenges are argued below.

4.1 Coordination challenges and Duplication by Civil Society

Although the theories of peacebuilding by Lederach (1997) and Diamond and MacDonald (1997) underscore the importance of multi-stakeholder involvement in peacebuilding, what the theorists fail to acknowledge is the complexity of the peacebuilding field. Hendricks (2009) explores the utility of complexity theory in the field of peace research and conflict intervention by discussing the notion of 'chaos' in peacebuilding. Complexity theory views change in one aspect of the system as affecting other aspects and underscores that social change is adaptive, innovative, multi-faceted, complex, mixing interdependent sets of people and processes. In Kenya, coordination and duplication were noted as major challenges facing the civil society organisations in Kenya. To a larger extent, the work of many Civil Society Organisations remain donor driven characterized by competing funding interests, and

driven largely by the foreign Policy interest of the donor country. As such, the donor driven agenda of program formulation and conceptualization has been a major bottle neck to the civil society organizations in Kenya. In certain instances, different donors fund similar projects to different organizations leading to competition and duplication among the CSOs. During the interviews for example, it emerged that the National Democratic Institute and Institute for Education in Democracy (IED) had both been funded by USAID to work on legislations on transitional chapters of the constitution. In the same program, EISA had been funded by DFID and had in fact initiated multi sectoral forums on electoral reforms. While efforts were made at better coordination, such duplication would have been avoided if the donors themselves better coordinated.

Apart from the donor driven agenda, most civil society organisations in Kenya have adopted a reactionary and event specific based approach that is usually characterized by the dominant and high profile agenda in the political environment. To this end, program activities are based on short term goals which are often not sustainable. The post election violence in Kenya in 2008 for example, led to the formation and proliferation of CSOs ostensibly doing peacebuilding and reconstruction work. Similarly the heavy reform agenda of 2008, also led to the mushrooming of new organizations working in the area of reforms and existing organizations changing their focus to work in the constitutional reforms. Peacenet, Women for Peace, Conflict Management Panels, Uwiano and District Peace Committees, and a host of Community Based Organisations were all engaged in peacebuilding work. In numerous instances, the organisations working on peacebuilding have frequently targeted the same people. During the Focus Group Meetings in both Kisumu and Nakuru¹¹⁶, participants confessed membership in multiple

¹¹⁶ Focus Group Discussion in Kisumu conducted in 11 August 2011 and Nakuru on the 13th August 2011

organizations and initiatives. Effectiveness of the peace programs can better be enhanced if the various CSOs and the donors funding the projects coordinate better for maximization of results.

Duplication and lack of coordination was not limited to the civil society organisations only. In a bid to restore peace and promote healing and reconciliation, the government initiated various programs aimed at peacebuilding. Among the initiatives started by the government included the National Cohesion and Integration Commission (NCIC), The District Peace Committees, among others. While these efforts are welcomed, there are instances where the work of the National Cohesion and Peace Committees have been overlapping. A clear example of such overlaps is the regional workshops being convened by both entities in different parts of the country.

4.2 Resource Constraints and Donor Dependency

The main source of funding for most Civil Society Organisations was listed as coming from donors and other development partners. The support CSOs receive originate from bilateral donors like USAID, DFID, DANIDA and SIDA among others. Civil society organisations also receive funding from multi lateral organizations like the UN through the United Nations Development Fund (UNDP) often in the form of UN funding or basket funding¹²⁰ managed on behalf of bilateral donors. The various types of funding from development partners are usually in the form of grants which is often preceded by call for proposals and the organizations funded on the basis of the proposal and programs outlined. Bilateral organizations mostly dispensed funding through grants¹²¹.

¹²⁰ Donors put money in the basket managed by UNDP and CSOs access funding through the basket..

¹²¹ Assistance given by donors that do not require repayment.

Most CSOs in Kenya have resorted to private funding in order to allow themselves to retain meaningful degree of independence of State control. The emergence of many Civil Society Organisations in the 1990s in Africa was largely fuelled and supported by assistance and funding from donor organisations. However, the precise impact of the massive funding by the donors is yet to be conclusively ascertained. While it is argued that the increased donor funding was intended to ameliorate some of the challenges besieging the continent, the impact of the various assistance has had ambivalent results due to a number of factors. At the center of this is the lack of common understanding of what the general political and economic context in the country entail and democratic systems in the recipient countries. Failure to appreciate the foregoing context have often resulted to the donors formulating a one size fit all approach which has been defeatist in the long run.

In most cases, NGOs are the preferred outlet for donor funds and support and they end up competing with the government. Such competition has exacerbated the adversarial relations between civil society and the state. This private orientation of most NGOs makes governments skeptic of civil society organisations. Another challenge with peacebuilding in Kenya is that external players often parachute peace without seeking sustainable solutions at the grassroots. Very often, peacebuilding in Kenya is often managed by international NGOs and donor agencies that have no intimate acquaintance with the local environment. Particularly problematic in this regard is that most CSOs in Kenya are dependent from funding from countries from Europe and North America. This is problematic since organisations from these countries do often only engage with CSOs that have a similar way of working as the CSOs in their respective countries. as is found in a report by the World Bank (Africa Region). In this report, a distinction is made between a *civil society for Africa model* and *civil society in Africa model* to highlight how the

former is imposed and externally driven while the later is homegrown."¹²² Hellinger. Hellinger and O'Regan (1988) criticise the reliance by civil society on external funding arguing that CSOs that are heavily donor reliant tend to shift interventions to match that of donors. Donors, for their part, often shift funding priorities and standards, which complicates issues as CSOs struggle to maintain consistency in the peacebuilding agenda. Quoting a traditional African proverb, they say, "*If you have your hand in another man's pocket, you must move when he moves*". This argument basically implies that external links of NGOs compromises their independence from donors, which in turn affects their reception from the communities they seek to serve. Indeed, some parts of the Kenyan community have voiced a certain distrust of the civil society community, based on their reliance on exogenous funding which makes them suspects of having ulterior motives. Thus, legitimacy of CSOs will likely to be eroded due to their donor dependency.

The other category of funding is in the form of contracts¹²³. In this category development partners contract an organizations to implement a program on its behalf. The contractee does not have wide latitude in program implementation and must rely on the donor for guidance and direction. In certain instances, organizations receive material support in the form of vehicles equipments, and money to develop publications or support specific activities.

While all the organisations interviewed conceded to have received funding from the various development partners, it was also acknowledged that such funding had significantly reduced in scope and amount. A number of factors were advanced to explain this reduction. First

¹²² Whereas the former seeks to transfer notions and practices of civil society in the liberal democracies of Europe and North America to Africa, the latter focuses on promoting participation, enhancing accountability, delivering services and countervailing actions that evaluate as not in the interest of their members or constituents. For details, see the World Bank, June 5, 2007. "The Civil Society Landscape in Sierra Leone: Understanding Context, Motives and Challenges." P.3.

¹²³ [http://siteresources.worldbank.org/INTSIERRALEONE/Data%20and%20Reference/22088623/SL\(CSO\)Study.pdf](http://siteresources.worldbank.org/INTSIERRALEONE/Data%20and%20Reference/22088623/SL(CSO)Study.pdf)
¹²⁴ SUNY is contracted by USAID to implement parliamentary strengthening program.

the priority interest of donors coupled by the recession¹²⁴ in the developed countries had necessitated the donors to review their strategic priority areas which often led to the reduction of development assistance. The various CSOs pointed out the elaborate procedure that they had to undergo to access donor funding. Secondly, the proliferation of NGOs, CBOs and other CSOs had led to stiff competition in terms of accessing the donor funding. Most development partners also preferred to give money to their international foundations that were implementing programs in Kenya. In this regard, it was pointed out that substantial amount of USAID funding for example was committed to the four US based organizations operating in Kenya namely; NDI, International Republican Institute, IRI, International Foundations for Electoral Systems IFES, and State University of New York (SUNY). Similarly, the largest recipients of German funds are the German organizations among them; Friedrich Ebert Foundation (FES), Konrad Adenauer Foundation, among others. The presence of these organizations in Kenya as implementing agencies inevitably means that the local CSOs have to compete for the much needed funding to implement their programs, with international organizations that have a clear head start in terms of accessing such funding.

Financial constraints provide serious obstacles to the civil society operations in Kenya. Donor dependency has deprived CSOs the capacity to be innovative and formulate long term sustainable problems. Consequently, CSOs have been reduced to merely reactive entities whose agenda are donor driven and activities tied to specific events. Various studies suggest that peacebuilding and post conflict reconstruction work are often time consuming processes whose impact can only be assessed in the long term. Similarly, sustainable democracy and democratic elections are not single events but long drawn out processes¹²⁵. Lack of long term focus explains

¹²⁴ The United States and Europe have been experiencing recession leading to reduction of funds.

¹²⁵ Electoral Reforms in Africa, Konrad Adenauer publication 2009.

for example why Kenya has never had a well grounded domestic election observation organization and must form election observation organisations every election year.¹²⁶

4.3 Ethnicisation of Civil Society

As mentioned in subsequent chapters, Kenya boasts of a very vibrant civil society compared to many countries in Africa. Indeed, civil society organizations were at the fore front of democratic struggle in 1990s, and have remain a formidable voice in the attempts to form a new constitution for Kenya. Despite, the vibrancy and visibility of CSOs in Kenya, the neutrality and non partisanship of the CSOs have been variously put to test in the past. The proliferation of the CSOs in Kenya emerged and persisted throughout the regime of President Moi in the 1990s. With the coming into power of the National Rainbow Coalition in 2002, CSOs found themselves in a precarious situation when most of their comrades in opposition political parties had joined the new government. In a bid to reward their former comrades, the government initiated the efforts of recruiting the CSOs into government¹²⁷. This strategy silenced the CSOs who lost formidable voices that had defended their interests over time. Sensing the changing political space in the period preceding 2002 elections, some leaders of the civil society organization contested political and elective positions and joined political parties. As pointed out by David K Leonard "civil society organizations put large numbers of candidates who were involved with the new competing political parties and consequently lost their non partisanship"¹²⁸. There are now

¹²⁶ NEMU 1992, CJPC, IED, and NCCK 1997, KEDOP 2002, and ELOG 2012.

¹²⁷ John Githongo former Director of TI, and Gichira Kibara Chairman of the NGO Council both joined the NARC Government in 2003

¹²⁸ EISA Journal of Elections 2009

fewer genuinely democratic groups promoting best democratic practices in Kenya and those that exist are smaller and more dependent on international finance¹²⁹.

The extent of ethnicisation of CSOs was demonstrated during the 2007 elections. The electoral atmosphere of 2007 was largely conditioned by the 2005 referendum where CSOs teamed up with the political leaders to defeat the new constitution. By and large, the polarization and tension occasioned by the referendum campaigns was imported in the 2007 elections with the voting patterns reflecting the outcome of the campaign. As with the previous elections, civil society organizations deployed observers who observed the 2007 elections. As noted by the Kriegler Commission Report, the CSOs who monitored the elections largely took sides and did not adhere to the tenets of neutrality and non partisanship expected of them. In Central and Nyanza provinces which were the strongholds of PNU and ODM respectively, civil society organizations were complicit in the electoral malpractices that were reported in these areas and to a larger extent sided with their ethnic communities in ballot staffing¹³⁰.

4.4 Challenges of implementation of the Constitution

Democratic transition processes in most countries do not sufficiently address the realm of constitutional reform due to bottlenecks that are faced when it comes to implementing those constitutions. Part of the challenge is that some of the civic actors involved in constitutional reforms are sometimes inexperienced and thus cannot fully exert the pressure and requisite impact on the expected reforms. This has led to deficiencies in constitutionalism and efforts towards genuine democratisation in Kenya. The politics of implementing the new constitution promulgated on 27th August 2010 remains a major challenge to the civil society organizations in

¹²⁹ Journal of African Elections volume 8 2009 pg 88

¹³⁰ CGD director noted that CSOs participated in the ballot staffing in Nyanza and Central Provinces.

Kenya. While the CSOs played a pivotal role in agitating for the passage of the new constitution, the constitution introduced rafts of legislations and a clear timeline in the Transitional Chapters that were to be enacted to facilitate its operationalisation. The new constitution anticipated the enactment of enabling legislations to take place within a staggered period of five year with most reforms intended to facilitate the 2012 elections namely: Representation, Judiciary and the Bill of Rights Chapters being given one year following the promulgation.

Apart from the legislative challenges, the difficulties in meeting the huge expectations and promises made in the constitution were regarded as critical. Expectations posed by the promise of more inclusive citizenship through the newly devolved system of government, reduced presidential powers¹³¹ and better separation of powers between the three arms of government, security sector and land reforms will no doubt present difficulties especially with regard to their realisation. Recognising the critical role that political parties play in the democratic process, the new constitution made provisions for strengthening the institutions of political parties in Kenya. However, the broad framework provided for by the constitution required legislation to facilitate its implementation.

Over the last year, the country has been involved in the laborious task of debating and passing the various legislations. While parliament met the set deadline for most legislations, the process was itself not free from the usual partisan debate. In a bid to beat the August 27th 2011 deadline for example, Parliament rushed 14 Bills in a record two days that were not subjected to quality scrutiny and input by other stakeholders. The difficulty in enacting these legislations was further compounded by the establishment of new institutions and appointment of people to serve in the various institutions. While the constitution provided for public participation, the extent of involvement of the public and in particular civil society organizations was not always assured.

¹³¹ Presidential appointments subject to parliamentary approval, see chapter on the legislature.

The CSOs found themselves fighting for space and accommodation from parliamentary committees whose roles were clearly stipulated in the new constitution. Suffice it to mention that some parliamentary committees among them the Justice and Legal Affairs Committee¹³² incorporated CSOs during discussions on the electoral legislations.

The standoff occasioned by different interpretation of the law by the three arms of government has greatly impacted on the constitutional implementation process. At various intervals, parliament, the executive and the Judiciary have had standoff arising from different understanding. During the nomination of the Chief Justice, Attorney General and the Director of Public Prosecution for example, both parliament and the courts vetoed the appointment made by the president claiming that they were unconstitutional¹³³. The civil society have also come up to challenge both the executive and parliament as was the case when FIDA went to court to challenge the nominations for the Supreme Court claiming that failure to nominate one –third women violated the constitution¹³⁴. The injunction sought by FIDA effectively delayed the appointments of Supreme Court Judges until the Court of Appeal lifted the injunction.

4.5 Civil Society and Political Parties

The debate as to whether civil society can replace political parties has dominated discussions and thinking in different forums. The trigger to this debate was the precise role that civil society and political parties play and the fact that in Africa, like in most parts of the world, political parties have overtime exhibited weak structures and ideology. While the fortunes of political parties have continued to be on the decline in Kenya and indeed other parts of Africa

¹³² The Committee incorporated the CSOs during the discussions on the IEBC, Political Parties and Elections Bill.

¹³³ This prompted the Executive to start the process a fresh.

¹³⁴ Article 27 and 81 of the new constitution

civil society organizations have maintained the notion that they are the blue eyed boy of development partners¹³⁵ This state of affairs has to a larger extent endangered the democratic equilibrium since commensurate assistance has been channeled to one side of democratic scale at the expense of the other.

As traditional institutions of representative democracy, political parties occupy a central role in the overall functioning of democracy. Indeed, a country's governance system and structures is heavily dependent on the efficiency of political parties in that country¹³⁶. Comparatively across the world, political parties still remain the primary institutional vehicles for political representation, interest aggregation and articulation, and as a constituent mechanism for the formation and organization of government, as well as channels for maintaining oversight accountability from governments¹³⁷. Regrettably, the role and responsibilities of political parties in the democratization process has not been appreciated and democracy assistance has increasingly been channeled to the CSOs at the expense of political parties.

The preoccupation with civil society organizations was heavily imbedded in the experience during the multi party struggle in Africa. For the most part, the CSOs were at the forefront of agitating for reforms and increased involvement of citizens in the governance structures during the struggle for multi party politics. Secondly, CSOs in its various forms have continued to present alternative voices that have often demanded accountability from government. Thirdly, decades of single party dictatorship that were obtaining in different parts of Africa deprived the people the real experience with political parties and made them fall back on

¹³⁵ Many donors feel that CSOs are more effective development and peacebuilding partners than the state in that they may be better placed to articulate the needs of the weak, to provide services and development in remote areas, and that they are less corrupt and more transparent. For details see, Ivan Doherty Democracy out of Balance Policy Review 2001

¹³⁶ Hon. Martha Karua while moving a motion on the Political Parties Bill in Kenya September 2007.

¹³⁷ Owuor Democracy Assistance: Spaces for improvement- Paper presented in Jinja Uganda June 2011.

the CSOs. Lastly, the opposition political parties that emerged in the 1990s did not exhibit a ideological and programmatic difference from the incumbent parties and largely fought to wrestle power from the ruling parties¹³⁸. The foregoing has led to most development partners reaching the conclusion that it is fashionable to strengthen the civil society organizations and merely engage with political parties when some measure of stability has been achieved. The consequence of such an action has been weak political parties institutions and strong incumbent and ruling parties. As noted by Doherty, strengthening civic organizations, which represent the demand side of the political equation, without providing commensurate assistance to the political parties which must aggregate the interests of those groups, ultimately damages the democratic equilibrium (Doherty 2001).

In Kenya, the weak political party organizations can be attributed to a number of factors. As mentioned, the reintroduction of multi party politics was not accompanied by comprehensive reforms that could reform the political sector and accord political parties a new impetus to launch their operations. Notably, while Kenya lifted the ban on multi party politics and allowed the formation of many parties, development partners ignored support to political parties and concentrated in developing the civil society organizations. Indeed it was not until after 1992 elections that most development partners began developing a reluctant interest in supporting political parties¹³⁹. Comparatively across Africa, it is now accepted that there is a direct link between political parties, political stability and economic development peace and tranquility. Political parties are viewed as key to democratic consolidation and this role cannot be replaced by civil society acting on its own. While the fight for democratic reforms in Kenya, Zimbabwe

¹³⁸ Kadima, D. and Owuor, F. Politics of Party Coalition in Africa: Kenyan Chapter.

¹³⁹ Owuor, Felix. Democracy Assistance: Spaces for Improvement paper presented in Jinja Uganda June 2011.

¹⁴⁰ Countries like Ghana, South Africa and Botswana which have strong political parties enjoy political, economic stability and peace.

and Ghana were championed by CSOs, it was not until political parties and groupings threw their weight behind such initiatives that meaningful gains were realized. In Kenya no meaningful reform initiative has been realized without political parties actively getting involved. At independence, political parties played a pivotal role in the acquisition of independence in the country¹⁴¹. During the fight for the restoration of multi-party politics, the Forum For the Restoration of Democracy FORD tilted the balance and forced KANU to yield to pressure. In 1997, the Inter Parties Parliamentary Group brokered a stalemate that facilitated the 1997 elections. The final push towards the realization of a new constitution in Kenya was made possible by political parties and parliament that represent political parties. In Zimbabwe, the political parties were instrumental in negotiating the Global Political Agreement (GPA)¹⁴² that led to the formation of the Grand Coalition Government. Similarly in Bangladesh, despite an abundance of advocacy and citizen action groups, the recurring partisan political stalemate consigns the country and its citizens to abject poverty (Doherty 2001).

4.6 Confrontational Strategies of the Civil Society Organisations

One criticism of civil society is their tendency to be confrontational with government in their attempt to build peace and consolidate democracy. Consequently, CSOs face the challenge of creating capacity to engage electoral bodies and government structures, both at the national and the local level. The *International Crisis Group* summarizes this challenge as the need for a "state-society engagement strategy." This strained relationship comes about when CSOs assume

¹⁴¹ Role played by KANU and KADU

¹⁴² The Global Political Agreement (GPA) was an agreement signed between the three major political parties in Zimbabwe, namely the Zimbabwe National African Union, Patriotic Front (ZANU-PP), the Movement for Democratic Change led by Morgan Tsvangirai (MDC T) and the Movement for Democratic Change led by Arthur Mutambara (MDC-M)

that they have become an alternative to the State in the provision of public goods and security. However, there is a need for civil society organisations to be more programmatic in the manner they interact with government. Bratton (1990) discusses the need for less aggressive approaches by civil society so that government does not feel neither threatened nor challenged by these organisations.¹⁴³ Bratton (ibid) maintains that although the State and NGO's can be referred to as, 'uncomfortable bedfellows', they are supposed to cohabit.¹⁴⁴ Bebbington and Farrington (1993) admonish the confrontational approach by civil society arguing that NGO's are smaller than the State: hence they have to rely on the State for guidance, provision of public goods. Clayton et al, (2000:17) underscore the relevance of the state to civil society activities, arguing that the civil society needs government to ensure "a foundation of law, a benign policy environment, investment in people and infrastructure and protection of the natural environment". Even though NGOs are important actors in the development playing field, they are not an island entity, or a "system on their own".¹⁴⁵ NGOs are not operating in a vacuum, but are part of the wider environment hence dialogue between them and the state is important (Bratton, 1989). Both CSOs and the State depend upon each other for several reasons. Salamon (1987) reiterates the same message, positing that the competitive and almost *conflictual* relationship between CSOs and the State should not be overstated. Instead, there Salamon (ibid) refers to as a *modus vivendi* between the State and the NGOs, which is a relationship of complementarity, coexistence and reliance. Antonio Gramsci (1963), a critical neo-Marxist conceptualises civil society as an entity coalesces with the State in a mutually reinforcing manner. Against this background, civil

¹⁴³ According to Bratton (1990), less aggressive approaches by CSOs include joint projects, collaborative social transformation as well as networking.

¹⁴⁴ The call is for NGOs and the state to find ways of working together despite the challenges of relating to each other.

¹⁴⁵ The systems theory analyses social reality holistically using the notion of a system, which is made up of interrelated parts. Civil society organisations are therefore part of the entire social system and from this perspective, they cannot effectively function on their own.

society organisations should learn that governments needs the support, expertise and resources that CSOs bring, while civil society also requires the policy and structural support from the government so as to facilitate sustainable and durable peace. This reinforces Maire Dugan's assertion that peacebuilding should be taken as mending or maintaining of relationships between various actors.

Due to the confrontational nature of CSOs in Kenya, an unhealthy tension has existed between the government and the CSO. Granted, the fight for the restoration of multi party democracy required a measure of confrontational approach given the dictatorial regime that was in power then. However, Kenya has undergone numerous transformations and whereas certain sectors have been able to change with changing times, CSOs are yet to undergo radical transformation to reflect the prevailing realities. Because of the tension existing between the government, parliament and the CSOs, the involvement of CSOs in major post election reform initiatives has been wanting and progressive legislation has been delayed.¹⁴⁶ In most instances, CSOs are reduced to fighting for space in the various processes. It is instructive to note that where CSOs and the state actors came together under mutual partnership and constructive engagement, significant milestone has been realised. This was evidenced during the implementation of the constitution. When Parliament, relevant government agencies teamed up with the CSOs, the actors were able to beat deadlines stipulated in constitutional implementation. Majority of the Bills that were rushed in parliament to beat the August 27th 2011 deadline did not sufficiently involve all actors due to the existing suspicion, tensions and mistrust.

¹⁴⁶ Examples of legislations that missed critical deadlines include the Salaries and Remuneration Commission Bill 2010 and 2011, the Independent Electoral & Boundaries Commission Bill 2011, and the Supreme Court Bill 2011. The Salaries and Remuneration and IEBC Bills ought to have been enacted into law by May 15, and the Supreme Court Bill by May 30. These Bills are reportedly waiting for Presidential assent.

4.7 Liberal Approaches by Civil Society

The neo-liberal perspective has been the dominant discourse influencing the development and growth of civil society activities in democratisation and peacebuilding. Neo-liberals argue that the massive expansion of the State in people's livelihoods is unsuitable and undesirable hence the need to liberalise the governance spectrum to allow for the participation of non-state actors.¹⁴⁷ For neo-liberals, government should create a lean and efficient economic, social and political space for NGO's because the revival of civil society is crucial for development, governance, peace and security. The continued burgeoning of NGOs in the peacebuilding frontier has led to duplication, commercialization of peacebuilding and reduced efficacy of the work of these players, a process resulting from what Orjuela (2004:225) terms "NGOization."¹⁴⁸

In Kenya, a debate of the hijacking of government and political parties has been echoed in the past. During the recent appointments of the Judiciary for example, a difference emerged between the so called civil society candidates and "other candidates" Parliament and political parties adversely criticised the CSOs under what they perceived as the CSOs misunderstanding of the word reformers. For most CSOs, the criteria for measuring the reform credential was narrowly defined as having been an active member of civil society movement and with underpinning orientation. The liberal nature of civil society has further led to the proliferation of CSOs and advocating of liberal policies that often challenge the entrenched conservative nature of most communities. As mentioned, Kenya has over the last two decades witnessed

¹⁴⁷ Neo-liberalism is a term describing a market-driven approach to social and economic development. It originates from neo-classical economic theory which underscores the need for an efficient of private sector which is governed by open markets and trade liberalization. Neo-liberalism seeks to maximize the role of the private sector in determining the political and economic priorities of the state while diminishing the overall outreach and influence of the state, especially in business matters.

¹⁴⁸ For details, see Orjuela, C. 2004. "Civil Society in Civil War. Peace Work and Identity Politics in Sri Lanka." PhD Dissertation. Department of Peace and Development Research, University Göteborg.

mushrooming of CSOs. Majority of these CSOs are formed to counteract predominant issues prevailing in the political environment at any given time. Thus the post election violence in Kenya in 2008 led to the formation of many CSOs ostensibly implementing peace building and reconstruction work. The proliferation of institutions associated with liberal policies is not limited to CSOs only. In Kenya, the re- introduction pluralistic politics in 1991 was largely misunderstood to mean the proliferation of political parties¹⁴⁹. As such the rush to form political parties led to a record of 250 parties registered in 2002. The number has since reduced to 47 due to the existence of the Political Parties Act.¹⁵⁰

¹⁴⁹ Afari Gjan Chairman Electoral Commission of Ghana: Does Multi party politics mean proliferation of political parties in Africa?

¹⁵⁰ According to the Political Parties Act of July 2010, all registered political parties will be required to share 15 per cent of the public funding equally. A further 80 per cent will be shared proportionally according to the number of votes attained in previous elections by each party's presidential, parliamentary and civic candidates. The remaining 5 per cent will be used to cover the fund's administration expenses. However, where more than one political party supports a presidential candidate, only the votes cast for the parliamentary and civic candidates shall determine the amount to be received. A registered political party may also miss out on public funding if its national office bearers do not reflect at least a third of either gender.

4.8 Unresolved Structural Causes of Conflict

The work of CSOs in Kenya will continue to be affected by the question of unresolved structural conflict¹⁵¹ in Kenya. Although Kenya overcame the most challenging period in the aftermath of the 2007 elections, the root causes of conflict still remain. The possibility of election violence was stemmed when the country underwent a successful conduct of the referendum for constitutional change in August 2010. Nonetheless, there is room for caution which CSOs need to pay attention to. While small incidents of violence were reported and mild tensions resurfaced when the country held a referendum on a new constitution in August 2010, the largely peaceful nature of the referendum provides testament to the fact that Kenya has significantly reformed its electoral institutions, which partially contributed to the post-2007 election violence.¹⁵² However, as long as the root causes of conflict in Kenya are not addressed, there is a strong possibility that violence in Kenya can erupt again. These factors include poverty, unemployment, insecurity, disenfranchisement, the unresolved land issue and corruption within the Kenyan government (OHCR, 2008). A Mercy Corps report (2011) indicates that nearly 70% of the perpetrators of Kenya's post-election violence were youths and their preponderance to violence was because they often lack livelihood options, and are subsequently vulnerable to manipulation by politicians to instigate violence. Despite Kenya's admirable economic growth and stable status in the region, the status of youths in Kenya has not changed much given the current unemployment rate.¹⁵³

¹⁵¹ Structural conflict is conflict caused by patterns or structures of actual or perceived power which create perceived inequality. Structural sources of conflict are pervasive and affect large numbers of people. Examples of structural causes of conflict include poverty, unemployment, environmental deterioration, population growth, resource scarcity, the colonial legacy, breakdown of values and traditions, poverty, and political or ethnic marginalization.

¹⁵² A constitutional referendum was held to determine whether or not to adopt a new constitution adopted by parliament in April 2010. The result was a victory for the "Yes" campaign or those in favour of the new constitution.

¹⁵³ Youth unemployment is currently a challenge in Kenya given that 60% of the Kenyan population is under the age of 35. The 2011 unemployment rate in Kenya stands at 40%. An estimated 65% of the unemployed are youths.

Furthermore, in Kenya, there are still youths and communities who participate in gangs or in slightly armed renegade groups, including armed pastoral and farming communities. Studies have indicated the nexus between youth unemployment and youth engagement in violence and gang involvement (Mercy Corps, 2011). In addition, there have been unconfirmed allegations that Kenyan government has seemingly failed to cull the Mungiki¹⁵⁴, which is a gang of rebel youths mainly from the Kikuyu community which seems to commit felonies without some reprieve from state officials. The Mungiki are allegedly hired by politicians to disrupt political meetings of opposition parties, for example. In some communities, the Mungiki demand “taxes” unabated.

4.9 Post 2007 Political and Electoral Environment

The political and electoral environment obtaining in Kenya has been fluid since the 2007 elections and the establishment of the Government of National Unity. While stiff competition¹⁵⁵ has been a feature of Kenya's elections in the past, the narrow margin of less than 200,000 votes that separated the two leading candidates brought new meaning to competition in the electoral politics in Kenya. As pointed out by the Institute of Education in Democracy (IED), the political campaigns in Kenya are often comparatively charged than any other country in East Africa. Indeed, since the advent of multi party politics in Kenya in 1992, the political and electoral environment has been characterized by ethnicity, polarization, tensions, violence and uneven playing ground¹⁵⁶. According to the Program Officer at EISA, the political and electoral

¹⁵⁴ The name “Mungiki” means “a united people” in Kikuyu language. Although their specific roots, origins and doctrines are unclear, the ideology of the group is mostly characterised by revolutionary rhetoric and they are said to espouse Kikuyu traditions. Originating in the 1980s, the Mungiki arguably has its roots in discontent arising from severe unemployment and landlessness arising from Kenya's rapid population growth.

¹⁵⁵ The Electoral Environment in Kenya, IED 1997, pg 89

¹⁵⁶ Kadima Politics of Party Coalition, 2006: Chapter on National Rainbow Coalition.

environment in the intervening period between 2008 and 2012 general elections has further been exacerbated by a number of factors. To begin with, the post elections violence necessitated a number of post conflict peace building and reconstruction that the country embraced in the period preceding the 2008 post election violence. In a bid to restore normalcy and reconciliation, the civil society organizations have been stretched to the limits conducting peace and reconciliation work around the country¹⁵⁷.

As part of the reform agenda negotiated by the Panel of Eminent Africans, the 2008 to 2012 political environment has been dominated by reform initiative. At the core of the reform agenda was the quest for enactment of a new constitution for Kenya. Following years of aborted efforts towards the realization of a new constitution, the push for a new constitution was restored in 2008¹⁵⁸ and lasted until August 2010 when the dream was finally realized when Kenyan passed a new constitution in a referendum. The politics of constitution making, being a political process posed a number of challenges to the civil society. At every turn of event, the concerns of the civil society were at constant loggerheads with the vested interests of political elites. The road map outlined by the Constitutional Review Act gave prominence to parliament and political parties as the main drivers of the constitutional review process¹⁵⁹. During the various stages of constitutional negotiation, the civil society constantly found themselves hostage of the politics of the Grand Coalition Government¹⁶⁰.

The passage of the new constitution and the introductions made by the constitution particularly on the Representation Chapter has introduced additional challenges in the political and electoral environment. The constitution introduced changes to the election of the President

¹⁵⁷ Organisations exist both at the national and local level.

¹⁵⁸ Constitutional Amendment of 2008, that laid the road map to achieving the new constitution.

¹⁵⁹ Key players included the Committee of Experts, Parliament, and the Executive.

¹⁶⁰ Disagreements of PNU and ODM wing of the government

by providing for the 50% +1 in the absence of which the first two candidates would be subjected into a runoff election.¹⁶¹ This requirement has triggered serious campaign around the country by the various political parties and presidential hopeful to galvanise support around the country. The consequence of this action has been an early campaign two years before the general elections. The constitution also increased the elective seats from three which was the previous case to at least six. The new elective offices will no doubt, and have already began, having profound implication on the electoral and political environment. The logistical and administrative nightmare on the election management body to holding elections for six offices will be tremendous. The cost implication and challenges that this will pose to political party nomination cannot be over emphasized. The civil society organizations that will monitor the elections will also be required to accommodate the challenges posed by the new elective offices.

A part from the new constitution and other attendance reforms, the 2012 general elections will be a transitional election. President Mwai Kibaki would be ineligible to run having served the constitutional requirement of two five year term¹⁶². The transitional nature of 2012 elections has significantly heightened the stakes, which in turn has inevitably charged the political environment. As noted by EISA and ICJ, the stakes of winning or losing 2012 has clearly manifested itself in the early campaigns witnessed in the immediate pre election environment¹⁶³. Massive campaigns and political realignments aimed at gaining advantage in 2012 have emerged. The political and electoral environment has also been impacted by the ongoing criminal trials at the International Criminal Court (ICC)¹⁶⁴ at the Hague Netherlands. Following the failure of enacting a local Tribunal as recommended by the Waki Commission, the ICC

¹⁶¹ Chapter 9 Dealing with the Executive.

¹⁶² Presidential Term limit introduced in 1992.

¹⁶³ EISA presentation to the donors, March 2011

¹⁶⁴ Confirmation of Charges of the six post election violence suspect on-going at the ICC September 2011.

moved in to indict persons who bore the greatest responsibility during the 2007-8 post election violence. The people indicted by the ICC included key political personalities who occupied senior positions in the government and political parties. The indictment of Hon. Uhuru Kenyatta (Deputy Prime Minister and a Presidential Candidate) and Hon. William Ruto¹⁶⁵, Member of Parliament and Deputy Party Leader of the Orange Democratic Party (ODM) send shock waves in the political landscape. Significantly, the two are seen as key leaders in their respective communities and their appearances at the ICC will have serious impact in the political and electoral environment.

The foregoing challenges indicate the unpredictable and fluid nature on the political and electoral environment which underpin the work of civil society in the 2008 and 2012 environment. The heavy constitutional implementation agenda, the politics of 2012, Kibaki succession and the ongoing trials at the ICC have all increased the work of the civil society. The challenge of effectively attending to the agenda prevailing in the political environment was noted by all the CSOs has massive.

4.10. Lack of Transparency by Civil Society Organisations

Lack of transparency, accountability and limited democratic decision-making processes is not only a problem in government; it is also one of the most challenging issues in the civil society domain. A lot of work still needs to be done in terms of democratization at the middle and local levels. Transparency of CSO is curtailed because of structural and organizational handicaps within civil society. Most CSOs are rather "footloose"¹⁶⁶ since they do not stay for

¹⁶⁵ Both Uhuru and Ruto have declared interest in vying for the presidential elections in 2012.

¹⁶⁶ The term "footloose" is used to denote that NGOs can easily relocate. They might locate in a country because of conducive operational political environment, but then move away when these run out. In addition, NGOs have

good in a community. This is the nature of civil society organisations because they are designed to build capacity. So in many cases, many CSOs leave when their capacity building projects have ended. Apart from that, most civil society organisations tend to have smaller structures, which therefore imply that they can only introduce “pockets of development and peacebuilding” through pilot projects. This hampers their efficacy. Government departments and structures, on the other hand, tend to be more permanent even if there is change of ruling parties.

CSOs now are supposed to be transparent to the government and to the district authorities they are operating in. Thus, most government departments are mandated to monitor CSO activities. The Government Sessional Paper (2006) on Nongovernmental Organizations outlines the Government's position on civil society and issues that need to be addressed.¹⁶⁷ Some of the issues that have been highlighted by other actors as bedeviling CSOs in Kenya include opaque procurement process, lack of accountability including financial accountability, accusations of nepotism and cronyism among others. The efficacy of CSOs in Kenya and their credibility can only be measured by how transparent and credible they are. However, if this transparency is compromised then CSOs will not have the moral authority and legitimacy to effectively represent the interest of the society.

projects which are categorised in year plans which means as soon as the project is concluded, they move elsewhere. As a result there might not be a long term benefit to the country.

¹⁶⁷ The Government Sessional Paper (2006) on Nongovernmental Organizations is a culmination of a series of consultations between the Kenya government and civil society organizations about the conduct of NGOs. The consultative process began in December 2001 and was concluded in 2006.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Overall Summary of the Study

The main aim of the study was to bring about the understanding on the role of civil society in post conflict peacebuilding and reconstruction. The study proceeded from the premise that since the post election violence in Kenya, a number of CSOs were engaged in peacebuilding and reconstruction work consistent with Lederachs peace building pyramid and the theory of multi track diplomacy propounded by Diamond and McDonald. The study embraced qualitative approach with a single case study and employed both structured interviews and Focus Group Discussion that served to deepen understanding and enhanced learning. Through the study, the typologies of CSOs in Kenya predominantly clustered around Women Empowerment; Governance, Democracy and Human Rights, Elections and Political Processes; Humanitarian and Peacebuilding; was established. The study further established the vibrancy of the CSOs working actively in the field of; constitutional reforms and implementation process, electoral process, relations building and engagement with other actors, and women political empowerment. The study also revealed challenges that militate against the work of the CSOs and were noted as follows; political and electoral environment preceding 2012, financial constraints, coordination and duplication ethnicity and the challenges associated with the implementation of the constitution. Overall, the relevant activities noted formed the core principle behind peacebuilding and reconstruction aimed at strengthening institutions and establishing a sound framework to ensure that conflict does not recur¹⁶⁸

¹⁶⁸ For details, see Boutros Ghali (1997). Agenda for Peace

5.2 Lessons Learned

The study generated lessons and experiences that will contribute meaningfully to the literature and discourse on CSOs work in Kenya and other parts of the world. The lessons learnt are discussed below.

5.2.1 *The Positive Impact of Transitional Governance*

The 2008 peace agreement signed between the Orange Democratic Movement (ODM) and the Party of National Unity (PNU)¹⁶⁹ in Kenya redistributed power among parties and halted the violence and subsequently provided temporary relief to the population. This agreement also ensured that there is no dominant party in Kenyan politics by ensuring that ODM and PNU share the levers of control and influence. The effects of this form of government have largely been positive albeit with some challenges. The transitional arrangement provided conflict parties with the platform to dialogue, provide solutions and implement reforms to address long-standing governance and democracy issues, including constitutional and institutional reforms¹⁷⁰. As a result of the ODM-PNU agreement and pressure from CSOs, the Kenyan government has managed to establish an Independent Review Committee to investigate all aspects of the 2007 Presidential electoral process.¹⁷¹ In addition, a Commission of Inquiry was established with a mandate to investigate the circumstances surrounding the violence that occurred during the two months following the election. This has paved way for accountability as well as for addressing the issue of impunity. Furthermore, the power sharing agreement provided space for a referendum which afforded Kenyans to contribute to a new constitution. The post-2007 election

¹⁶⁹ National Accord and Reconciliation Act, 2008.

¹⁷⁰ The Four Item Reform Agenda negotiated by Annan Panel
¹⁷¹ Kriegler and Waki Commissions

violence context in Kenya is hopeful as the major political parties have been forced to confront the issues of ethnic divides and *ethnicization* of politics in Kenya. Civil society has been very active in ensuring that the recommendations from the various commissions including the Waki Commission and the Truth and Reconciliation Commission are implemented.

5.2.2 *Gender Dimension of Peacebuilding*

The quest for sustainable peace in Kenya is within reach because of the upsurge of “gendered peace processes” which was evident during the mediation process by Kofi Anan and in the post-conflict stage. During the mediation process, a member of the AU Panel of Eminent Persons, Graça Machel¹⁷² mobilised women across ethnic, class and political divides, emphasising their common objectives for peace in Kenya. Women from civil society operated at the level of Track II diplomacy to influence the peace process, since they were not officially invited to the negotiation tables. After consultations with the mediation team, women finally joined the peace negotiations as representatives of the ODM and PNU¹⁷³. Women in civil society met with the principals of the negotiating parties to highlight their concerns about the peace process and to present issues that they wanted to be included in the final peace agreement. As a result, pertinent women’s issues were included in the Kenyan constitution and the peace agreement¹⁷⁴. Following the end of the election violence, a considerable number of Kenyan civil society organisations have made significant strides in mainstreaming gender into their post-conflict reconstruction and peacebuilding efforts.

¹⁷² Member of the Kofi Annan Panel who negotiated the National Accord and Reconciliation Act
¹⁷³ Hon Martha Karua represented PNU and Hon Sally Kosgei represented ODM during the talks.
¹⁷⁴ Article 27, 81, 97, and 98 of the Kenyan Constitution

5.2.3 *The Role of Youths in Conflict*

Over 70% of participants in Kenya's 2007/2008 post-election violence were youths¹⁷⁵ (Educational Development Centre, 2009). Sociologists and anthropologists such as Richards (1995: 1996) observe that during time of rapid transformation, young people are vulnerable to risky behaviors as well as demanding roles and responsibilities. Economists, Paul Collier and Anke Hoeffler (2002) point out that youths without economic opportunity and who are marginalized from politics, are often manipulated by political elites to create violent conflict. McLean and Fraser (2009: 4) highlight that "where youths feel that existing power structures marginalise them, violence can provide an opportunity to have a voice." In Kenya, youth unemployment is often cited as one of the reasons why rural youths are joining the armed groups and gangs¹⁷⁶. This calls on peacebuilding activities by CSOs to increase their focus on the youth dimension.

5.2.4 *Multiple Relations Between Actors in Peacebuilding*

This research has outlined that relationships in peacebuilding are determined by a variety of factors, which include the socio-economic and political context. Further, certain structural issues like the channels of communication, resource availability as well as policies appear to have had a bearing on the State-NGO relationship. Thus, the State and CSOs are interacting not only at the official structural levels, but also at individual level since both NGOs and State staff discovered that building individual relations promotes sustainable peace.

¹⁷⁵ See also Waki Commission Report,

¹⁷⁶ Some of the gangs include Mungiki, Abachuma, Baghdad and Chinkororo

5.2.5 *Collaboration in Conflict Prevention and Peacebuilding*

This study reveals the importance of networking and collaboration in peacebuilding since peace is a state of affairs that affects every sector of society. Following the eruption of governments, civil society and various partners, including the government of Kenya, initiated a series of conflict prevention and conflict management initiatives in the six affected regions¹⁷⁷, among others. The collaboration initiated by the National Council on Peace and Security is a case in point. It was also established that the state initiated two agencies, the National Cohesion and Integration Commission and the District Peace Committees both of which have forged crucial interaction with the CSOs at the national and the grassroots level. The essence of multi track diplomacy hinges on such mutual collaboration and partnership.

5.2.6 *Linking Peacebuilding with Development and Human Security*

Peacebuilding does not exist in isolation but exists along the broad spectrum of various approaches of responding to conflict. This study realises that much of the conflict management work has been centred on providing humanitarian support for victims of post-election violence, while a few initiatives have focused on peacebuilding and restoration of relationship as bases for social change. Few initiatives have had a take on building community and these include Mercy Corps' Local Empowerment for Peace Project (LEAP)¹⁷⁸. In the Rift Valley Province, Mercy Corps works with local partners in Kenya and the region to bridge interethnic divisions and prevent violence from recurring. LEAP works at the local, district, and provincial structures to address the underlying causes of post-election violence and promote sustainable peace and

¹⁷⁷ Active peacebuilding work are ongoing in Rift Valley, Nyanza, and Central Provinces in Kenya
¹⁷⁸ District Peace Committees are also active in these areas.

reconciliation by training peace actors and supporting dialogues. In addition, UNDP's Conflict Prevention and Transformation Project which is in collaboration with the Kenya Institute of Administration is implemented based on the reasoning that the levels of violence could have been contained and curtailed if sufficient numbers of Kenya's police and administrators had been trained in peace building and conflict management. The result has been that from 2008-2009, UNDP has supported KIA to run a series of one week courses in Peacebuilding and Conflict Management for security personnel and administrative officers. More than 700 officers have been trained in a total of 27 courses.

5.2.7 *Proactive Peacebuilding and Conflict "Prevention"*¹⁷⁹

Although the conflict prevention mechanisms developed by civil society organisations have been effective at mitigating violence thus far, it is important for CSOs to take a proactive approach to peacebuilding. This is what John Burton (1990) labels 'conflict prevention,' an approach which involves longer-term policies and more systemic changes to address conflict. Most of the conflict prevention mechanisms have been fairly effective in addressing the aftermath of violence rather than in preventing future violence. However, CSOs peacebuilding initiatives need to be focused on long-term community engagement, dialogue and rebuilding of broken relationships. This thinking should also be adopted by the donors so as to fund projects with long term goals. Peacebuilding is not an event but a process, activities aimed at peacebuilding should therefore have long term projections for sustainability.

¹⁷⁹ Conflict 'provention' is a term coined by John Burton (1990) to emphasise the need for a problem-solving approach to conflict resolution, and the need for conflict prevention. Burton uses the invented term "provention" to avoid the negative connotations of containment associated with the term, "prevention." For details see Burton, J (1990). *Conflict: Resolution and Provention*, New York: St. Martin's Press.

5.3 Conclusions and Recommendations

The study established the relevance and the impact of civil society in post conflict peacebuilding and reconstruction. In particular the typologies of civil society and the specific intervention employed by the CSOs within the peacebuilding discourse was established. Given the role and activities of CSOs in Kenya in peacebuilding work, it is clear that sustainable peace can only be achieved if both the state and non state actors collaborate and forge amicable partnership. The experience of peacebuilding by civil society organisations in Kenya is evolving and eclectic although there are some unifying themes. Peacebuilding in Kenya reflects various theories of social change and many players including NGOs, grassroots organisations, the media and religious communities. A lot of effort is needed to strengthen peace processes in Kenya, in particular, scaling up the positive attributes which exist in the continent such as endogenous methods of peace, role of women and enhancing the networking between civil society and government actors. The research generated recommendations that can be considered by the government and civil society sector as well as on the implementation of the constitution.

5.3.1 *Recommendations for the Government of Kenya*

Addressing structural causes of conflict in Kenya would require concerted efforts by government to tackle issues of poverty, unemployment, inequality, land and corruption within government. Although conflict management and peacebuilding initiatives such as dialogue, training and reconciliation initiatives would address relational dimension of conflict, durable and sustainable peace will only be achieved when structural conditions of conflict are fully addressed.

The government of Kenya, through relevant departments like the Ministry of Education should work towards making peace education part of the curriculum for primary, secondary and tertiary levels of education. Already, the Ministry of Education has piloted the Global Peace Education Initiative but it will only be effective if a significant amount of resources, training and expertise are dedicated towards the project.

It is important to address the situation of internally displaced persons (IDPs) who were affected by the 2007 post-election violence in Kenya. It is estimated that there are 300 000 IDPs who are yet to be resettled¹⁸⁰. Some of the resettled IDPs live in temporary housing provided by the Kenyan government as well as non-governmental organizations.

The State and CSOs should keep on networking since both parties share the common goal of consolidating peace in Kenya. Civil society organisations should not take advantage of resource deficits bypassing its authority and disregarding policy. Rather, civil society organisations should complement rather than substitute the State. The government should pass some legislation and introduce policies designed to monitor and support CSOs activities;

¹⁸⁰ Report of Kenya National Commission on Human Rights, 2010

5.3.2 Recommendations for Civil Society Organisations

Civil society should continue engaging communities in peacebuilding and reconciliation initiatives, while also preparing Kenyan citizens for the transitional justice process that is already underway through the Truth, Reconciliation and Justice Commission (TRJC) and International Criminal Court (ICC) process. While achieving justice and accountability, transitional justice process are likely to further divide the Kenyan population between those who call for justice and those who call for the “forgive and forget” approach, especially when notable leaders of some ethnic groups are implicated. Civil society would need to step up its efforts, skills and expertise in uniting the population and engaging communities to participate in the TRJC processes.

Civil society is the guarantor of peace processes in many instances. In the Kenyan case, civil society organisations are called upon to be watchdogs of the implementation of the National Accord and Reconciliation Act between PNU and ODM, being the document that restored peace in Kenya. Civil society should continue to monitor compliance of parties to tenets of the peace deal to ensure that parties do not renege on the commitments they made towards governance reforms and peacebuilding initiatives.

Civil society organisations should continue networking and collaborating under the umbrella organisations established to coordinate the activities of CSOs. To this end, CSOs should make efforts to ensure that grassroots civil society organisations are also included in deliberations and strategies for peacebuilding engagement to avoid the urban bias and elite effect.

Although youths were identified as the greater population that participated in the post 2007 election violence, instead of focusing on youths as victims or as a source of problems.

CSOs should instead seek to channel the youths' energy creatively so that young people can become powerful forces for peace (UNICEF, 2005; 2009). Civil society organisations should embrace a 'youth development perspective' which recognises that young people have an enormous stake in the present and future state of the world (World Bank 2007; 2011). The youth and development emphasises the need to treat young people as active participants in peacebuilding processes. As such, CSOs should massively invest in programs that focus on youth development in conflict and post-conflict settings. One way of addressing this challenge is to run programs that seek to break barriers among youths. When youths are socially reintegrated, they are less susceptible to involvement in violent groups.

5.3.3 Implementation of the Constitution

The new constitutional dispensation has provided the country with a new platform with which a new Kenya can be re launched. The CSOs should seize this opportunity to ensure that constitutional implementation remain on track. While a number of legislations have been passed that were stipulated in the one year timeline, other legislations are yet to be passed to accord the new law and enabling operational environment. CSOs should strive to build consensus on thematic issues across sectors, while paying attention to the core principles of constitutionalism. In addition, CSOs should continue to educate the public on key constitutional issues even though the new constitution is already in place. The post constitutional reform process in Kenya should witness think tanks and other CSOs continued efforts in evaluating and measuring the implementation of the reform process, assessing the impact of the new constitution and encouraging local ownership. All the post election commission reports were unanimous that the

2007 election merely provided a trigger for deeply entrenched inequalities and injustice. If fully implemented, the new constitution and attendant legislations will inevitably redress the past imbalance.

5.4 Areas for Further Research

Upon the completion of the current parliamentary term in Kenya (2008-2012), and the assessment of the work of the CSOs in Kenya within the intervening period, it would be imperative to conduct further research on a number of areas. To begin with, it would be important to research on the practicality and efficacy of multi track diplomacy within the Kenyan and Zimbabwean context. As mentioned, the two countries embraced Grand Coalition Governments based on the respective mediation under Track I, but the actual operationalisation of the coalition as well as the promotion of peace work embraced multi track diplomacy in which the CSOs and other non state actors were to play an active role.

Another area of further research would be to ascertain the extent to which new constitutional and legal frameworks are necessary in securing lasting peace. The mediation effort by the Annan team outlined comprehensive reforms to be enacted in Kenya in the period between 2008 and 2012. The extent to which the laws are needed to secure lasting peace and avoid relapse would be critical in this regard.

Given the enormous resources committed by the donor organisations in peacebuilding and democracy work in Kenya, it would be important to research on the extent and the impact achieved by such donations. This would be particularly important to help the country and CSOs develop practical and sustainable methods of utilizing donor funds. Such a study would also be

critical in informing the donor organisations on exactly how to dispense and prioritise on development assistance.

Finally Given the fact that Kenya has been a multi party democracy since 1991, it is critical to research on multi party political dispensation and the gains and impact that have been achieved in the governance sector over the last two decades.

BIBLIOGRAPHY

- Afro barometer (2008). Dataset from Round 4 Survey in Kenya
- Bayart, J.F. (1993). *The State in Africa: the politics of the belly*. London: Longman.
- Berman, S. (1997). "Civil Society and the Collapse of the Weimar Republic", *World Politics* 49
- Bratton, M. (1994). "Civil Society and Political Transition in Africa", in J.W. Harbeson, D. Rothchild, and N. Chazan (ed.s), *Civil Society and the State in Africa*. Boulder: Lynne Rienner.
- Chazan, N. (1992). "Africa's Democratic Challenge" *World Policy Journal*, 9 (2).Denzin, N. K. and Lincoln, Y. (ed.) (1994). *Handbook of Qualitative Research*. London : Sage Publications
- Collier, Paul & Anke Hoeffler (2002). "Greed and Grievance in Civil War," World Bank research paper.
- Constitution of Kenya, 2011
- Diamond, L. (1997). "Introduction: In Search of Consolidation", in L. Diamond, M. Plattner, Y. Chu and H. Tien (ed.). *Consolidating the Third Wave Democracies: Themes and Perspectives*. Boulder: Johns Hopkins University Press.
- Diamond L. (1993). *Civil Society and Democratic Consolidation: building a Culture of Democracy in a New South Africa*. Stanford : The Hoover Institution
- Diamond, Louise and John W. McDonald. 1996. *Multi-Track Diplomacy: A Systems Approach to Peace*. Kumarian Press.
- Diamond, L. (1999). *Developing Democracy Towards Consolidation*. Baltimore: John Hopkins University Press
- Educational Development Centre (2009). Kenya Cross-sectoral Youth Assessment USAID Equip 3.
- Ekeh, P. (1992). "The Constitution of Civil Society in African History and Politics", in

B. Caron, A. Gboyega and E. Osaghae (ed.s), *Democratic Transition in Africa*. Ibadan: University of Ibadan Press.

EISA 2010: This Seat is Taken. Edited by Gender Links.

EISA 2010: When Elephants Fight: Preventing and Resolving Election Conflict in Africa: Khabele Matlosa, Gilbert Khadiangala and Victor Shale

Giddens, A. (1982). *Profiles and critiques in social theory*. Berkeley: University of California Press.

Government of Kenya. *Commission of Inquiry into Post-Election Violence*. Commission of Inquiry, Nairobi: Government of Kenya, 2008.

IED 1997. The Electoral Environment in Kenya

Kadima, D. 2006. Politics of Party Coalition in Africa

Kenya Human Rights Commission. *Violating the Vote: A Report of the 2007 General Elections*. Nairobi: Author, 2008.

Kenya National Commission on Human Rights (2008). On the Brink of the Precipice: A Human Rights Account on Post Election Violence in Kenya

Foley, M. and Edwards, B. (1996). "The Paradox of Civil Society" *Journal of Democracy*, 7 (3).

Gyimah-Boadi, E. (1996). "Civil Society in Africa" *Journal of Democracy*, 7 (2).

Kriegler Commission Report on 2007 Elections in Kenya: GOK 2008

Hall, J. (1995). *Civil Society: Theory, History, Comparison*. Cambridge: Polity Press.

Harbeson, J. W. (1994). "Civil Society and Political Renaissance in Africa". in J.W. Harbeson, D. Rothchild, and N. Chazan (ed.s), *Civil Society and the State in Africa*. Boulder: Lynne Rienner.

Lederach, John Paul. 1997. *Building Peace: Sustainable Reconciliation in Divided Societies*. Herndon, VA: USIP Press.

- Lederach, John Paul. 2005. *The Moral Imagination: The Art and Soul of Building Peace*. Oxford University Press. Oxford.
- Leonard, K. 2009. *Election Journal in Africa*. EISA Publication.
- LSK. *The Law of Kenya Journal*, Volume 6 of 2010
- Mamdani, M. (2002). *Citizens and Subjects: Contemporary Africa and the legacy of Late Colonialism*. Ibadan: John Archers
- Mercy Corps. (2011). *Understanding Political Violence among youths: Evidence from Kenya on the links between youth economic independence, social integration and stability*, June 2011.
- Mercy Corps. *Mercy Corps in Kenya: Recovery After Post-Election Violence*, 2011.
- McLean and Fraser, H.E. (2009). *Youth Exclusion, Violence, Conflict and Fragile States*, Report prepared for DFID's Equity Rights Team, Social Development Direct.
- Nangulu, Anne. "The State, Ethnicity and Resource Allocation for Socio-Economic Development in Kenya." *Maarifa* (School of Arts and Social Sciences) II, no. 2 (July 2007): 243-254.
- Ong'ayo, Anthony Otieno. "The Post Election Violence in Kenya: An Overview of the Underlying Factors." *Pambazuka*. February 14, 2008.
<http://www.pambazuka.org/en/category/comment/46094>
- Ragin, C. C. (1987). *The comparative method: Moving beyond qualitative and quantitative strategies*. Berkeley: University of California Press.
- Saunders, Harold. H. 1999. *A Public Peace Process: Sustained Dialogue to Transform Racial and Ethnical Conflicts* (New York: St. Martin's Press, 1999).

Saunders, Harold H. 1999. "The Multilevel Peace Process in Tajikistan." In *Herding Cats: Multiparty Mediation in a Complex World*. Edited by Crocker. Chester A., Fen Osler Hampson and Pamela Aall, eds. Washington DC: USIP Press.

Slaughter, Anne-Marie, 2004. *A New World Order* (Princeton: Princeton University Press).

Stewart, D.W., & Shamdasani, P.N. (1990). *Focus groups: Theory and practice*. London: Sage

Sharan, Meriam. B. (ed.). 2002. *Qualitative research in practice*. San Francisco, CA: Jossey-Bass.

Patton M. Q. (1990) *Qualitative Evaluation and Research Methods*. London, Sage Publications

Government of Kenya. *Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission*. Task Force, Nairobi: Government of Kenya, August 26, 2003.

Political Parties Act, Kenya 2011

Richards, Paul. (1995). *Rebellion in Liberia and Sierra Leone: a crisis of youth?* In: O.W. Furley (ed.). *Conflict in Africa*, I.B. Tauris: London.

Richards, P (1996). *Fighting for the Rainforest: War, Youth and Resources in Sierra Leone*. Oxford: James Currey and Heinemann.

United Nations Children's Fund (UNICEF). (2005). *State of the World's Children 2005: Childhood under Threat*. New York: UNICEF.

United Nations Children's Fund (UNICEF). (2009). *Children and Conflict in a Changing World, Machel Study 10-Year Strategic Review*. New York: UNICEF

United Nations Department of Social and Economic Affairs (UNDESA). (2005). *World Youth Report: Young people today, and in 2015*. New York: UNDESA.

Waki Commission Report on the Inquiry of Post Election Violence. GOK, 2008

World Bank (2007). *World Development Report 2007: Development and the Next Generation*. Washington DC: World Bank Publications

World Bank. (2011) *World Development Report 2011: Conflict, Security and Development*. Washington DC: World Bank Publications.

INTERVIEW GUIDE

THE ROLE OF CIVIL SOCIETY IN PEACEBUILDING: THE CASE OF KENYA

Please indicate if you wish to remain anonymous and to have your name and identification withheld in the research report:

Please indicate if you have read and signed the informed consent form:

Name :

Organization:

Operational Region/ Province:.....

Date and Time:.....

Brief profile of the Organization

Please, tell me about your organization and its major roles, activities and mission;

1. History of elections conflict in Kenya

- In your view, when did the election related conflict begin in Kenya?
- What, in your opinion are the reasons for the election violence Kenya?
- What strategies if any were utilized to resolve the post election violence in 2007/2008

2. Role in Peacebuilding

- What has been your organisation's role in mitigating and preventing election violence?
- Following the election conflict in 2007, what has been your organisation's role in mitigating election violence?
- Does your organisation engage in other peacebuilding activities that are beyond elections?

3. Impact of Peacebuilding Initiatives

- What has been the impact of your organisation's peacebuilding programs on the communities?
- What have you observed as the impact of other Civil society organisation's peacebuilding?

4. The future of Kenya

- How do you see the events in Kenya unfolding in the next year (elections)? In the next 5 years?
- Do you foresee any major changes to the conduct of elections?
- Do you foresee any changes with regards to the nature of conflicts in Kenya and the peacebuilding environment?

5. Critical Analysis of Civil society

- What have been the most notable achievements by civil society in the peacebuilding arena?
- What are some of the challenges you face in delivering peacebuilding programs?

6. Way forward/ Recommendations

- Any recommendations to enhance peacebuilding in Kenya?
What role should various stakeholders play to ensure sustainable peace in Kenya
- What are your recommendations for resolving election-related violence?