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ASSESSING THE ROLE OF EAST AFRICAN LEGISLATIVE ASSEMBLY IN MANAGING CONFLICTS IN THE EAST AFRICAN SUB-REGION: 2001 - 2008

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Declaration

I declare that this proposal is my original work and has not been presented   for a degree award in any other university.

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Stephen Njenga Ruge

This proposal has been submitted for examination with my approval as university   supervisor.

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ABSTRACT

Efforts at achieving integration in East Africa have a long history. Formal economic and social integration have been traced to, *inter alia*, the commencement of the construction of the Kenya-Uganda Railway (1897-1901), the establishment of the Customs Collection Centre (1900), the East African Currency Board (1905), the Postal Union (1905), the Court of Appeal for Eastern Africa (1909), the Customs Union (1919), the East African Governors Conference (1926), the East African Income Tax Board (1940) and the Joint Economic Council (1940).[1] This paper outlines the development of the East African Community, from declaration of intent in 1963, establishment in 1967 and eventual collapse in 1977 and subsequent efforts at resuscitating the organisation culminating in the Treaty for the Establishment of the East African Community which was signed on 30th November, 1999. The paper examines progress made and posits that lack of a clearly defined conflict management mechanism within the Community poses a threat to the achievement of integration and the eventual goal of political federation. The paper asserts that looking at the conceptual and institutional basis of legislatures around the world, the East African Legislative Assembly has a pivotal role to play in managing conflicts which is not recognized not only by policy-makers but also by the members of the Assembly themselves. The paper notes that the Assembly, in recognition of that role, established a Committee on Regional Affairs and Conflict Resolution. This was to compliment other legislative mechanisms such as legislation, representation and oversight, which, though seen as important processes in a democratic system, and particularly in the exercise of the principle of separation of powers, this paper argues that they have an inherent conflict

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[1] *Treaty Establishing the East African Community*, Arusha, EAC Secretariat, 2002, p 1

management component. The essay assesses how these mechanisms have been utilised in managing conflicts in the sub-region and their viability and concludes that conflicts have been and will continue to be a phenomena in the sub-region which will consequently pose serious risks to the goal of economic and political integration. Mechanisms must therefore be clearly defined, developed and strengthened to manage conflicts which are part and parcel of human existence.

1.0 CHAPTER ONE: BACKGROUND TO THE STUDY

1.1 Introduction

The East African Community is an economic association of East African countries of Kenya, Tanzania, Uganda, Rwanda and Burundi. It began with a declaration of intent in 1963 between Kenya, Tanzania and Uganda to improve trade, communications and economic development. This was the East African Common Services Organization which provided for common currency, common market and customs. This agreement was developed by the Treaty of Kampala of 1967 into the East African Co-operation for the establishment respectively, of the East African High Commission, the East African Common Services Organisation and the East African Community as successive joint organisations of the said countries to control and administer certain matters of common interest and to regulate the commercial and industrial relations and transactions between the countries and by means of a central legislature to enact on behalf of the countries laws relevant to the purposes of the joint organisations.[2] The East African Community had its headquarters in Arusha, Tanzania. Considerable economic headway was made before 1971 when Uganda came under Idi Amin's regime. The Community eventually broke up in 1977.[3] After much bickering over the assets and liabilities, a Mediation Agreement was arrived at on 14th May 1984.[4] The collapse of the Community in 1977 is widely attributed to several factors which include; lack of strong political will, lack of strong participation of the private sector and civil society in the co-operation activities, the continued disproportionate sharing of benefits of the Community among the Partner

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[2] Ibid., preamble
[3] "East African Community," *A Dictionary of World History*, 2000, Encyclopedia.com

States due to their differences in their levels of development and lack of adequate policies to address this situation. Under Article 14.02 of the Mediation Agreement, the countries agreed to explore and identify areas for future co-operation and to make arrangements for such co-operation. Subsequently, on 30th November,1993, provision was made by the Agreement for the Establishment of The Permanent Tripartite Commission for Co-operation between the three countries. Consequently, The Tripartite Commission was established with the mandate for the co-ordination of economic, social, cultural, security and political issues among the countries. A Declaration was also made by the Heads of State of the countries for closer East African Co-operation. On 26th November,1994, provision was made by the Protocol on the Establishment of a Secretariat of the Permanent Tripartite Commission for Co-operation. On 29th April,1997, the Heads of State of the countries, after reviewing the progress made by the Tripartite Commission in the development of closer co-operation between the said countries in the fiscal, monetary, immigration, infrastructure and service fields and after approving the East African Co-operation Development Strategy for the Period 1997-2000, directed the Tripartite Commission to embark on negotiations for the upgrading of the Agreement establishing the Tripartite Commission into a Treaty.[5] The first East African Development Strategy of 1997-2000 focussed on the development of the policy framework for regional co-operation. Its implementation culminated into the signing of the Treaty for the Establishment of the East African Community on 30th November, 1999 in Arusha, Tanzania. The Treaty entered into force on 7th July, 2000 following its ratification by the original 3 partner states. Upon launching of the Treaty, other remnant institutions of the

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[4] T. N. Kibua and A. Tostensen, "Fast-Tracking East African Federation: Assessing the Feasibility of a Political Federation by 2010," CMI Report, Nairobi &Bergen, Oct. 2005, p1

defunct EAC like the East African Development Bank, the Inter-University Council for Eastern Africa and the Lake Victoria Fisheries Organisation were deemed to be institutions of the Community. The Treaty aimed at strengthening economic, social, cultural, political, technological and other ties for partner states' fast, balanced and sustainable development by the establishment of an East African Community, with an East African Customs Union and a Common Market as transitional stages to and integral parts, and subsequently a Monetary Union and ultimately a political federation.[6] The first East African Summit was held in Arusha on January 15, 2001 and followed thereafter by its formal launching, an occasion graced by the heads of state of the three member countries. Among the observers were the Presidents of Burundi and Rwanda. In a joint Communiqué, the three heads of state declared that the launch of the EAC marked "a decisive phase and commitment of the people of East Africa to the development and realisation of a meaningful and viable people-centred regional integration."[7] The Vice-President of the United Republic of Tanzania officially launched the Council of Ministers on 13 January, 2001 when it held its first session at Arusha. The institutionalisation process of the EAC was completed with the inauguration of the East African Legislative Assembly and the East African Court of Justice on 30 November, 2001. Referring to the first attempt at East African integration, Mwagiru noted that the old East African Community collapsed in 1977 because it did not provide for sufficient conflict management mechanisms and that it seemed to operate from the assumption that the idea of a community would preclude or eliminate conflicts which meant that eventually when

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[5] *Treaty Establishing the East African Community*, Arusha, EAC Secretariat, 2002, preamble, Op cit.
[6] Ibid., preamble
[7] "Mambo" Newsletter of French Institute for Research in Africa, Vol. II, No. 1, 2001, pp 1-2

political conflicts broke out, there were no mechanisms that could mediate them.[8] Mwagiru adds further that this thinking seems to be the trend adopted in the current movement towards a new East African Community with the Treaty being based on the thinking that the whole idea of integration and functionalism that it entails will curtail the emergence of conflicts which ignores the ever-present reality that conflict is an inalienable part of human life.[9] It is therefore important that conflict management mechanisms be devised and integrated into the East African Community structure to address various forms of conflict. This proposal will explore conflicts in the sub-region and assess the role of the East African Legislative Assembly as one of the organs of the Community in managing conflicts. This approach emanates from the concept that the fundamental function of a legislature, whether national, sub-national or supra national is to legislate or make laws. A law is defined as "a rule of conduct formally recognized as binding or enforced by authority."[10] Management of conflict is essentially the *sine qua non* of law. The East African Legislative Assembly therefore has an innate or inherent role in the management of conflict in the sub-region, primarily as a law-making body and secondly as a debating chamber. The legislature, as the representative body of government, has the potential to be an extremely effective institution for conflict management.[11] Article 49 (2) of the Treaty aptly recognises this role and states:

"The Assembly:

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[8] M. Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*, Nairobi, CCR Publications,2006, p 153

[9] Ibid., p 154

[10] *Longman Family Dictionary*, London, Chancellor Press, 1988, p389

[11] N. Dutta et al, "Report of Coursework for Policy Workshop on Building Legislatures in Fragile Societies," Woodrow Wilson School of Public and International Affairs, p v

(d) shall discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty."[12]

Acting pursuant to powers given by Article 49 of the Treaty in furtherance of its mandate, the Assembly established a committee on Regional Affairs and Conflict Resolution, which is a clear indication that the Assembly recognized the need to manage conflicts. The admission of Rwanda and Burundi as members of the Community makes the task even the more critical from the perspective of conflict systems. Mwagiru has noted that conflict systems in Africa can not only be identified geographically in the context of east, west, south and north, but also thematically, for instance, the Horn of Africa or the Great Lakes conflict systems.[13] These conflict systems overlap making them very difficult to manage due to the complexity of issues, interests and actors and the expansion of the Community will bring all these factors into play.

1.2 Statement of the Research Problem

The Treaty establishing the East African Community gives a history of formal and informal co-operation and interactions in the region and a roadmap towards a political federation through transitional stages of customs union, common market and monetary union. However, as Mwagiru observes, it fails to define how emerging conflicts will be managed so as not to threaten the community as it did in 1977.[14] Lack of a clearly defined conflict management mechanism poses a major risk to integration efforts considering the

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[12] *Treaty Establishing the East African Community*, Arusha, EAC Secretariat, 2002 Article 49, Op cit.
[13] M. Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*, Nairobi, CCR Publications, 2006, p 78, Op cit.
[14] Ibid., p 154

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internecine conflicts witnessed in the sub-region both in the past and present. These conflicts include the over two-decade insurgency in northern Uganda orchestrated by the Lord's Resistance Army; the 27 December 2007 general elections in Kenya that culminated into the worst political crisis in the country since independence taking cognizance that Kenya's political and economic health is an essential ingredient for the security and prosperity of eastern and central Africa and indeed, for how the entire continent's future is assessed by investors;[15] the row over the ownership of *Migingo* island in the Lake Victoria between Kenya and Uganda is another indication of the urgent need for a clearly defined conflict management mechanism. Indeed, the EAC Observer Mission Report on the general elections in Kenya of December 2007 recommended, among others, the establishment of a regional mechanism to prevent, manage, and resolve disputes and conflicts and common mechanisms for the management of refugees in the region as per chapter 23 of the Treaty.[16] In addition, the Republics of Rwanda and Burundi acceded to the EAC Treaty on 18 June, 2007 and became full members of the Community with effect from 1 July, 2007. The enlargement brings into the fold Rwanda and Uganda, countries that have had frosty relations in the past which, by 2001, this rivalry had resulted in three battles in the Congolese town of Kisangani.[17] Burundi, the other new entrant to EAC has been facing internal political crisis. The civil conflict in Burundi between political groups compromises the holding of free and fair elections in 2010 and the country's future stability.[18] These conflicts and rivalries are besides the

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[15] International Crisis Group, "Kenya in Crisis," *Africa Report* No. 137, February, 2008
[16] "The East African Community Observer Mission Report on the Kenya General Elections of December,2007," EAC Secretariat, p 8
[17] International Crisis Group "Rwanda/Uganda: A Dangerous War of Nerves", *Africa Briefing* No.7, December,2007, p 2
[18] International Crisis Group "Burundi: Restarting Political Dialogue," *Africa Briefing* No. 53, August, 2008, p 1

clashes between communities in the sub-region particularly pastoralists living along the international borders which frequently engage in deadly cattle rustling activities as well as conflicts over water and pasture, and since they cannot be eradicated, a mechanism should be developed for timely and proper management in a structured manner to secure the goal of co-operation and integration. The study will investigate what role the East African Legislative Assembly which, *inter alia*, established a committee on Regional Affairs and Conflict Resolution pursuant to its powers under the Treaty has played in management of conflicts in the sub-region.

1.3 Objectives of the study

1.3.1 Overall Objective

The study has the overall objective of assessing the role of the East African Legislative Assembly in managing conflicts in the sub-region.

1.3.2 Sub- Objectives

The study has the following sub-objectives;

i) to explore conflicts and their dynamics in the sub-region that threaten integration;

ii) to inquire into the strategies employed by the East African Legislative Assembly and establish the major challenges facing it in managing conflicts; and,

iii) to examine the role of legislatures in the area of conflict management and to make recommendations that will enhance effectiveness of EALA in conflict management.

1.4 Literature Review

1.4.1 Introduction

The literature is divided into four thematic groups, namely, rationale for regional and sub-regional economic co-operation, the East African Community, the East African Legislative Assembly and an assessment of legislatures in managing conflicts. The themes are useful to the study because the essence of the East African Community is the promotion of social, economic and political co-operation and integration and hence an examination of the basis of the principle is essential. A review of literature on East African Community will assist in defining the scope of the study against the backdrop of available information. The legislature, as one of the organs of the Community is expected to play a functional role in furthering the course of integration. In particular, Article 5 of the Treaty stipulates-

> "the objectives of the Community shall be to develop policies and programs aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit."[19]

The preamble of the Treaty enumerates transitional stages towards greater integration culminating into a political federation. However, as Nye noted while referring to the first East African co-operation, "a loose system of co-operation is forever prey to any small spark which may set off a chain reaction." He also argued that East African economic integration is vulnerable to many sources of disruption in the economic, administrative,

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[19] *Treaty Establishing the East African Community,* Arusha, EAC Secretariat, 2002, Article 5, Op cit.

and political fields.[20] Rothchild, further commenting on the earlier attempt at East African Federation, asserted that leaders must make a concerted effort to ensure that the gains of co-operation did not slip away and also highlighted warning signs detrimental to co-operation which were already in evidence. He concluded that "a variety of approaches to unity are possible. What is all important is that leaders keep moving steadily in the direction of this goal."[21] The East African Legislative Assembly will be furthering the goal of co-operation and integration by managing conflicts that will certainly arise from time to time. An assessment of legislatures in governance was undertaken to determine their nexus in conflict management.

1.4.2 Rationale for regional and sub-regional economic co-operation

Extensive body of literature exists on the history, merits and theoretical basis of various forms of co-operation, be they economic, political, national or cultural. The World Bank study, "Sub-Saharan Africa: From Crisis to Sustainable Growth," lays a lot of emphasis on "regional integration and co-operation" and gives examples where this has produced results in concrete terms. The study accepts that regional integration and co-operation among African states is still an objective worth pursuing if Africa is to benefit from economies of scale in her industrialization process. Calls for unity and co-operation in Africa were made even at the dawn of independence, by vocal pan-africanists like Nkrumah and Nyerere. Nkrumah, for example, argued that the fragile nation-state, born out of the accidents of history emanating from colonialism, would be too weak, too poor, and politically vulnerable to serve the needs of the people and further noted that:

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[20] J.S Nye, "East African Economic Integration," *The Journal of Modern African Studies, Vol. 1, No. 4*(Dec. 1963). p 501
[21] D. Rothchild, "East African Federation" *Transition*, No. 12 (Jan.-Feb 1964) p 39

"The need to establish institutions which can help member states, collectively, to develop capabilities and infrastructures essential for their economic and social development and which individually, they are too poor to set up, was recognized soon after the establishment of the ECA."[22]

There was therefore general consensus especially in the post-independence period that political and economic unification of the African continent was necessary if self reliant development was to be achieved. There was however no agreement on how this integration and unity could be achieved. Nyerere, for example, believed that while continental unity was politically desirable, it was not practically implementable at once and that this would have to be achieved by stages with regional groupings being a step forward and so were other forms of co-operation.[23] This latter group agreed that economic and technical development, in the respective territories and on intra-African basis, should take precedence over political union. The possibility of an African political integration emerging at an unspecified distant date was not ruled out, but in the prevailing circumstances of the time, economic and social co-operation was to precede political union.[24] Contributing to the debate, Kibaki, the then parliamentary secretary in charge of development planning in Kenya, noted that "the debate seems to be between those who think that independent African states should aim at forming a 'political union'....directly; and those who think the best approach lies in 'functional co-operation' and the promotion of regional associations (or federations) which would then work out the political

[22] A. Nyong'o, "Regional Integration in Africa: An Unfinished Agenda," in A. Nyong'o (ed) *Regional Integration in Africa: Unfinished Agenda,* Nairobi, Academy Science Publishers, 1990, p 4, Op cit.
[23] Ibid., p 5
[24] G. A Nweke, "The Organization of African Unity and Intra-African functionalism," *Annals of the American Academy of Political and Social Science, Vol. 489, International Affairs in Africa* (Jan. 1987), p 137

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unification of all Africa."[25] In fact, this idea of gradual building block approach was not new.

Functional co-operation in Africa had its roots in the colonial era and it was essentially for economic reasons. The British colonial administration attempted to harmonise their administration and control of native affairs in East Africa and argued that a stronger political union would be a prerequisite for economic integration of East Africa.[26] Ochwada has argued that partnership and collective action is crucial in development, therefore, enlarging the social terrain of interaction could pay dividends in economic and political terms. He states further that this will be achieved only if an adequate policy reformulation on the terms of integration is undertaken to lessen distinctions that ascribe specific characteristics to different states of East Africa.[27] At the continental level, the Organisation of African Unity was formed as an institutional expression of over six decades of the African struggle for collective identity and security. Although in theory and practice the OAU fell short of the functionalist model, of "a working peace system" and of a neo-functionalist supranational body offering appropriate outlet for a plurality of interests, its commitment to functionalism is reflected not only in the politics of African unity, but also in the Charter and in the fact that it was seen as a precursor to that end dream of an African sociopsychological community.[28] The East African Legislative

[25] J.S Nye, "East African Economic Integration," *The Journal of Modern African Studies, Vol. 1, No. 4*(Dec. 1963), pp 475-476, Op cit.
[26] H. Ochwada, "Rethinking East Africa Integration: From Economic to Political and from State to Civil Society," *Africa Development, Vol. xxix*, No. 2, 2004, p 58
[27]Ibid., p 54
[28] G. A Nweke, "The Organization of African Unity and Intra-African functionalism," *Annals of the American Academy of Political and Social Science, Vol. 489, International Affairs in Africa* (Jan. 1987), p 134, Op cit.

Assembly, as one of the organs of the community and in furtherance of its mandate as provided in the Treaty must play a functional role in advancing the course of integration.

1.4.3 The East African Community

The East African Community (EAC) is the regional intergovernmental organisation of the Republics of Kenya, Uganda, the United Republic of Tanzania, Republic of Rwanda and Republic of Burundi with its headquarters in Arusha, Tanzania. Initially, it comprised Kenya, Uganda and Tanzania but later expanded to incorporate Rwanda and Burundi after the two countries acceded to the Treaty in 2007. Referring to the initial East African Community, Sebalu observed that many students of economic organizations claimed that the East African Community is unique in the whole world and is one of the most integrated and most advanced of regional organizations for economic and political co-operation.[29] Kenyatta concurred with this view referring to the Treaty for the EAC as "one of the most advanced stages of co-operation between sovereign states anywhere in the world."[30] Sebalu also argued that co-operation in East Africa evolved as a result of historical circumstances as the territories were under one colonial power which led to the construction of a unified railway system, post office and, later, an airline, in order to reduce the cost to the British Exchequer which was subsidising these services initially.[31] Indeed, East Africa is credited with one of the longest experiences in regional integration which is traced to a Customs Union operated by Kenya and Uganda as early as 1900.[32] The economic association which began with a declaration of intent in 1963 to improve

[29] P. Sebalu, "The East African Community," *Journal of African Law, Vol. 16, No. 3 (1972),* p 345
[30] S.G Weeks, "The East African Community," *Africa Today, Vol. 14, No. 5, American Policy in Southern Africa (Oct. 1967),* p 2
[31] P. Sebalu, "The East African Community," *Journal of African Law, Vol. 16, No. 3 (1972),* p 345, Op cit

trade, communications and economic development through the East African Common

Services Organization was developed by the Treaty of Kampala of 1967 into the East

African Community. It made considerable economic headway before 1971 when Uganda

came under Idi Amin's regime.[33] Weeks asserted that some analysts pointed that

obstacles to the success of the East African Community included divergent political and

ideological patterns being followed in the three countries and the decentralization made

possible by the Treaty.[34] Mwagiru has noted that sub-regional organisations have always

been a part of the political map of Africa and the question of their role pre-figured the

setting up of the OAU in 1963. These organizations were initially envisaged to play an

economic role within African politics eventually creating a continent-wide economic

system. Mwagiru further noted the danger of the belief that economic units and

organizations can operate separately from the political framework of the continent. This

view was vindicated by the circumstances surrounding the collapse of the EAC in 1977.

Mwagiru has argued that the old East African Community, amongst other things, failed

because it did not provide for sufficient conflict management mechanisms.[35] This study

will establish whether this weakness has been rectified in the current second attempt

towards co-operation and integration. As Kagame noted at an EAC retreat in Kigali, "as

in other parts of Africa and the world, regional integration has a long history- and in our

case in East Africa, we are what I may call the 'second generation' of regional integration

attempts and determined to do better than previous efforts. We will achieve better

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[32] East African Community, "Progress, Achievements and Benefits of the East African Community," East African Community, Arusha, 2008, p 5, Op cit
[33] "East African Community," *A Dictionary of World History*,2000, Encyclopedia.com, Op cit
[34]S.G Weeks, "The East African Community," *Africa Today, Vol. 14, No. 5, American Policy in Southern Africa (Oct. 1967)*, p 3, Op. cit
[35]M. Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*, Nairobi, CCR Publications, 2006, p 153, Op cit.

outcomes because we fully understand the benefits of larger markets, economies of scale, larger pools of human, financial, and physical capital- and generally because East Africans have rich legacies of socio-economic, political and cultural interactions that are being consolidated by formal institutions."[36] The main objective of the establishment of the Community is described by Museveni who asserted that:

> "The balkanization of Africa into 53, mostly sub-optimal states, has meant that Africa cannot have a large internal market under one political authority; have no power to negotiate with the rest of the world. This balkanization must stop."[37]

Kibaki concurred with this view when he argued that, "I firmly believe that regional integration is not a choice but a necessary strategy for sustainable development. On a cultural level, regional integration solidifies the unity of communities with personal ties and common history, language and culture."[38] A World Bank report supports this approach by asserting that "international boundaries still matter, although scale economies and lower transport and communication costs have increased trade opportunities. The greatest divisions remaining in the developing world are often between neighbours. Interaction may be especially important: regional integration can best help developing countries leverage scale economies and lower transport costs."[39] There is therefore general agreement in the literature that there is merit in scaling up regional

[36] P. Kagame, Speech made at EAC Retreat, Kigali, 9 February, 2009
[37] East African Community, "Report of the Committee on Fast Tracking East African Federation," EAC Secretariat, Government Printer, Nairobi, 2004, p 5
[38] Ibid., p 5
[39] World Bank, "World Development Report 2009: Spatial Disparities and Development Policy," Washington, 2009, pp ii-iii

integration especially economic integration as a way of building viable neighbourhoods as a means of addressing the development challenge particularly of sub-saharan Africa.[40]

1.4.4   The East African Legislative Assembly

The membership of East African Legislative Assembly currently stands at 52, with 9 members elected from each partner state and 7 Ex-officio members. Members are indirectly elected by their respective National Assemblies. Article 50 mandates the National Assemblies of each partner state to determine the procedure of electing members to the East African Legislative Assembly. Commenting on processes for elections to EALA by the initial partner states, Ang'ila noted that the rules for the three countries were almost identical with some practical deviations. He argued that the greatest controversy was in Kenya which ignored gender concerns by failing to nominate at least three women as stipulated in the rules. He observed further that the bigger problem was the glaring lack of civil society involvement in the election process in each of the three countries as well as lack of involvement of the ordinary citizens and concluded that the process of regional integration will only be meaningful if done with the full involvement of all citizens.[41] The process of election for members of the Assembly became the subject of a case before the East African Court of Justice filed by Anyang' Nyongó and ten others in 2006 regarding nomination and election of representatives from Kenya. The Court delivered its judgement on 30th March,2007 declaring that the rules of election applied by the Kenya National Assembly infringed Article 50 of the Treaty and that what transpired in the National Assembly did not

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[40] Ibid., p 29
[41] F. Ang'ila, "Processes for Elections to the East African Legislative Assembly," Friedrich Ebert Stiftung, Nairobi, 2004, p iv

constitute an election within the meaning of Article 50 of the Treaty.[42] The process and the results were, therefore, nullified. As the countries move towards greater integration, the entire principle and process should be fundamentally reviewed to make provision for direct elections of members to EALA to make them represent real East African constituencies fully espousing and promoting the agenda of integration. The committee on fast tracking East African integration noted and lamented the lack of a politically accountable authority at the regional level; lack of clearly defined roles for the East African Legislative Assembly and the East African Court of Justice in contributing to the integration endeavour.[43] In course of its work, the committee on fast tracking East African integration solicited views and perceptions from stakeholders throughout the region. From these consultations, it emerged a clear picture of an East African people overwhelmingly in favour of a federation. However, they were united in their call for a people-centred federation based on a bottom-up approach rather than a top-down declaration by political elites of the partner countries.[44] A representative Assembly democratically and directly elected by the people of East Africa would be extremely useful in the process of facilitating participation by the people. Its main work is similar to that performed by most legislatures in the Commonwealth. As the legislative arm of the EAC with oversight over all the Community's work, the Assembly has a wide responsibility which is reflected in the scope of the standing committees that handle the Assembly's main work.[45] EALA carried out these functions through Bills, Motions for

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[42] East African Court of Justice Ref. No. 01/2006
[43] T. N. Kibua and A. Tostensen, "Fast-Tracking East African Federation: Assessing the Feasibility of a Political Federation by 2010," CMI Report, Nairobi &Bergen, Oct. 2005, p viii, Op cit
[44] Ibid., pp 9-10
[45] "East African Community and the East African Legislative Assembly," EAC Secretariat, Arusha, 2008, pp 1-3

resolutions, questions to the Council of Ministers and reports of committees. Among EALA's major achievements cited in its eight years of existence traversing the first and the second Assemblies include enactment of 18 legislations, debate and approval of EAC budgets. Questions have been raised about the scope of the mandate of the Assembly and particularly its relationship with other organs of the Community. Abdi, the Speaker of the Assembly has, for instance lamented that the structure of the organs of the Community are not well defined creating conflict among them. To him, the organizational structure of the Secretariat and other institutions of the Community are superior to those of the Assembly and the Court.[46] The Speaker therefore called for the implementation of the doctrine of separation of powers to provide checks and balances among the main organs of the Community. The available literature mostly gives an account of the functions of the Assembly describing how it discharges its mandate within the Community but fails to clearly illustrate its contribution to the goal of integration.

1.4.5 An Assessment of Legislatures in Conflict Management

The legislature, otherwise referred to as Parliament, is one of the three institutions of government created on the constitutional basis of the doctrine of the separation of powers.[47] It is generally recognized as one of the arms of state. A state is defined as 'an independent political society occupying a defined territory, the members of which are united together for the purpose of resisting external force and the preservation of internal order.' Chemerinsky has argued that 'no independent political society can be termed a

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[46]Abdi, A Conference Paper titled, "The East African Legislative Assembly: Mandate, Challenges and Relationships with Other Organs of the Community" presented at the Strategy Retreat for Key EAC Organs, Kigali, February,2009, pp 15-17

state unless it professes to exercise both these functions."[48] He adds further that a fully developed modern state is expected to deal with a vast mass of social problems, either by direct activity or by supervision or regulation. In order to carry out these functions, the state must have agents or organs through which to operate. The appointment or establishment of these agents or organs, the general nature of their functions and powers, their relations *inter se* and between them and the private citizen, form a large part of the constitution of a state.[49] The legislature operates under the basic principle expressed in the theory of constitutionalism. This is a commitment in governmental philosophy to restraint and checks and balances with the goal of ensuring that there are no excesses or abuses of power committed to the detriment of citizens by any particular agency. Thus the exercise of executive powers ought to be conducted within the framework of appropriate checks. This ensures proper administration within the law and respect for recognized rights.[50] The system of "parliamentary" or "responsible government" is one of the constitutional models or control mechanisms devised around the world to prevent untrammelled exercise of power.[51] Faruqi has argued that in political theory, an elected and representative Parliament, endowed with legislative and fiscal powers, is the cornerstone of a democratic edifice. He adds that in the Westminster style of parliamentary democracies, there is a further essential requirement that the executive

[47] A. Oloo & W.V Mitullah, "The Legislature and Constitutionalism in Kenya" in L.M Mute & S. Wanjala (Ed), *When the Constitution Begins to Flower* (Vol. 1), Claripress Ltd., Nairobi, 2002, p 35
[48] E. Chemerinsky, *Constitutional Law, Principles and Policies*, 2nd Edition, New York, Aspen Law & Business, 2002, p 4
[49] Ibid., p 5
[50] A. Oloo & W.V Mitullah, "The Legislature and Constitutionalism in Kenya" in L.M Mute & S. Wanjala (Ed), *When the Constitution Begins to Flower* (Vol. 1), Claripress Ltd., Nairobi, 2002, p 36, Op cit.
[51] S.S Faruqi, " The Coroner or Corpse: A Look at Parliament's Role at the Grand Inquest of the Nation," in Y. Vyas, et al, *Law and Development in the 3rd World*, Faculty of Law, University of Nairobi, 1994, p 163

must be "responsible and answerable" to the legislature.[52] A complete separation of powers, in the sense of a distribution of the three functions of government among three independent sets of organs with no overlapping or co-ordination, would (even if theoretically possible) bring government to a standstill. What the doctrine must be taken to advocate is the prevention of tyranny by the conferment of too much power on any one person or body, and the check of one power by another.[53] There are divergent views on what the relationship between the three arms of government ought to be. Craig has argued that whether we should be dismayed by the executive domination of the legislature depend on what we believe the latter's role to be. He postulated that the legislature should primarily be a critic, a body to scrutinize the government rather than one that has any real hand in the legislative process.[54] Ryle, while commenting on the role of legislature as a critic stated:

"Thus much of the criticism of Parliament and particularly of the House of Commons today, flows, I believe, from this fundamental mistake in their perceived functions. Parliament is wrongly blamed for bad government because Parliament does not govern. To put it baldly: the government governs; Parliament is the forum where the exercise of government is publicly displayed and is open to scrutiny and criticism. And the Commons does not control the executive- not in any real sense; rather the executive control the Commons through the exercise of their party majority power."[55]

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[52] Ibid., p 164
[53] E. Chemerinsky, *Constitutional Law, Principles and Policies*, 2nd Edition, New York, Aspen Law & Business, 2002, p 12, Op cit
[54] P.P Craig, *Administrative Law*, (5th Ed), London, Sweet and Maxwell, 2003, p 78
[55] Ibid., p 78

Much of the literature on legislatures focuses on their role in governance and particularly their functions in a democratic system. An elaborate body of literature exists on mechanisms utilised by legislatures to fulfil their constitutional mandate, including treatises on parliamentary practise and procedure. However, not much work has been undertaken in the area of legislatures in managing conflict except as an institutional actor in a democracy. The democratic peace thesis, perhaps the most widely accepted thesis among international relations theorists, for example, posits that democracies rarely go to war with other democracies and by extension, have non-violent methods of resolving internal disputes. Although not without critics, the consensus view of advocates of this thesis is summed in the oft-repeated observation that the "absence of war between democracies comes as close as anything we have to an empirical law in international relations."[56] The theory advances three explanations about why democratic polities are pacific: institutional constraints; democratic norms and cultures; and economic interdependence.[57] This essay postulates that whereas S.A de Smith and others have identified the three main constitutional functions of Parliament as making laws; controlling national expenditure and taxation; criticism of national policy and scrutiny of central administration,[58] the effective performance of these functions is, in essence, legislative conflict management.

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[56] J.S Levy, "Domestic Politics and War," in R.I Rotberg & T.K Rabb, (eds), *The Origin and Prevention of Major Wars*, Cambridge, Cambridge University Press, 1989, p 88

[57] C. Layne, "Kant or Cant: The Myth of the Democratic Peace," *International Security, Vol. 19, No. 2 (Fall 1994)*, p 8

[58] S.S Faruqi, "The Coroner or Corpse: A Look at Parliament's Role at the Grand Inquest of the Nation," in Y. Vyas, et al, *Law and Development in the 3rd World*, Faculty of Law, University of Nairobi, 1994, p 164, Op cit

1.4.6 Overview

As demonstrated, a great deal of literature exists on history and rationale for regional and sub-regional economic co-operation including World Bank reports. The roots of functional co-operation in Africa were traced and the background of the East African Community and the discourses on the scope of co-operation. The membership of the Assembly, mandate and operational processes and relationship with other organs of the Community were explored. The principle of separation of powers in a constitutional system was discussed and the role of legislatures in governance. There is evidence to show that regional and sub-regional integration offers tangible benefits and therefore the dream of integration in East Africa is worth pursuing. The paper argues that various organs of the Community as functional entities must play a role in pursuit of the goal of integration. It concludes that the Assembly, though generally perceived by many scholars as a legislative, oversight and representative body, has a role to play in managing conflicts in the sub-region, not only conceptually, but also as provided in the Treaty.

1.5 Justification of the study

The study illustrates that conflicts in the East African sub-region, like elsewhere in the world, exist as they are an inalienable part of life. Ramsbotham et al have argued that conflict is an intrinsic and inevitable aspect of social change. It is an expression of the heterogeneity of interests, values and beliefs that arise as new formations generated by social change come up against inherited constraints.[59] In fact, people in the sub-region have either witnessed or experienced conflicts, including the row over the ownership of a

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[59] O. Ramsbotham, et al, *Contemporary Conflict Resolution* (2nd edition), Cambridge, Polity Press, 2005, p 13

small island in Lake Victoria known as *Migingo* between Kenya and Uganda. A study by Tedd Gurr and others noted that while the prevalence of armed conflict has declined significantly in the 1990's, "Africa, along with very poor and non-democratic states elsewhere in the world, will continue to experience serious warfare in the future. If the goal of greater economic and political integration is to be achieved, then a clear mechanism must be devised to manage various forms of existing and emerging conflicts. This study will explore risks posed to the Community by conflicts and the futility of the assumption that conflicts will cease to exist at the idea of the Community. It will examine conflicts in the sub-region in the period 2001- 2008 and assess the role EALA has played in managing them. The results of the study will be useful to policymakers at the highest level of the Community to undertake an appraisal of the journey towards a political federation and trigger, initiate or activate a fundamental rethink of conflicts and their management as conflicts will certainly be part and parcel of relations between the member countries of the East African Community. This will avoid the pitfalls of the earlier Community that was founded on hope that conflicts would not arise. Policymakers can then use the information and recommendations to take appropriate measures to establish and strengthen conflict management mechanisms and capacities that can handle complex conflicts in the sub-region as they unfold. As Ramsbotham, et al observes;

> "All over the world, societies are facing stresses from population growth, structural change in the world economy, migration into cities, environmental degradation and rapid social change. Societies with institutions, rules or norms for managing conflict and well established traditions of governance are generally better able to accommodate peacefully to change; those with weaker governance,

fragile social bonds and little consensus on values or traditions are more likely to buckle. Strengthening the capacity of conflict resolution within societies and political institutions, especially preventatively, is a vital part of the response to the phenomena of war-lordism and ethno-nationalism."[60]

There was therefore need to conduct this study to ascertain how conflicts were being managed and the effectiveness of conflict management within the framework of East African Community so that measures can be taken to either establish or strengthen existing mechanisms geared at managing conflicts in the sub-region to avoid the pitfalls of the first effort of integration which collapsed in 1977. The study will also be useful to researchers and academicians who might be interested in pursuing further the subject of legislatures in managing conflicts in the future. As Baregu observed in a research proposal, the Great Lakes region which encompasses the East African sub-region has become the home of violent and prolonged conflicts causing untold suffering and blocking meaningful socio-economic progress, but no solution seems to be in sight. He argued that what was required was a fundamental paradigm shift on a number of parameters which include a shift from root causes of conflict to obstacles to peace initiatives, political will to actor interests and strategies, static parties to dynamic actors in conflicts, state actors to comprehensive actor field, internal-external actors to actor interaction, inclusive actor participation to selective targeting and looking at peace as consensual as opposed to peace as contested goal.[61] Academic justification is based on the view that legislatures have been studied as an arm of government in a democratic

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[60] Ibid., pp 7-8
[61] M. Baregu, Research Proposal "Actors, Interests and Strategies in the Great Lakes Conflict Formation," presented at EALA workshop on Causes of Conflicts in East Africa, Bujumbura, November,2008

system but not as a mechanism for conflict management, which concurs and reinforces this dynamism in approach advanced by Baregu in managing conflict. The essay gives new impetus in the study of legislative institutions.

1.6 Conceptual Framework

A legislature is defined as the branch of government responsible for making statutory laws.[62] It is one of the three arms of government in a democratic system, the others being the executive and the judiciary. The identification of the three elements of the constitution derives from Aristotle. In the *Politics*, Aristotle proclaimed that;

> "There are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it; if these are well arranged, the constitution is bound to be well arranged, and the differences in constitutions are bound to correspond to the differences between each of these elements. The three are, first, the deliberative, which discusses everything of common importance; second, the officials; and third, the judicial element."[63]

Montesquieu, a French Enlightenment philosopher, further stressed the importance of the principle of separation of powers in the 18th century. He asserted that;

> "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty....Again, there is no liberty if the powers of judging is not separated from the legislative and executive. If it were joined with the legislative, the life and liberty of the subject would be

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[62] B. A Garner (ed.) *Black's Law Dictionary*, (8th Ed.) Minnesota, West Publishing Co., 2004, p 919
[63] H. Barnett, *Constitutional and Administrative Law* (7th Ed.) Abingdon, Routledge-Cavendish, 2006, p 74

exposed to arbitrary control; for the judge would then be legislator. If it were joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, if the same man or the same body... were to exercise those three powers."[64]

Separation of powers is a fundamental doctrine to the organisation of a state, and to the concept of constitutionalism, in so far as it prescribes the appropriate allocation of powers, and the limits of those powers, to differing institutions. It is the relationship between these bodies which must be evaluated against the backcloth of the principle. The essence of the doctrine is that there should be, ideally, a clear demarcation of personnel and functions between the legislature, executive and judiciary in order that none should have excessive power and that there should be in place a system of checks and balances between the institutions.[65] The legislature, as the representative body of government, has the potential to be an extremely effective institution for conflict management.[66] In the United States system, for example, a state legislature is called 'the people's branch of government' essentially because they are expected to be responsive to the needs and wishes of the people in ways that governors and judges are not. Legislatures are also expected to protect the interests of the people they represent. Through a series of institutional norms, structures, processes and relationships, legislatures are able to fashion consensus from very divergent points of view.[67] A legislature is a formal conference on public affairs; a general council; especially an assembly of representatives of a nation or

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[64] Ibid., pp 74-75
[65] Ibid., p 73
[66] N. Dutta et al, "Report of Coursework for Policy Workshop on Building Legislatures in Fragile Societies," Woodrow Wilson School of Public and International Affairs, p v, Op cit
[67] T.H Little & D.B Ogle, *The Legislative Branch of State Government*, Santa Barbara, ABC-CLIO, 2006, pp 1- 5, Op cit

people having authority to make laws. The philosophy that stakeholders can transfer their grievances from the battlefield to the political sphere, and power-sharing mechanisms can be adopted to bring all segments of society into the political framework is a key concept. In addition, stakeholders can pursue compromises and participate in making difficult decisions on contentious issues of national policy through the legislative and committee processes in the legislature. Similarly, an effective legislature can exercise oversight over the executive, acting as a check on an authority, if unfettered, could ignore or abuse minority interests.[68]

1.7 Research Hypotheses

The study was based on the following hypotheses:

Lack of clearly defined conflict management mechanism in the East African Community causes delays in resolution of conflicts in the sub-region threatening economic and political integration;

Direct elections for members of the East African Legislative Assembly will increase public awareness of the goal of integration and increased support for the East African Community;

Election of members of East African Legislative Assembly by national Parliaments in proportion to political party strength transfers national political party rivalry to Arusha reducing its effect as an organ of the Community;

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[68] N. Dutta et al, "Report of Coursework for Policy Workshop on Building Legislatures in Fragile Societies," Woodrow Wilson School of Public and International Affairs, p v, Op cit

Inadequate budgetary allocations to the East African Legislative Assembly constraints its role of managing conflicts;

Members of East African Legislative Assembly are not conversant with their role of conflict management which creates confusion when conflicts emerge;

East African Legislative Assembly is perceived as a law-making body and not as conflict management organ which negatively impacts on its role and effect.

1.8   Research Methodology

The study depended on both primary and secondary data. Primary data is factual data collected for the first time to address the problem at hand. This was done primarily through the use of questionnaires as described in the data collection procedures. Secondary data was collected from academic articles, journals, newspapers, published and unpublished work and papers presented at meetings and conferences on the subject of co-operation, peace and security especially in Africa and on legislatures and their role in management of conflicts. Reports of different organs and institutions of the Community were also reviewed.

1.8.1   Research Design

Kerlinger defines a research design as "the plan, structure and strategy of investigation conceived so as to obtain answers to research questions and to control variance."[69]A research design guides the research in collecting, analyzing and interpreting observed facts. A descriptive survey design was used in this study. The design is appropriate

because it is useful in establishing the nature of current condition as it exist at present[70] and that the target population was located at the East African Community headquarters at Arusha, Tanzania and in Nairobi. The design enabled the researcher to secure evidence on the practical functions of organs of the Community and primarily the role of EALA in furthering co-operation and particularly in managing conflicts within the partner states.

1.8.2 Population of the study

Target population is the population to which a researcher wants to generalize the result of the study.[71] The target population of the study comprised 30% of Members and professional staff of EALA as well as officials of the East African Court of Justice and the Secretariat.

1.8.3 Sampling Methodology

According to Singleton, sampling design is that part of the research plan that indicates how cases are to be selected for observation.[72] Since the target population for this study was small, therefore the researcher conducted interviews on a sample of 19 of the targeted 33 respondents. 5 interviews were conducted to supplement information sought through the questionnaires. The respondents were identified using non-probability sampling design applying purposive or judgemental sampling technique. The design was

[69] S.P Robbins, *Managing Organizational Conflict: A Non-traditional Approach*, Englewood Cliffs, N.J, Prentice-Hall, 1974, p 156

[70] C.R Kothari, *Research Methodology: Methods and Techniques*, Second Edition, Wishwa Prakathan, New Delhi, 2004, p 37

[71] Mugenda O.M and Mugenda A.C, *Research Methods, Quantitative and Qualitative Approaches*, Nairobi, Africk Centre for Technology Studies, 2003, p 22

[72] R. C Singleton et al, *Approaches to Social Research*, Oxford, Oxford University Press, 1988, p 136

useful because although the target population is small, not every unit in the population would have the information required for the study.

1.8.4 Data Collection Procedures

The focus during the field survey was to gather primary data. This is factual data collected for the first time to address the problem at hand. The questionnaire was the principle tool in collecting primary data. The questionnaire contained both closed and open-ended questions. According to Kinoti (1998), open-ended questions may elicit adequate qualitative data. The researcher obtained permission from the Clerk of the East African Legislative Assembly who facilitated access to the AICC, Arusha and in certain instances identified and confirmed appointments with respondents. The questionnaires were self-administered. A deadline was set by which the completed questionnaires were to be ready for analysis to commence. The returned questionnaires show that 5 members of the Assembly responded while 14 responses were from either serving or former staff of the EAC. Questionnaires were distributed to serving staff members at the EAC headquarters located at AICC in Arusha, Tanzania while former members of the Secretariat filled the questionnaires in Nairobi. All members of the Assembly filled their questionnaires in Nairobi where they were attending a workshop organized by the committee on Regional Affairs and Conflict Resolution.

1.8.5 Data Analysis Procedures

After the fieldwork, before analysis, all the questionnaires were adequately checked for completeness. Qualitative analysis involved categorizing of qualitative data into common themes from which conclusions were drawn.

Secondary data was collected from academic articles, journals, newspapers, published and unpublished work and papers presented at meetings and conferences on the subject of integration, peace and security, especially in Africa and on legislatures and specifically their role in management of conflicts, with focus on the East African Legislative Assembly as a case study. Reports of different organs and institutions of the Community were also used.

1.8.6 Limitations of Research methodology

As Mugenda et al observes, there is no study that is so perfect that it has no limitations[73] and this one is no exception.

The first limitation was that a proportion of primary data had to be collected when the East African Legislative Assembly or its committees were sitting given that members of EALA are from the five partner states. It was a challenge ensuring that the data was collected within the sitting window. This is based on the assumption that posting questionnaires particularly to politicians is unlikely to elicit responses. This was addressed by keeping track of Assembly programs. This culminated into the interviews that took place in Nairobi during a workshop involving the committee on Regional Affairs and Conflict Resolution. It was a challenge interviewing judges of the EACJ as the court convenes when it has business to transact. A member of the technical staff was interviewed as staffs are on full-time employment and are readily available at EAC headquarters. The other challenge was that many people, including legislators view legislatures as an important organ of governance in a democratic set up and not as a

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[73] Mugenda O.M and Mugenda A.C, *Research Methods, Quantitative and Qualitative Approaches*, Nairobi, Africa Centre for Technology Studies, 2003, p 125, Op cit

mechanism to manage conflicts and consequently had difficulties internalizing the concept and therefore not useful in the discourse.

CHAPTER OUTLINE

Chapter 1   -   Introduction

Chapter 2   -   Debates on Legislatures and their Role in Conflict Management

Chapter 3   -   A Case study of East African Legislative Assembly in Managing

Conflicts in the sub-region: 2001- 2008

Chapter 4   -   A Critical Analysis of Role of East African Legislative   Assembly

in Managing Conflicts

Chapter 5   -   Conclusions and recommendations

2.0 CHAPTER TWO: DEBATES ON LEGISLATURES AND THEIR ROLE IN CONFLICT MANAGEMENT

2.1 Introduction

The Chapter will explore perspectives on the causes of conflict and approaches to management, outline concepts on legislatures and mechanisms used to discharge their mandate and examine their role in conflict management and conclude with an overview.

Ackermann has argued that neither the literature nor the practice of conflict prevention is in its infancy any longer and that an impressive volume of conflict prevention literature has emerged since the early 1990's.[1] She has asserted that much of the conceptual confusion over the scope and definition of conflict prevention found initially in the literature is still there and is linked to two questions, namely, whether conflict prevention should be limited only to the early and non-escalatory stages of a conflict or whether it should address only the immediate causes of conflict or also its underlying roots, or both?[2]

The changing nature of conflict and the increase in intrastate conflict during the 1990's, followed by its slow decline since the turn of the century, have led to changing priorities in the field of conflict resolution. No longer is the international community solely concerned with resolving existing conflicts; it also is managing emerging conflicts to ensure they do not flare into violent conflict. Blake defines conflict management as the "handling of grievances."[3] Mwagiru has argued that conflict is endemic in society which

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[1] A. Ackermann, "The Idea and Practice of Conflict Prevention," *Journal of Peace Research*, Vol. 40, No. 3 (May, 2003), p 341
[2] Ibid., p 341
[3] M. J Borg, "Conflict Management in the Modern World System," *Sociological Forum*, Vol. 7, No. 2 (Jun. 1992), p 265

means that conflict will always be an important part of human life. He adds that conflict is an important and ever present part of society and hence cannot be eradicated and that a society without conflict is both stale and sterile. The solution is, therefore, to learn how to manage it properly.[4] Bengtsson has concurred with this view and has argued that conflict is found wherever competing and mutually-exclusive interests are present and that virtually everywhere, conflict is a naturally occurring phenomenon and is necessary for positive social change.[5] The complexity of conflicts suggests the existence of different types of conflict which reflect, among other things, the complexity of human society, its interactions and its motivations.[6] This complexity is also reflected in the different theories and approaches to conflict and its management and the role of legislatures should be seen in that light. However, one should take due cognizance of one of the bedrocks of international legal and political system that conflict management must be peaceful.[7] Various approaches have been advanced on the history and role of legislatures, processes and mechanisms in the discharge of their mandate. These approaches will be outlined.

2.2 Concepts on the Institution of Legislature

An extensive body of literature exists on *inter alia*, the origins, development, essence and even the future of the institution of legislature especially in the developed countries. Other authors have focussed on different aspects of legislatures, for instance, their role in governance, how they influence policy, internal institutional structures, relationship with

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[4] M. Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*, Nairobi, CCR Publications, 2006, pp 5-6, Op cit.
[5] AWEPA "The Role of Parliaments in Conflict Management and Peacebuilding" *Occasional Paper Series 13* Oct. 2004- Sept. 2006, p 13
[6] M. Mwagiru, *Conflict in Africa, Theory, Processes and Institutions of Management*, Nairobi, CCR Publications,2006, p 14, Op cit.
[7] Ibid., p 36

other arms of government and the budget process in a plethora of subjects touching on different facets of the institution.

Thompson and Silbey have, for example, observed that conventional research in the history of legislatures has been abundant but unsystematic and incomplete. They noted that the institution was born in western Europe during the middle ages but it was in the 19th century that national legislatures came to occupy positions of prominence in the western world, and in several places especially Great Britain, France and the United States, they were their nations' dominant governmental institutions and their major arenas of political action.[8] Henneman has noted that the studies on parliament-

> "deal with aspects of the history of assemblies and representative institutions over a span of eight centuries. They focus primarily on why assemblies were convened and   what they did.....The nature of the source material has influenced the way in which   scholars have studied them. Scholars who lack the documentation that would permit   statistical analysis are nonetheless able to describe many important functions of such   assemblies   and,   sometimes,   to   observe   their political behaviour. Those who have the sources to analyze assemblies by statistical techniques must remain mindful of the long tradition of ceremonial, constitutional, social, and legal behaviour that have given political institutions a complexity which statistics can describe but not necessarily explain."[9]

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[8] M. S Thompson & J.H Silbey, "Research on 19th Century Legislatures: Present Contours and Future Directions," *Legislative Studies Quarterly*, Vol. 9, No. 2 (May, 1984), p 319
[9] Ibid., p 320,

Oppenheimer noted that research on legislatures was substantially process oriented, and policy outputs resulting from those processes tended to be treated tangentially.[10] He concluded that such studies tended to be concerned with such outputs as the number of bills introduced and the efficiency of bill processing. Packenham writes that the principle function of most of the world's legislatures is not to make decisions. To him, most of them do not allocate values or at least do not have it as their principle function and instead, he argued, most of them deal with legitimation, recruitment, and socialization. He summarizes literature on a range of legislatures in developing countries (among which he includes Japan) to support his point that "most of the world's legislatures do not legislate very much." Walke holds similar views as he believed that political scientists have spent too much time studying the policy role of parliaments instead of their supportive functions, which he viewed as critical.[11] Thompson and Silbey further observed that twenty years of research on nineteenth-century legislatures had produced substantial if incomplete picture of the nineteenth-century legislative world in the United States. They added that we are still deficient in describing a great deal of actual behaviour, let alone in understanding the full range of before-the-floor activities in legislatures, the internal dynamics, cue-giving mechanisms, external pressures, from lobbyists and from constituents that make up the decision-making complex. Linkages remain unclear among various aspects of legislative activities, between internal and external realities, and between the legislative arena and the rest of the political system.[12]

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[10]B.I Oppenheimer, "How Legislatures Shape Policy and Budgets," *Legislative Studies Quarterly*, Vol. 8, No. 4 (Nov. 1983), p 551
[11]Ibid., pp 574- 577
[12] M. S Thompson & J.H Silbey, "Research on 19th Century Legislatures: Present Contours and Future Directions," *Legislative Studies Quarterly*, Vol. 9, No. 2 (May, 1984), p 343, Op cit

The antiquities of the word parliament have not been neglected either by lexicographers or by constitutional historians.[13]

A legislature is also known as parliament in many countries that are former British colonies. The word parliament is derived from a French word 'parlement', the action of 'parler', which means to speak. A 'parlement' is a discussion. The term came to mean a meeting place at which such a discussion took place. The French connection in the origins of the institution is recognized by Cuttino who noted that parliament and the common law have become "an inheritance from the great age when Ireland, as well as England, was under the empire of French speech and French thought."[14] Verbal contests are a hallmark of the parliamentary system everywhere and freedom of speech is perhaps one of the most important and valued privileges enjoyed by members of the legislative bodies. In Kenya for example, the National Assembly (Powers and Privileges) Act, declares and defines powers, privileges and immunities of the National Assembly and its members, to *inter alia*, secure freedom of speech. Section 4 states-

> "No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Assembly or a committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise."[15]

Section 60(1) of the Constitution of the Republic of Malawi states-

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[13] H.G Richardson, "The Origins of Parliament," *Transactions of the Royal Historical Society*, Fourth Series, Vol. 11 (1928), p 137
[14] G.P Cuttino, Mediaeval Parliament Reinterpreted, *Speculum Vol. 41, No. 4 (Oct. 1966)*, p 681
[15] *National Assembly (Powers and Privileges) Act*, Section 4, Chapter 6, Laws of Kenya

"The Speaker, every Deputy Speaker, every member of the National Assembly and every member of the Senate shall, except in cases of treason, be privileged from arrests while going to, returning from, or while in the precincts of the National Assembly or the Senate, and shall not, in respect of any utterance that forms part of the proceedings in the National Assembly or the Senate, be amenable to any other action or proceedings in any court, tribunal or body other than Parliament."[16]

Article 4 (2) of the Constitution of SADC Parliamentary Forum states that;

"The SADC Parliamentary Forum, including its representatives and officials, as defined in the standing rules and orders shall have freedom of speech in the Forum and in its committees and are not liable to criminal or civil proceedings, arrest, imprisonment or damages in respect of:

(i) anything that they have said in, produced before or submitted to the Forum or any   of its committees; or

(ii) anything revealed as a result of anything that they have said in, produced before or   submitted to the Forum or its committees."[17]

On the question of the nature and essence of parliament, Powicke had this to say about the institution during the reign of Edward I:

"In England it had come to mean the king in council in a gathering of wider scope. It implied the presence of the king and we may assume that any parliament

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[16] *The Constitution of the Republic of Malawi* (1995), Section 60

held in the king's absence would be held only by his command......We should not restrict but extend, and extend indefinitely, the conception of proceedings in parliament as proceedings in the king's court, and the kernel of this conception is the legal doctrine or rule that what concerns all must be approved by all, a rule implicit in the development of the 'community of realm.'"[18]

Mezey reviewed the structure of legislatures in the third world with their decision-making and representational functions as well as their impact on the process of societal change. He noted that literature on third world legislatures is relatively recent, emerging for the most part in the period since 1960, when the new states of Africa and Asia were created and when American and European scholars first began to take seriously the politics of "developing areas." The scholars represented different research traditions, each with its own concepts, research questions, and data collection categories. The intellectual and geographical breadth of this scholarly community has meant that the literature generated on Third world legislatures is somewhat less coherent, and much more resistant to cumulation and synthesis. He concluded that in sum, the research and writing on Third world legislatures has been concerned with broad tasks of mapping the structural and functional characteristics of these institutions, assessing the legislature's effect on political and social change and identifying the factors that influence how legislatures themselves change.[19] Musolf and Springer have emphasized this concept that the study of legislatures in the new nations has understandably emphasized constraints imposed by the "developing" environment- economic scarcity, authoritarian political culture, and weak

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[17] *The Constitution of SADC Parliamentary Forum*, Article 4
[18] G.P Cuttino, "Mediaeval Parliament Reinterpreted," *Speculum Vol. 41, No. 4 (Oct. 1966)*, pp 682-683, Op cit

secondary associations.[20] They argued that the Malaysian legislature, for example, as is frequently the case in developing nations, is peripheral to the democracy in terms of decision making power. They however recognized the role of parliament as a major stage for the interaction of political parties. They contended that in the deeply divided society, "conflict organizations" arise within communal groups and press their interests before competing communal representatives. To them, conflict organizations are often political parties, and in the Malaysian case the absence of strong, competing voluntary associations makes the party the preeminent organisational representative of communal interests. Parliamentary positions provide Malaysian parties with their primary elective goal, and shifts in electoral strength in parliament are an important symbol of party strength. They noted that the importance of parliament as a forum for the discussion of crucial public issues cannot be overlooked and despite the prohibition of certain sensitive issues, considerable criticism and debate takes place on the floor which is probably most important with respect to the administration of development programs and the balancing of the benefits of development resources between communal groups.

Despite the perils of competitive democracy in a divided society, Musolf and Springer argued that legislatures can play a crucial political role in nations confronted with dual problems of communal division and socio-economic development, and for the case of Malaysian parliament, it provided a central arena of electoral competition which has nurtured parties articulating interests that cross communal boundaries. They concluded that the Malaysian parliament was playing an important part in fashioning political

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[19]M.L Mezey, "The Functions of Legislatures in the Third World," *Legislative Studies Quarterly, Vol. 8, No. 4 (Nov. 1983)*, pp 511-512

debates and implementing development strategies which may help transcend the limits of communal politics in Malaysia.[21]

Commenting on role of parliamentarians, Freeman and Richardson observed that helping individual constituents when they run into difficulty dealing with government agencies probably takes more of a legislator's time and energy than any other legislative function.[22] Baaklini has noted that the growing volume of literature on developing countries by western scholars has been marred by the persistence of ethnocentric interpretation as a result of which the functions of indigenous governmental institutions have been misunderstood and the important role of legislatures in the developmental process largely neglected.[23] Emphasising this concept, Toll observes that legislative activity has been too often maligned by those who cannot or will not view it in perspective. He argued that cynicism and sarcasm concerning lawmakers as a class bring satisfaction to many youthful critics who desire to imply their own superiority and that history fails to reveal any period when contemporaries did not bestow abuse on their elected representatives.[24]

2.3 Debate on Representative Function

In the modern state, with its size and complexity, the ancient democratic concept of the citizens of a city-state gathering in a conclave is impracticable. Wanyande has noted that

[20] L. D Musolf & J.F Springer, "Legislatures and Divided Societies: The Malaysian Parliament and Multi-Ethnicity," *Legislative Studies Quarterly, Vol. 2, No. 2 (May 1977),* p 113

[21] Ibid., pp 118-133,

[22] P. K Freeman& L.E Richardson, "Casework in State Legislatures," *State and Local Government Review,* Vol. 26, No. 1 (Winter 1994), p 21

[23] A.I Baaklini, "Legislatures in New Nations: Towards a New Perspective," *Polity, Vol. 8, No. 4* (Summer, 1976), p 558

[24] H.W Toll, "Today's Legislatures," *Annals of the American Academy of Political and Social Science, Vol. 196, Our State Legislators (Jan. 1938),* p 1

direct democracy in which every individual citizen participates in major decision-making has been replaced by what one might call representative democracy whereby the people elect their representatives to a national parliament. The elected representatives then become the ultimate authority from which national, political and other important decisions derive their legitimacy since democratic governments derive their power and authority from the people. This, he argued, makes elections and parliaments consisting of the people's representatives' vital instruments and institutions for democratic politics in present-day societies.[25]

Faruqi has argued that in political theory an elected and representative parliament, endowed with legislative and fiscal powers, is the cornerstone of a democratic edifice and asserted that in the Westminster style of parliamentary democracies, there is a further essential requirement that the executive must be "responsible and answerable" to the legislature.[26] This is the situation in Kenya where section 17 (3) of the constitution stipulates that "the cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President or the Vice-President or any other Minister in the execution of his office."[27]

Oloo and Mitullah have also contributed to the discourse by postulating that in theory, the legislature is positioned in such a way that it should be able to exercise control over an original executive decision and that within the concept of separation of powers, the

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[25]P. Wanyande, "Democracy and the One-Party State: The African Experience," in W.O Oyugi and A. Gitonga, *Democratic Theory and Practice in Africa*, Nairobi, East African Educational Publishers Ltd., 1995, p 81
[26]S.S Faruqi, "The Coroner or Corpse: A Look at Parliament's Role at the Grand Inquest of the Nation," in Y. Vyas, et al, *Law and Development in the 3rd World*, Faculty of Law, University of Nairobi, 1994, p 164, Op cit
[27]*The Constitution of the Republic of Kenya*

strength of a parliament lies in the extent to which it can exercise political control. To them, the main point with regard to parliamentary control is not only to supervise the activities of the executive or even where necessary to issue directives but to provide a means of bringing these activities to a halt once they cease to be in keeping with the wishes of the representatives of the people.[28]

Parliaments by their very nature represent the ethnic, gender, and religious diversity of individuals and groups in the society.

Within the realm of representation, issues pertaining to needs and problems facing constituents are raised in the legislature and different perspectives and solutions publicly discussed. Writing about legislatures in the United States, Little argued that "a state legislature, like the state itself, is made up of rural and urban members, republicans and democrats, liberals and conservatives, men and women, blacks, whites and Hispanics. That enables a legislative chamber, acting as a body, to reflect the collective needs and interests of the people of its state in a way that a single executive or a handful of Supreme Court judges never could. Through the debate and discussions that are central to the legislative process, the many diverse constituencies of a state are given voice. Those voices are reflected in the laws passed by the legislature."[29] An example is the current debate in Kenya on a notice issued by the government to evict people from the Mau forest to protect the Mau complex water catchment from degradation. Discussions highlight the different facets of the problem, for example, the need to protect the environment as well as ensuring that the welfare of those being evicted is taken into

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[28]Oloo A & Mitullah W.V, "The Legislature and Constitutionalism in Kenya" in Mute L.M & Wanjala S.(Ed), *When the Constitution Begins to Flower*, (Vol: 1), Claripress Ltd., Nairobi, 2002, pp 36-37, Op cit

consideration. In the end, a middle ground is more often than not found to accommodate the concerns of parties in the equation therefore pre-empting other possible approaches to the problem which may not necessarily be peaceful.

In the legislature, stakeholders can transfer their grievances from the battlefield to the political sphere, and power-sharing mechanisms can be adapted to bring all segments of society into the political framework.[30] Stakeholders can pursue compromises and participate in making difficult decisions on contentious issues of national policy through the legislative and committee processes in the legislature. As Scholten observed, "the basic role of Parliament is to substitute the power of physical violence by the power of words, and arguments, and to replace the law of force by the force of law."[31] The application of law implies following the generally accepted norms which have inbuilt systems of addressing grievances in society. As Anthony de Reuck noted, "rational conflict resolution implies reaching an accommodation- a new situation of compatibility- at a minimum cost to the parties individually. Optimisation of the cost-benefit balance thus becomes a central feature of the process."[32] Members of most legislatures are elected through very competitive processes to represent different shades of opinion, regions and community interests. Legislatures are hence the guarantors of pluralism and can play a significant role to ensure the proper workings of government while protecting the

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[29] T.H Little & D.B Ogle, *The Legislative Branch of State Government*, Santa Barbara, ABC-CLIO, 2006, p 4, Op cit

[30] Sisk, T "Democratization and Peacebuilding-Perils and Promises" in Mirna Skrbic and T.K Vogel, *Constitutional Reform Falters*, Transitions Online, 2006, p 789

[31] AWEPA, "Parliament as an Instrument of Peace," *Occasional Paper Series No. 8*, 2001, p 5

[32] A de Reuck, "The Logic of Conflict: Its Origin, Development and Resolution", in M. Banks (ed), *Conflict in World Societies: A New Perspective on International Relations*, Sussex, Harvester, 1984, p 97

interests of minorities or disenfranchised groups.[33] Nakamura has observed that, "a major cause of conflict everywhere is the oppression of one group by another. Devises for sharing and dividing governmental power to allow oppressed groups a more significant voice in government are common means used to reconcile groups and create the conditions of peace."[34] It has been argued that parliamentary committees in particular are important in post-conflict period. As societies emerge into a new understanding for the future, parliamentary committees can help bring the conflict from the realm of individual personalities and groups of people, into the realm of ideas, policies and proposals for the future and that simply by allowing the disadvantaged and minority parties to express their grievances in open debate can act as an important pressure-release valve and cross-party confidence-building measure. The Mozambican context in the aftermath of the 1994 transitional multi-party elections is a case in point.[35]

2.4 Debate on Legislative Function

The legislative function of Parliament is probably its most important and time consuming.[36]

Pursuant to its law making function, legislatures are fundamentally entrenched in conflict management. Law is defined as a rule of conduct formally recognized as binding or

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[33] N. Dutta et al, "Report of Coursework for Policy Workshop on Building Legislatures in Fragile Societies," Woodrow Wilson School of Public and International Affairs, p v, Op cit

[34] R.T Nakamura, "The Role of the Rwandan Parliament in Conflict Prevention", in M. Obrien et al (eds), *Parliaments as Peacebuilders in Conflict-Affected Countries*, World Bank Institute, Washington, 2008, p 122, op cit

[35] AWEPA "The Role of Parliaments in Conflict Management and Peacebuilding," *Occasional Paper Series 13*, Oct. 2004- Sept. 2006, p 17, Op. cit.

[36] J. A Pettifer, *House of Representatives Practice*, Canberra, Australian Government Publishing Service, 1981, p 17

enforced by authority.[37] It is intended to cure mischief and to manage relations and conflict between individuals and groups. The Constitution of Australia explicitly states "that the Parliament shall make laws for the peace, order, and good government of the Commonwealth, the parliament has powers and functions other than legislative. The legislative function is paramount but the exercise of Parliament's other powers, which are of historical origin, are important to the understanding and essential to the working of Parliament."[38] For instance, following the post election crisis in Kenya in 2008, the National Assembly enacted two Bills that were central in giving legal effect to the Agreement on the Principles of Partnership of the Coalition Government which emanated from mediation efforts. The National Accord and Reconciliation Act of 2008 provided for the creation of the coalition Government and the establishment of the offices of Prime Minister and Deputy Prime Ministers and their functions which, together with the Constitution of Kenya (amendment) Act (No. 3) of 2008 led to a cessation of hostilities between the parties to the conflict. Put differently, regardless of which parliamentary system a country uses, as the supreme law making institution in a nation, parliament makes the rules by which society is governed.[39] Parliament can be an important element in establishing, discussing and promoting a national consensus around commonly held values and through its power as a representative organ of the people, it can influence the executive to be responsive to the needs of the population, thereby avoiding insurgencies and other forms of defiant behaviour. Legislatures have significant roles in the budget

[37] *Longman Family Dictionary*, Chancellor Press, London, 1988, p 389
[38] J. A Pettifer, *House of Representatives Practice*, Canberra, Australian Government Publishing Service, 1981, pp 14-15, Op. cit.
[39] R. Stapenhurst et al, "Introduction: Parliaments as Peacebuilders", in M. O'Brien et al (eds), *Parliaments as Peacebuilders in Conflict-Affected Countries*, World Bank Institute, Washington, 2008, p 3, Op cit

process, with some authors referring to the concept as "the power of the purse." In Kenya, for example, section 99(1) of the Constitution provides as follows-

> "Subject to sub-section (2), all revenues or other moneys raised or received for the purposes of the Government of Kenya shall be paid into and form a Consolidated Fund from which no moneys shall be withdrawn except as may be authorised by this Constitution or by an Act of Parliament (including an Appropriation Act) or by a vote on account passed by the National Assembly under section 101."[40]

This mandate allows the legislature to exercise latitude specifically over policy formulation and implementation by the executive and generally on governance. A recent row over the re-appointment of the Director of the Kenya Anti-Corruption Authority between the legislature and the executive is a case in point. The former argued that the latter flouted the law in purporting to re-appoint the Director while the executive asserted that it was not obliged to consult the National Assembly. To illustrate the power of the National Assembly on governance, a motion was filed to delete or remove the Kenya Anti-Corruption Authority from the Appropriation Bill, which was pending before the Assembly. This would have starved the Authority of requisite funds effectively bringing the operations of the Authority to a halt. The subsequent resignation of the Director may have mollified the legislature but more fundamentally demonstrates its impact in influencing and setting policy. The action sent a very strong signal that the country is no longer hostage to a dominant and an unresponsive executive wielding untrammelled powers which opens a window of opportunity for other unresolved grievances without communities and individuals having to resort to acts of violence.

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2.5 Debate on Accountability and Oversight Functions

Rick Stapenhurst et al have noted that a responsible government is one in which the executive is accountable to parliament. This is the case, for instance, in Kenya where section 17 (3) of the Constitution states that 'the cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President or the Vice-President or any other Minister in the execution of his office."[41] This accountability is exercised through a number of methods, the most routine of which is scrutiny through parliamentary debate and parliamentary questions. Oversight is not just about exposing maladministration but also about gathering information and generating discussion on potential and existing policy issues. These debates allow for a testing of the executive's position, which informs both the parliamentarians and those stakeholders in civil society who wish to influence policy.[42] As Global Organisation of Parliamentarians against Corruption noted:

"Parliamentarians, as the expression of political will, should be the institutional bridge between state and society and play a critical role in good governance by ensuring that state institutions are accountable, open and participatory in their decision- making and service delivery. In systems that work, citizens look up to parliaments-their

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[40] *The Constitution of the Republic of Kenya*, section 99

[41] *The Constitution of the Republic of Kenya*, section 17, Op cit.

[42] R. Stapenhurst et al, "Introduction: Parliaments as Peacebuilders", in M. O'Brien et al (eds), *Parliaments as Peacebuilders in Conflict-Affected Countries*, World Bank Institute, Washington, 2008, p 4, Op cit,

elected   representative assemblies- to hold governments accountable for their actions and   performance".[43]

The legislature's scrutiny of taxation, expenditure, and public services is fundamental to a democracy and to the relationship among parliament, the executive, and the people. Financial oversight is a "checks and balances" function of all parliaments, through which they seek to ensure that programs are carried out legally, effectively, and for the purposes for which they were intended.[44] Legislatures have developed different mechanisms to ensure that governments operate accountably and transparently. In the National Assembly of Kenya, for example, processes have been instituted especially with the adoption of the new standing orders on 10th December,2008 which provides opportunities not seen before. For instance, standing order 40 makes provision for prime minister's time when he/she is expected to make a statement or answer questions that have been put to him relating to the overall management of government. The standing orders also increased the number of committees which was aimed at deepening the scope of oversight on the entire realm of governance. These committees which are broadly categorised as watchdog, departmental, housekeeping and ad- hoc, have specific mandate aimed at exercising oversight. The functions of departmental committees, for example, are stipulated in standing order 198(3) which gives their mandate as, to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments; to study the programs and policy objectives of ministries and departments and the effectiveness of the

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[43] Global Organization of Parliamentarians Against Corruption (GOPAC), *Controlling Corruption: A Parliamentarian's Handbook*, GOPAC,2005, P 11

implementation; to study, and review all legislation referred to it; to study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives; to investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House or a minister.[45] In addition, the committee sittings have, with a few exceptions, been opened to the public including the media. It has been noted that ministers take the reports of the respective committees very seriously especially now that another committee on implementation has been established to follow-up on resolutions adopted by the House, including adopted committee reports as well as undertakings made by the government on the floor of the National Assembly. These initiatives have taken the concept and practice of parliamentary oversight and accountability to unprecedented levels which are not only good to the image of the institution but to governance in general.

2.6 Debate on the Role of Legislatures in Conflict Management

Thompson and Silbey have argued that conventional research in the history of legislatures has been abundant but unsystematic and incomplete. They noted that an empirical, social science tradition has developed recently, most strikingly in the study of the nineteenth and early twentieth century U.S Congress and state legislatures in which historians took the lead in forging a trail that many others have since travelled in describing the legislative past. Other Europe-focussed research was primarily concerned with a number of themes already alluded to, most particularly the growth of

[44] R. Stapenhurst et al, "Introduction: Parliaments as Peacebuilders", in M. O'Brien et al (eds), *Parliaments as Peacebuilders in Conflict-Affected Countries*, World Bank Institute, Washington, 2008, p 4, Op cit

parliamentary authority, usually through conflict with centralized executive power. Aydelotte declared that, "it is now feasible to identify more precisely the topics to be investigated and the questions to be answered. The accumulation of evidence and the development of thinking about legislative behaviour, though still inadequate, are sufficient to afford at least some general guidance and the prospects for further work in the field are promising."[46] As demonstrated in the preceding debates, the different facets of the institution of legislature have been examined at length by many scholars interested in a particular area of its existence. This essay posits that though important in the growth of knowledge on the operations of the institution, mechanisms used in the discharge of mandate and overall understanding of the institution, research on the subject has largely neglected the important role played by legislatures in the area of conflict. Managing conflict between competing groups is an essential function of legislatures in all democracies. It has been argued that much of the political and economic competition and conflict among human societies is traceable to the fact that the demand for things required to satisfy biological and psychological needs always exceeds the supply.[47] The human needs theory posits that there are certain ontological and genetic needs which will be pursued and that socialization processes, if not compatible with such needs, will lead to frustration and anti-social personal and group behaviour.[48] As illustrated earlier, the functions of a legislature can be grouped into broad categories of representation, legislation, oversight and accountability. At the heart of each of these categories is an

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[45] *National Assembly of Kenya- Standing Orders*, Government Printer, Nairobi, 2008, p 106
[46] M. S Thompson & J.H Silbey, "Research on 19th Century Legislatures: Present Contours and Future Directions," *Legislative Studies Quarterly*, Vol. 9, No. 2 (May, 1984), pp 319-343, Op cit
[47] J.E Dougherty & R. Pfalzgraff, *Contending Theories of International Relations: A Comprehensive Survey*, New York, Harper and Row Publishers, 1990, p 275, Op cit
[48] R. Mudida, Conference Paper "The Security-Development Nexus: A Structural Violence and Human Needs Approach" presented at New Faces Conference, Madrid, 5-7 November,2007, Op cit

inherent component of conflict management which has not been recognized by researchers in the discipline. In a pioneering volume, Nangia argued that one of the best tools a nation has at its disposal for managing conflict and poverty is its parliament. He added that parliament is a pivotal institution through which to address the divergent interests of multiple groups because of the very nature of the parliamentary process and parliament's ability to build relationships among its members and within the broader community.[49] Some authors have in fact postulated that without a central role for parliaments, lasting peace and posterity especially in Africa will be an illusion.[50] The growth in numbers and successes of democratic processes in Africa, coupled with the changing nature of conflict itself in the post-cold war geopolitical environment, has significantly affected the role that parliaments and parliamentarians can play, and has opened the door to a new recognition of their possibilities and responsibilities, especially in conflict affected countries. This newly perceived importance of parliament stems partly from the new respect gained by parliamentary institutions as a result of a wave of democratization in Africa.[51]

In fact, the very process of democratization hinges on development of 'tolerance, bargaining, and compromise among rival political groups' which is especially critical in post-conflict and fragile states.[52] Shija has argued that vibrant democratic institutions enable countries to respond better to conflicts and are more likely to effectively prevent those conflicts from developing in the first place and also that a democratically elected

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[49]R. Stapenhurst et al, "Introduction: Parliaments as Peacebuilders", in M. O'Brien et al (eds), *Parliaments as Peacebuilders in Conflict-Affected Countries*, World Bank Institute, Washington, 2008, p ix, Op cit
[50]AWEPA "The Role of Parliaments in Conflict Management and Peacebuilding," *Occasional Paper Series 13* Oct. 2004- Sept. 2006, p 12, Op cit.
[51] Ibid., p 12

parliament in which candidates representing all shades of political opinion are free to stand and be chosen freely and fairly via the ballot box by the electorate, is the best means of preventing armed conflict and ensuring sustainable peace.[53] Finally, an effective legislature can exercise oversight over the executive, acting as a check on an authority, which, if unfettered, could ignore or abuse minority interests.[54] It has been noted that most conflicts in Africa occur within countries, not between them. Evidence suggests that internal conflict is related to poverty and that a society's vulnerability to conflict goes up as poverty increases and persists. Statistics show that there is a strong negative correlation between outbreaks of violent conflict and per capita income.[55] The World Bank, UNDP and UNICEF, among other bodies, have come to realize that parliaments and parliamentarians are key players in poverty reduction and political stabilization strategies. Parliament can assist in conflict prevention by ensuring an equitable distribution of socio-economic development across regions and communities, through income and opportunity distribution policies using the national budget.[56] This approach is particularly significant with the rise of the concept of human security-development nexus. As Mudida contends, the linkages between the two concepts have evolved over the last few decades to exhibit a certain convergence and to challenge the traditional notions of security which were based on the use of force. Human security implies vital freedoms, and implies protecting people from critical and pervasive threats

[52] N. Dutta et al, Report on "Strengthening Legislatures for Conflict Management in Fragile Societies," Woodrow Wilson School of Public and International Affairs, p 7, Op cit
[53] M. O'Brien et al (eds), Parliaments as Peacebuilders in Conflict-Affected Countries, World Bank Institute, Washington, 2008, pp xi-xii, Op cit
[54] N. Dutta et al, "Report of Coursework for Policy Workshop on Building Legislatures in Fragile Societies," Woodrow Wilson School of Public and International Affairs, p 7, Op cit
[55] UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*, Report to the UN Secretary General, January,2005, p 146

and situations while enhancing their strengths and aspirations as well as creating systems that give people the building blocks for survival, dignity and livelihood and thus closely connected to development.[57]

At the regional level, inter-state conflict in Africa has far higher potential to erupt where dialogue is absent and cross-border tensions are high. According to the Saferworld/International Alert report, *Developing an EU strategy to address fragile states*, there is strong link between security, governance and development and hence maintaining political dialogue with fragile states on a regional level, or inter-regional level, can be an effective prevention mechanism. The conflict in the DRC, for example, at one point involved forces from nine different countries. Under such circumstances, there is an even greater need for progress on regional economic integration and regional political dialogue which can be achieved by active parliamentary peace agenda.

Another recognized area of intrastate conflict generation is related to elections where contentious electoral processes may see physical violence erupting during the campaign period or, more commonly, after the results come in and the losing party (or parties) refuses to accept them. Depending on the way they are managed, elections, the showcase of democracy, can instigate war or peace, and the post-election crisis in Kenya following the general election of December, 2007 is a practical confirmation of this reality.[58] Faced by this threat, the Southern African Development Community Parliamentary Forum

[56] AWEPA "The Role of Parliaments in Conflict Management and Peacebuilding," *Occasional Paper Series 13* Oct. 2004- Sept. 2006, p 15, Op cit.
[57] R. Mudida, Conference Paper "The Security-Development Nexus: A Structural Violence and Human Needs Approach" presented at New Faces Conference, Madrid, 5-7 November, 2007, pp 11-12

[58] AWEPA "The Role of Parliaments in Conflict Management and Peacebuilding," *Occasional Paper Series 13* Oct. 2004- Sept. 2006, pp 13-14, Op cit.

(SADC-PF) established a Conflict Management Advisory Group (CMAG), which, based on the Norms and Standards for Elections in the SADC Region, has identified a number of root causes to election related conflict. These causes include unfair or inappropriate electoral systems, archaic constitutional and regulatory arrangements, misuse of state resources in campaigns, biased composition of electoral management bodies, unresolved or unaccepted electoral dispute settlements, media misrepresentation and bias and violations (or absence) of codes of conduct. The SADC-PF has also proposed parliamentary intervention strategies and action areas for pre-election, election-phase and post-election conflict flashpoints. Parliamentary goodwill missions in conflict-affected areas are seen as an important option to promote regional parliamentary solidarity with democratic forces, as are regional parliamentary observer delegations. In addition, regional parliamentary peer pressure can help to stifle non-democratic tendencies and open new possibilities for effective parliamentary action.[59]

2.7 Chapter Overview

Legislatures do not automatically take on the role of conflict management as they too can become instruments of majoritarian oppression of the minority by passing legislation to marginalize the opposition.[60] The passing of a constitutional amendment in the National Assembly of Kenya in 1982 making the country a *de jure* one-party state is partly blamed for the attempted military coup of August 1982 and enhanced efforts, some clandestine, to expand the democratic space in the country. Legislatures, precisely because they are representative of plural societies, can embody the social cleavages that drive a conflict.

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[59] Ibid., pp 13-14
[60] D. Smilov and R Kolarova, *Parliaments in Conflict and Post-Conflict Situations: Lessons Learned from Eastern Europe and the Commonwealth of Independent States*, New York, UNPD, 2005, p 10

Particularly in situations of extreme subservience to the executive, they can exacerbate these social divisions and become part of the underlying causes of conflict. Properly functioning legislatures are, however, less likely to be captured by conflict inducing interests. Legislatures that effectively perform the three functions of representation, lawmaking and oversight have the greatest potential to effect meaningful conflict management and peacebuilding measures.[61] The role of Parliament in conflict-affected countries becomes even more evident when the correlation between conflict and poverty is considered. Parliaments not only contribute directly to conflict prevention but also aid peacebuilding by combating poverty. By addressing issues of poverty, equitable distribution of resources, and economic development, parliamentarians can attempt to guard against the creation of an enabling environment that is prone to the escalation of conflict.[62] This Chapter postulates that although there is general consensus on the functions of legislatures and their position in a democratic system, categorised in broad themes of oversight, representation, legislation and approval of taxation and expenditure, the effective performance of those functions is essentially conflict management.

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[61] N. Dutta et al, "Report of Coursework for Policy Workshop on Building Legislatures in Fragile Societies," *Woodrow Wilson School of Public and International Affairs*, p vi, Op cit

[62] K. Kamanga, Paper titled *"Some Constitutional Dimensions of East African Co-operation"* presented to Kituo Cha Katiba for *"State of Constitutional Development in East Africa"* Project, 2001

3.0 CHAPTER THREE: A CASE STUDY OF EAST AFRICAN LEGISLATIVE ASSEMBLY IN MANAGING CONFLICTS IN THE SUB-REGION: 2001-2008

3.1 Introduction

The Chapter will be structured in the following manner. It will commence by briefly linking

the Assembly with the preceding debates on conceptual basis of legislatures in conflict

management. It will then delve into a historical background of the predecessor of the East

African Legislative Assembly, how it is currently constituted and its mandate, processes in

discharging its functions primarily as provided in the rules of procedure with particular focus

on its role in managing conflict in the partner states and conclude with an overview.

As Molukanele noted, it is clear that parliaments are well placed for conflict management. He

argued that their character as representative bodies that are deliberative augurs well for them

especially given that conflicts need to be managed, not suppressed. He concluded that

parliaments are able to do this by providing space for the articulation of differences.[1] The

chapter will explore how the Assembly has utilised its processes and mechanisms to address

what Molukanele terms "inherently conflictual" societal relations to avoid violent

confrontations that might ensue from the relations.[2]

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[1] T. Molukanele, "Parliaments as Unique Institutions for Conflict Management," *Conflict Trends*, Accord, 2008, p 44

[2] Ibid., p 40

3.2 Background of the Assembly

According to Ogot, a former member of the defunct East African Legislative Assembly, the predecessors of the Assembly established either under the East African High Commission (1947) or under the East African Common Services Organization (1961), had been set up in part because it was considered that there might eventually be a political federation in East Africa. He asserted that the Assembly was to provide an important political ingredient as well as exercising some measure of control over the common services. He further added that although it was set up on an experimental basis, it thrived to become a vociferous, if not significant force for greater unity in East Africa so much that it served to embarrass the national governments. This made the new leaders of independent East African states uncomfortable with the political influence the Assembly had acquired culminating in provisions of the 1967 Treaty which could be interpreted as reducing the status of the Assembly.[3] Indeed, members of the Assembly postulated that architects of the East African Treaty for Co-operation did not envisage that the Community would ever be considered as basis for political federation.[4] The Assembly, however continued to be a pressure group for greater integration, especially at the political level, and as a forum for

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[3]B.A Ogot, *Autobiography: My Footprints on the Sands of Time*, Anyange Press Limited, Kisumu, September 2006, p 264
[4]Ibid., p 293

some form of political articulation on questions of economic co-operation. Ogot cited EALA as the most advanced form of Assembly of any regional economic organization at the time especially with regard to the control of the Community budget.[5] The differences and conflicts between the partner states ultimately led to the collapse of the Community in 1977 and although the East African states failed to realize the dream of a united East Africa, they did not completely abandon it, and renewed efforts were again to be made in the latter part of the 1990's to realize this cherished dream which culminated in the signing of a new East African Community Treaty on 30th November,1999.[6] Given that the Assembly was re-established in the new Treaty is a confirmation that it has a role in advancing the goal of integration and particularly in avoiding the pitfalls of the earlier Community which evidently collapsed as the partner states were unable to manage their conflicts amicably.

3.3 Formation and mandate of the East African Legislative Assembly

The Treaty for the East African Community was signed on November 30, 1999 and came into force on July 7, 2000 upon ratification by the three member states. It established several organs and institutions to ensure its implementation which include, *inter alia*, the Summit of the Heads of State and Government, the Council of Ministers, the Co-ordination Committee,

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[5]Ibid., p 265
[6]Ibid., pp 296-301

Sectoral Committees, the East African Legislative Assembly (EALA), the East African Court

of Justice, and the Secretariat. Like is the case with many other legislatures across the world,

EALA is the independent legislative arm of the Community. As Obatra observed, the key

mandate of the Assembly falls within the traditional realm of parliament, namely, legislation,

representation, oversight and budget.[7] According to the Treaty, the Assembly is made up of

52 elected members, comprising 9 members from each member state, seven ex-officio

members, (the Minister in each partner state responsible for regional co-operation), the

Secretary General and the Counsel of the Community. In addition to providing a democratic

forum for debate, it serves as a watchdog over the EAC executive as well as performing

representative functions. Commenting on the challenges facing EALA in the discharge of its

mandate especially in managing conflict, the first Clerk of the Assembly asserted

that there were questions of legitimacy which could be addressed through direct elections for

members of the Assembly as well as granting it more autonomy.[8] It held its first sitting in

Arusha on November 29, 2001 where Abdulrahman Kinana was unanimously elected

Speaker. It has been argued that the establishment of the Assembly should be seen in the

context of the re-establishment of the former East African Community after its initial collapse

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[7] Interview with Senior Clerk at East African Legislative Assembly in Arusha on 15 September, 2009
[8] Interview with the first Clerk of the East African Legislative Assembly in Nairobi on 14 October, 2009

in 1977. The main reasons often cited for the collapse of the former Community were, lack of

strong political will; lack of strong participation of the private sector and the civil society in

the affairs of the Community; the continued disproportionate sharing of benefits of the

former Community among the partner states due to their differences in their levels of

development; and lack of adequate policies to address these factors.[9] The functions of the

Assembly are set out in Article 49 of the Treaty which states that the Assembly shall be the

legislative organ of the community and further that the Assembly shall liaise with the

National Assemblies of the Partner States on matters relating to the Community and that it

shall debate and approve the budget of the Community; consider annual reports on the

activities of the Community, annual audit reports of the Audit Commission and other reports

referred to it by the Council; discuss all matters pertaining to the Community and make

recommendations to the Council as it may deem necessary for the implementation of the

Treaty; for purposes of carrying out its functions, establish any committees for such

purposes as it deems necessary; recommend to the Council the appointment of the Clerk

and other officers of the Assembly; and make its rules of procedure and those of its

committees.[10]

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[9] East African Legislative Assembly, Report of the Committee on General Purpose on "Functional Relationship Between the East African Legislative Assemblies and the National Assemblies of the Partner States of the EAC:

Pursuant to Article 50 of the Treaty, the National Assembly of each partner state shall elect, not from among its members, nine members of the Assembly, who shall represent as much as it is feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in the partner state, in accordance with such procedure as the National Assembly of each partner state may determine.

The current legislature is the second Assembly, following the dissolution of the first whose tenure expired on November 29, 2006. It was inaugurated on June 5, 2007. Although it was expected that the elections would return some new members, the turn-over rate surpassed all expectations because out of the 27 members, only six members from the first Assembly were re-elected. Moreover, many of the new members were without any prior political-parliamentary background.[11] This factor, as it happens in similar situations is bound to compromise and undermine the effectiveness of the institution.

3.4 Processes of discharging mandate of the East African Legislative Assembly

As the legislative arm of the EAC with oversight over all the Community's work and as provided by Article 49 of the Treaty, the Assembly has wide responsibilities. This is reflected in the scope of the standing committees that handle the Assembly's main work. Most of the Assembly's oversight functions are carried out through committees, but it also has the mandate to address parliamentary Questions to the Council of Ministers, which it has so far exercised on a wide range of issues. The committees are established according to the provisions of the Treaty

Implementation of Recommendations of Nanyuki 1 and Nanyuki 2," East African Legislative Assembly, Arusha, 2006, p 1
[10] *Treaty Establishing the East African Community*, Arusha, EAC Secretariat, 2002, Article 49, Op cit
[11] A. Abdi, Conference Paper titled, "The East African Legislative Assembly: Mandate, Challenges and Relationships with Other Organs of the Community." Presented at the Strategy Retreat for Key EAC Organs, Kigali, February,2009, p 2

and Rule 77 of the Rules of Procedure of the Assembly which gives effect to the Treaty. The Rule provides for the appointment of relevant committees and sets out the specific areas of co-operation to which the partner states have agreed. Except the House Business Committee, which deals with the internal programmes of the House, each committee is assigned a specific field of activity. Within this field, it must check the progress and oversee the implementation of the objectives as set out in the Treaty and Development Strategy. The Assembly has established seven standing committees on; Accounts; Agriculture, Tourism and Natural Resources; Communication, Trade and Investments; General Purpose; Legal, Rules and Privileges; and, Regional Affairs and Conflict Resolution.[12]

The rules of procedure allow for the appointment of further select committees when the need arises. The composition and leadership of each of these committees is shared equally among the partner states and in most cases takes into account member's professional or educational background.

The committees have enquired into and compiled reports on many issues pertaining to the Community, some of which were adopted by the Assembly for implementation by the Council of Ministers. These reports include: Reports on the Budgets of the East African Community for the Financial Years 2003-2008; Report on the Review of the Treaty for the Establishment of the East African Community; Report on the Resource based conflicts in the EAC region; Report on the review of the processes and stages of integration; Report on the status of co-operation in defence matters in the EAC region; Report of the goodwill mission to Kenya following the aftermath of the general elections of December, 2007; and Report of the public hearing

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[12] "The East African Legislative Assembly," EAC Secretariat, Arusha, 2006, p 7

workshops on the draft protocols on the East African Customs Union and Standardization, quality assurance, metrology and testing.

The Assembly has also adopted several resolutions calling upon the Council of Ministers to take certain actions in accordance with the provisions of the Treaty.[13] These include: Resolution seeking to establish practical working relations between the Secretariat, the Assembly and the Court, adopted in February,2003; A Resolution seeking the appointment of an East African Peace Committee for Northern Uganda with the mandate to bring to an end the violence in Northern Uganda in May,2003, in pursuance of Article 123 and 124 of the Treaty; and, a resolution urging for peaceful resolution of the conflict in *Migingo* island which had drawn members of the partner states of the Community.

These forums and mechanisms are essential in the development of consensus for public policy. As Kenyatta observed in 1964 while referring to the National Assembly of Kenya-

> "What this House must contribute to the Republic is something far more than just machinery which can give the plans or requirements of the Government their lawful status. This must be our forum, for discussion and proposal, for question, objection or advice. It must give full modern expression to the traditional African custom, by serving as the place where the elders and the spokesmen of the people are expected and enabled to confer."[14]

As observed earlier, legislatures generally perform three broad functions of legislation, oversight and representation. The chapter will explore how the East African Legislative

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[13] Ibid., p 4,
[14] N.M Stultz, "Parliament in a Tutelary Democracy: A Recent Case in Kenya," *The Journal of Politics*, Vol. 31, No. 1 (Feb. 1969), p 112

Assembly has performed these roles and how it has contributed towards the integration endeavour and particularly in managing conflicts.

3.4.1 Legislation

The EAC Treaty provides for four main phases of the integration process, namely, the Customs Union as the entry point followed by the Common Market, Monetary Union and ultimately Political Federation. This is the general strategic framework that was agreed upon by the Partner States in 1999, when the Treaty was signed. The first role of EALA, therefore, is to ensure that the necessary legal framework and institutions are in place for each of the four phases. For instance, the Treaty required that the Customs Union must be in place within four years of the Treaty coming into force. The role of EALA was therefore to ensure that the necessary legal and institutional framework for the management of the Customs Union was in place. This was achieved in December 2004 with the enactment of the East African Customs Management Act.

During the period under examination, the Assembly enacted the following legislations: Laws of the Community (Interpretation) Act, 2004; The Community Emblems Act, 2004; The Acts of the East African Community Act,2004; The East African Legislative Assembly (Powers and Privileges) Act, 2004; The East African Community Appropriation Acts for the financial years 2002-2008; The East African Community Customs Management Act,2004; The East African Community Standardization, Quality and Testing Act,2006; The East African Community Competition Act,2006;[15] The Lake Victoria Transport Management Act, 2007; The Summit (Delegation of Powers and Functions) Act,2007; The East African Community Joint Trade Negotiations Act, 2008; The Inter-University Council for East Africa Act,2008; The East

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[15]"The East African Legislative Assembly," EAC Secretariat, Arusha, 2006, p 5, Op cit.

African Community Budget Act,2008; The EAC Emblems (Amendment) Act,2008; and The EAC Customs (Amendment) Act, 2008.[16]

It can hence be argued that EALA, by enacting laws that govern the various facets of integration, which laws have to be assented by the heads of governments of the partner states, therefore signifying consent is, in essence managing conflict. A former Clerk of the Assembly however argued that the Council of Ministers should take a more active role in Community matters and also called for the improvement of decision-making procedures to encourage voting on issues before the Community as opposed to the current practice of consensus.[17] A lot however, remains to be done especially with regard to the utilization and sharing of natural resources in Lake Victoria and elsewhere.

3.4.2 Oversight

Parliaments are constitutionally obliged to scrutinize the activities of the Executive, including the way it spends the funds voted to it by Parliament. The oversight functions are vested in the legislature as a fundamental principle of the separation of powers. This is intended to ensure delivery of services. In order for parliament to retain legitimacy as an institution, it must reflect public and social concerns.[18] In this regard, EALA considers and debates the reports of the Council of Ministers on progress made in implementing its programmes and other decisions. The ensuing debates as well as parliamentary questions help to keep all implementing organs and institutions of the Community alert to their duties. Most of the oversight is done at committee level in the relevant sectors. EALA is also responsible for ensuring there is a sufficient budget of the Community on an annual basis. Whenever the Assembly finds the

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[16] The East African Legislative Assembly, "Eight Years of EALA 2001-09," EAC Secretariat, Arusha, 2009, pp 4-5
[17] Interview with a former Clerk of the East African Legislative Assembly in Nairobi on 12 September,2009

budgetary proposals of the Council of Ministers to be insufficient to cover the agreed programmes, it always calls upon the members of the Council to review their estimates.[19] In particular, the General Purpose Committee is mandated by the rules of procedure to review the pre-budget activities of the East African Community. The report of the General Purpose Committee on pre-budget activities and the draft budget of the EAC for the financial year 2008/09 noted that the 10% annual growth rate of the EAC budget was insufficient following the admission of Rwanda and Burundi as well as establishment of new institutions and consequently recommended that the partner states support the budget from the priority activity point of view so as to facilitate the integration process in accordance with the EAC Development Strategy 2006-2010.[20]

3.4.3 Representation

Parliaments provide the opportunity for all citizens to seek direct representation or elect others to represent their interests and champion their freedoms and civil liberties as enshrined in the Constitution or for this matter, the Treaty. The ideal of expressing different views and opinions on national and international issues and working together to find compromises and ultimately to achieve consensus in the interest of the state and society at large, constitutes the bedrock of parliamentary democracy. The Assembly consists of elected representatives from the partner states, who speak on behalf of their countries and ultimately the region which is their constituency. EALA is the only elected organ of the community. Therefore, its role as a repository of the people's collective conscience, as a voice with legitimate mandate, and as a vehicle for social justice cannot be overemphasized. All decisions must be made in the interests

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[18] "The East African Legislative Assembly," EAC Secretariat, Arusha, 2006, p 11, Op cit.
[19] Ibid., p 11

of the people. EALA uses its outreach programmes, public hearing workshops and constant liaison with National Assemblies to ensure that the needs and interests of the people are taken into consideration while adopting policies at EAC level.[21] In 2004, the summit of the heads of state directed that ways and means be found of fast-tracking the Federation. A committee of eminent people from the region was constituted to gather views from a cross-section of their fellow East Africans. The committee concluded that the Federation could indeed be attainable by 2013, through fast-tracking and taking on the phases of Common Market and Monetary Union simultaneously. The Assembly supports the fast track method but insists that views of the East African people are sought and taken into account on the Federation issue. EALA will then ensure that the necessary legal and institutional framework is put in place for the establishment of the Federation.[22] On liaison with National Assemblies of partner states, EALA has held inter-parliamentary relations seminars with members of National Assemblies. These seminars deliberated on complimentarity of the roles of EALA and National Assemblies and other actors in the process of regional integration and discussed mechanisms for strengthening institutional linkages between the National Assemblies and EALA. The Assembly has contributed to publicity and marketing of EAC through familiarization tours of the partner states.[23] As the region moves towards greater integration, the role of EALA will be essential in mobilizing the East African populace in line with the first operational principle committing the Community to be people-centred and private sector driven. As Kenyatta noted while speaking before a joint meeting of both Houses of Parliament, "Members of Parliament must serve as a bridge between

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[20] East African Community, "Draft Report of the General Purpose Committee on Pre-Budget Activities and the Draft Budget of the EAC for the Financial Year 2008/09," pp 1-8
[21] "The East African Legislative Assembly," EAC Secretariat, Arusha, 2006, pp 12-13, Op cit
[22]Ibid., p 13
[23] "The East African Community: The East African Community Development Strategy 2006-2010," EAC Secretariat, Arusha, p 21

Government and the people, representing to the Government the views of their constituents and then interpreting to their people the policies and decisions of the Government."[24] The Assembly can play a crucial part in mobilization and sensitization but as a former Clerk of the Assembly noted, the mandate of EALA and resources must be enhanced in order to meet the challenge.[25] The first Clerk of EALA concurred by contending that direct elections for members of the Assembly will address this anomaly and put the members in the driving seat of integration initiatives as they will enjoy legitimacy conferred by the East African people.[26] An officer in the department of peace and security agreed with this assertion and reiterated that a clearly defined election process for members of the Assembly will enhance their legitimacy and enhance mandate including framework of the Assembly's existence.[27] As it emerged from the report of the committee on fast tracking East African Federation, the people of East Africa are united in their quest for the Federation and the question was how and when. Some people wanted it immediately while others wanted a cautious approach to ensure that the Federation rests on a solid and firm foundation. The proponents of both approaches were united in their call that the Federation should be people centred and not emanate from the leaders. In other words, it should be a bottom-up instead of a top-down approach.[28] Commenting on the representative role of Parliament, Helen Cam pointed out that there is nothing unique or unusual about representation

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[24] N.M Stultz, "Parliament in a Tutelary Democracy: A Recent Case in Kenya," *The Journal of Politics*, Vol. 31, No. 1 (Feb. 1969), p 97, Op cit
[25] Interview with a former Clerk of the East African Legislative Assembly in Nairobi on 12 September,2009
[26] Interview with the first Clerk of the East African Legislative Assembly in Nairobi on 14 October,2009, Op cit
[27] Interview with an officer from Department of Peace and Security at East African Community Secretariat in Arusha on 16 September, 2009
[28] East African Community, "Report of the Committee on Fast Tracking East African Federation," EAC Secretariat, Government Printer, Nairobi, 2004, p 15

itself. She argued that it arises "when there is an active community upon which some external demand is made" and is "an obvious commonsense solution of constantly recurring problems."[29]

3.4.4 The East African Legislative Assembly in Conflict Management

As explained earlier, managing conflict between competing groups is an essential function of legislatures in all democracies. It has been argued that much of the political and economic competition and conflict among human societies is traceable to the fact that the demand for things required to satisfy biological and psychological needs always exceeds the supply[30] and the East African Legislative Assembly is no exception. As one of the key organs of the Community, it has an important role to play in the management of conflict not only conceptually as illustrated in Chapter 1 but also because the mandate emanates from the Treaty itself. Specifically, Article 49(2)(d), gives the Assembly overarching responsibility on matters relating to the Community and states that the Assembly-

> (d) shall discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty."[31]

How has the Assembly discharged this mandate especially with regard to addressing conflicts which, as Mwagiru asserts, are part and parcel of human society? As observed earlier, the Assembly recognized that it had a role in dealing with conflicts when it established the committee on Regional Affairs and Conflict Resolution. The committee has been one of the mechanisms used by the Assembly in contextualizing its role in addressing conflicts which have manifested themselves in various forms. In 2003, for example, the committee on Regional

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[29]G.P Cuttino, Mediaeval Parliament Reinterpreted, *Speculum Vol. 41, No. 4 (Oct. 1966)*, p 681, Op cit
[30] J.E Dougherty & R. Pfalzgraff, *Contending Theories of International Relations: A Comprehensive Survey*, New York, Harper and Row Publishers, 1990, p 275, op cit

Affairs and Conflict Resolution jointly with that on Agriculture, Tourism and Natural Resources conducted fact finding missions on resource-based conflicts in Kagera; Karamoja and Lake Victoria border regions of East Africa. The main goal of the missions was to help provide lasting solutions in the regions affected by various conflicts in the partner states in order to create a better East Africa where people would live in peace and harmony and in a state of improved well-being.[32] The visit by the committees highlighted several challenges in the search for peace in the regions affected by conflicts as well as opportunities. The challenges included mass pastoral migration, leadership as well as structural weaknesses and regional dynamics. Achievements obtained from the visit included publicity and mobilization of stakeholders who included politicians, civil servants, local leaders, private sector and NGO's which culminated into extensive consultations on the causes of conflicts in those regions and mechanisms of resolution. The mission that covered the Lake Victoria basin led to the release of some Kenyan fishermen arrested by Ugandan authorities while fishing in the lake.[33] The ensuing report demonstrated the grave problem posed by the conflicts not only to the regions and the countries concerned, but also to the Community and the goal of integration. The report also proposed ways of addressing the conflicts encompassing governance incorporating a systematic mechanism to extend good governance into the regions which, among other things, entails the enforcement of law and order and ensuring that the people participate in determining their destiny.[34] Similarly, in 2005 the Assembly organized a fact-finding tour of its members to pastoralist districts of northern Kenya. The main objective of the tour was to enable pastoralist

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[31] *Treaty Establishing the East African Community*, Arusha, EAC Secretariat, 2002, Op cit.

[32] East African Legislative Assembly, "Report on Preliminary Study by the Committees of Regional affairs and conflict Resolution, and of Agriculture, Tourism and Natural Resources on Resource-Based Conflicts in East Africa: A Case Study of the Kagera; Karamoja and Lake Victoria Border Regions, October 2003," EALA, Arusha, 2006, p xvii
[33]Ibid., p 77

communities in the region attain social, economic and political progress by influencing the policy and legislative processes and attitudes at both the local and the East African Community level.[35] Some of the emerging issues from the visit included the realization that pastoralists' areas in northern Kenya have suffered progressive neglect over a long time leading to high levels of poverty, poor infrastructure and lack of a general framework to address developmental issues in the area. There were calls for extensive regional community sensitization and mobilization on the need for peaceful co-existence in the region as well as the creation of a regional policy framework for peace-building and conflict resolution connecting communities through central and regional governments.[36] A former Deputy Secretary General of EAC acknowledged that conflict especially within countries, is caused by lack of opportunities and hence the challenge is to create the necessary policies and environment at the national and sub-regional levels. He argued that some of these sub-regional strategies of managing conflict will involve surrendering a certain degree of sovereignty[37] and this is an area where the Assembly could be significant.

3.4.5 Overview of the East African Legislative Assembly in Managing Conflicts

Reviewing the activities of the East African Legislative Assembly, it is evident that as the legislative arm of the Community, the Assembly has continued to fulfil its legislative, oversight and representative functions in a number of ways. Abdi, the Speaker of the Assembly has observed that in the critical role of legislation, democratic representative structures and institutions such as EALA offer a unique and good opportunity of addressing issues of

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[34]Ibid., pp 128-129,
[35] East African Legislative Assembly, "Report of the Fact Finding of Pastoralist Districts of Northern Kenya by the Members of EALA," EALA, Arusha, 2006, p 3
[36]Ibid., pp 43-46
[37]Interview with a former Deputy Secretary General of EAC at Nairobi on 16 October, 2009

development through checks and balances on governments (through the Council of Ministers). He added that the idea is to embrace an all-inclusive approach to policy and decision making and implementation mechanisms of agreed upon agenda and emphasized that in virtually all respects, legislations are fundamental and most critical guiding and regulatory framework for shaping this agenda.[38] Abdi further noted that in the EAC arrangement, EALA's role in the integration agenda is to provide legislation that ensures a balanced, equitable and sustainable integration process. Commenting on the oversight role, a Senior Clerk at the Assembly observed that considering the number of resolutions and questions to the Council of Ministers, it is evident that the Assembly takes cognizance of its oversight role.[39] In terms of representation, the Assembly has served as the main democratic link between the institutions of the East African Community and the people of East Africa and like any other legislature, it has been the voice for the concerns of the citizens of East Africa to other decision making bodies. EALA has been performing this function in the integration process because it constantly consults the people of East Africa on issues related to the implementation of the policies and activities outlined in the protocol/Treaty for the establishment of the EAC. Notable among these were the public hearing workshops on all major stages of integration and legislations which included workshops on the Customs Union (both protocol and the Act) and on the proposed protocol on the Common Market.[40] To understand and appreciate the concerns and priorities of the people of East Africa, the Assembly has endeavoured to enhance public access through holding its sittings in cities and towns across the region in an effort to fulfil one of the operational principles of the

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[38] A. Abdi, Conference Paper titled "The East African Legislative Assembly: Mandate, Challenges and Relationships with other Organs of the Community." Presented at the Strategy Retreat for the Key EAC Organs and Institutions, Kigali, Feb., 2009, p 4
[39] Interview with Senior Clerk at East African Legislative Assembly in Arusha on 15 September,2009
[40] A. Abdi, Conference Paper titled "The East African Legislative Assembly: Mandate, Challenges and Relationships with other Organs of the Community." Presented at the Strategy Retreat for the Key EAC Organs and Institutions, Kigali, Feb., 2009, Op cit., p 5

Community of being "people-centred and market-driven." EALA has also played the oversight role through interrogating public policies and public funds earmarked to pursue these policies to ensure efficiency and effectiveness, fairness and equity in their administration or implementation. This is mainly done through the respective committees of the Assembly which are in constant contact and dialogue with the Secretariat in an effort geared at ensuring that the path articulated by the EAC through the Development Strategy is adhered to. On the budget, EALA plays an important role by providing direction on EAC spending and allocation of resources as provided by Article 132 (5) of the Treaty which states-

> "the resources of the Community shall be utilized to finance the activities of the Community as shall be determined by the Assembly on the recommendation of the Council."[41]

This mandate has provided an important opportunity to EALA to debate the budget and allocate resources in line with priorities of the Community, although in practice, the power and impact of the Assembly on the actual budget allocations is minimal. On the utilization of Community finances, EALA is empowered to debate the report of the Audit Commission on the accounts of the Community and its recommendations have made positive impact in the management of EAC's finances. In terms of outreach, the Assembly has marketed the Community across East Africa through tours and outreach programmes. It has visited and interacted with villagers, rural peasants, business community, scholars, professional associations, etc, to collect their views about the type of Community they want. It has also developed liaison mechanisms with the National Assemblies of partner states. Formal fora to allow parliamentarians from the five East

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[41] *Treaty Establishing the East African Community,* Arusha, EAC Secretariat, 2002, Op cit.

African countries to regularly interact with those of EALA to discuss matters of regional integration have been established which include the annual Inter-Parliamentary Relations Seminar (Nanyuki); the Inter-Parliamentary Forum on Population, Health and Development; the Inter-Parliamentary Liaison Committee on Natural Resources/Extractive Industries; the Inter-Parliamentary Liaison Committee on Budget; the Inter-Parliamentary Liaison committee on Trade and the Eastern Africa Association of the Public Accounts Committees. Apart from being the legislative body of the EAC, EALA has provided a forum for the civil society and other non-state actors within the EAC to advocate for the promotion of democracy, the rule of law and respect for human rights.[42] As noted by a number of interviewees, the role of the Assembly particularly in managing conflicts is impeded by a number of factors which include the structures of the EAC as provided in the Treaty, lack of a clear mandate partly due to questions of legitimacy as well as issues pertaining to the Treaty relating to matters of sovereignty.

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[42] A. Abdi, Conference Paper titled "The East African Legislative Assembly: Mandate, Challenges and Relationships with other Organs of the Community." Presented at the Strategy Retreat for the Key EAC Organs and Institutions, Kigali, Feb., 2009, Op cit., p 9

4.0 CHAPTER FOUR: A CRITICAL ANALYSIS OF ROLE OF EAST AFRICAN LEGISLATIVE ASSEMBLY IN MANAGING CONFLICT IN THE SUB-REGION

4.1 Introduction

This Chapter presents and descriptively analyses the data gathered from members of the East African Legislative Assembly and current and former staff of the East African Community on key themes arising from the study. It starts with perspectives on nature and trends of conflict, strategies used in their management, effectiveness of the strategies employed by the EAC and the Assembly, the concept of elections for members of the Assembly, mandate of the Assembly and its role in conflict management and end with a summary.

4.2 Nature and Prevalence of Conflict

The study is based on the premise that conflict has been and will continue to be a phenomenon within and between states in the sub-region. To establish the prevalence of conflicts, the respondents were asked to indicate whether conflicts had increased or reduced during the study period. 61.5% of the respondents were of the view that conflicts had reduced while 30.7% indicated that conflicts had increased. 7.6% polled that the prevalence of conflicts had remained the same.[1] There is therefore consensus that conflict indeed exists

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[1] Results of study done by Njenga between September-October, 2009

and hence there is every indication that the sub-region will continue to experience conflict, both inter-state and intra-state.[2] Conflicts cited were those in northern Uganda between the government and the Lord's Resistance Army which has persisted since 1986, the post election crisis in Kenya between 2007 and 2008; the row over the ownership of *Migingo* island between Kenya and Uganda; conflicts over natural resources especially fish in Lake Victoria and over pasture among the pastoralist communities; conflicts between Rwanda and Uganda, and internal political conflicts in Burundi. These conflicts culminated into 879,982 refugees and 1,357,000 Internally Displaced Persons in the sub-region by January,2009.[3]

The EAC recognizes this reality. As Kiraso, the Deputy Secretary General for political federation in the EAC noted, "over the last two decades, the security dynamics have revealed that although inter-state conflicts do exist, intra-state conflicts are the most serious challenge, with governance being the most prominent source of grievances."[4] Mulongo concurred and asserted that conflicts in the sub-region are complex and interlocking which tends to weaken governments' effective control over territory and that this is partly due to the fact that political elites tend to play into ethno-divisions and stereotypes.[5] These conflicts

[2] For a further discussion see debates in chapter 2
[3] UNHCR Presentation at EAC Conference on Peace and Security, "Role of UNHCR in Improving Peace and Security," Kampala, 5-7 October,2009
[4] B. Kiraso, Presentation at EAC Conference on Peace and Security for Stability and Development, Kampala, 5-7 October,2009.

and others that Kiraso terms, "new generation threats to peace and security," continue to

emerge which include maritime piracy, terrorism, cybercrime and identity theft,

counterfeiting, money laundering and human trafficking.[6] It is however evident that intra-state

conflicts pose a more serious challenge to peace and security than inter-state conflicts. Most of

the conflicts were mostly traced to issues of governance making the role of the Assembly

critical.[7]

4.3 Strategies to Manage Conflicts

To address these challenges, a number of interventions have been developed, others are at

different levels of conclusion while others are at different levels of implementation. As

Kiraso noted, the EAC has taken bold steps to create a framework and structures to address

issues of peace and security but regretted that the effectiveness of the structures were

hampered by the absence of clear strategic direction on the critical areas of co-operation. It

was against this background that the Council of Ministers, upon recommendation by the

sectoral committee on inter-state security established an experts group to develop a regional

strategy supported by a practical implementation plan.[8] One of the goals of the strategy for

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[5] S. Mulongo, Presentation at EAC Conference on Peace and Security for Stability and Development, Kampala, 5-7 October,2009
[6] B. Kiraso, Presentation at EAC Conference on Peace and Security for Stability and Development, Kampala, 5-7 October,2009, Op cit.
[7] For a further discussion see debates in chapter 2
[8] East African Community, "Strategy for Regional Peace and Security," EAC Secretariat, Arusha, 2009, p 2

regional security is to develop a mechanism for conflict management and resolution. When

asked what strategies the Assembly has instituted to manage conflicts in the sub-region, 76%

of the respondents cited the establishment of the committee on Regional Affairs and Conflict

Resolution, election monitoring, questions to Council of Ministers, Resolutions urging

governments to resolve conflicts peacefully, undertaking fact-finding missions to areas or

countries embroiled in or prone to conflict as well as goodwill missions to affected areas and

engaging with the conflicting parties and arranging workshops and conferences particularly for

members of National Assemblies. 7.6% of the respondents polled that the Assembly did

not have a conflict management strategy while 15.3% were not aware of any strategy

employed by the Assembly.[9] It was noted that inter-parliamentary meetings enhanced relations

and understanding between EALA and respective National Assemblies leading to

improvements in liaison which, for instance, culminated in revision of reporting procedures

of EALA activities in the National Assembly of Kenya.[10] There was however no evidence that

these mechanisms and strategies assisted in managing any form of conflict in a structured

way.

4.4 Effectiveness of strategies employed by EALA to manage conflicts

When asked to rate the effectiveness of the strategies employed by EALA to manage

conflicts, 53.8% responded that the strategies were effective, 30.7% were of the view that they were ineffective while 15.3% polled that they were either unaware of the effect or did not believe such strategies existed. On the role of resources in facilitating the Assembly, 83.3% asserted that inadequate budgetary allocations constrained its capacity to manage conflicts, 8.3% disagreed, while 8.3% were undecided.[11] A large majority of the respondents therefore believed that the Assembly could do more in the area of conflict although, as noted earlier, there is no precedent created where the Assembly has been successful in managing conflict. It is, however, unlikely for the Assembly to have a significant impact in the area of managing conflicts even with additional resources given the current organisational structure of the EAC which does not recognise the importance of a legislative Assembly within the doctrine of separation of powers in a democratic system.[12]

4.5 Direct elections for Members of the Assembly

Regarding the composition of the Assembly, 58.3% of respondents supported the assertion that direct elections for members of the Assembly would increase public awareness for the goal of integration and increased support for the East African Community and 33.3% responded to the negative while 8.3% were undecided.[13] The current practice provides for the National

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[9] Results of study done by Njenga between September-October, 2009

[10] For further details see chapter 3

[11] Results of study done by Njenga between September-October, 2009

Assemblies to elect members to EALA, a system which has been faulted since the members are

often elected in proportion to the strength of their political parties in the respective

National Assemblies which entrenches and rewards party loyalty for membership to EALA as

opposed to advancing integration agenda. It has been suggested that for integration to move

forward, members of EALA should be elected directly by the people through universal adult

suffrage on the platform of integration in an East African constituency. Questions of

procedure of electing members to the Assembly have been subject of litigation at the East

African Court of Justice and is, therefore, a potential area of conflict as the sub-region

decides on the matter of federation. On the legitimacy of members of EALA, Adar has

argued that the success of the federalism project in East Africa and its envisaged durability

must be people centred and institution-driven. He asserts further that the Treaty should

confer direct electoral sovereign responsibilities on the East Africans which by extension

would empower the East African legislators with rights and duties to drive federalism in the

region.[14] Respondents suggested that the mandate of EALA be considered together with the

need to obtain legitimacy from East Africans.[15] As Adar asserted, "ownership of federalism

through the recognition of sovereign rights of East Africans is an important ingredient for the

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[12]For a further discussion see debates in chapter 2
[13] Results of study done by Njenga between September-October, 2009

success and durability of the EAC."[16] He further argued that these functional powers and

responsibilities are derivatory in the sense that EALA, if properly constituted, would be

empowered by East Africans through electoral process to exercise its duties inscribed in the

Treaty.[17] A direct mandate for the Assembly emanating from the people would give the

Assembly an important leverage over matters of the Community.

4.6 Key Mandate of EALA and role in Managing Conflicts

To gather data on what was considered to be the key mandate of the Assembly, 92.3% of the

respondents cited the traditional roles of legislatures of legislation, oversight and

representation while 7.6% polled that its main task was liaison with National Assemblies. It is

therefore clear that the Assembly is perceived in the traditional framework of a legislature.

58.3% polled that the view negatively affects its role and impact in managing conflicts while

41.6% were undecided on the impact the perception had on conflict management.[18] The

perception of EALA as a law-making body and not as a mechanism of conflict management

implies that whenever conflicts arise, partner states have been resorting to bi-lateral measures

irrespective of whether or not the conflict has an impact on the Community. This was the

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[14] K. D Adar "Federalism and East African Community Integration Process: The Role of East African Legislative Assembly," paper presented at Cigi/Garnet Conference, Bordeaux, 17-20 September,2008, p 1
[15] For a further discussion see debates in chapter 2
[16] K. D Adar "Federalism and East African Community Integration Process: The Role of East African Legislative Assembly," paper presented at Cigi/Garnet Conference, Bordeaux, 17-20 September,2008, p 1, Op cit
[17] Ibid., pp 5-6
[18] Results of study done by Njenga between September-October, 2009

case during the row over the location and ownership of *Migingo* island in Lake Victoria.

4.7 Conflict Management mechanisms within the EAC

To collect information on structures to manage conflicts when they occurred, respondents

were asked to comment on existence of conflict management mechanism within EAC. 76.9%

of those polled asserted that the Community did not have a conflict management mechanism

and the lack of a clearly defined conflict management mechanism causes delays in resolution

of conflicts in the sub-region threatening economic and political integration, while 23% were

not decided.[19] Respondents asserted that there is need for a body charged with the duty of

managing conflicts and to co-ordinate peace and security activities. The finding confirms the

view expressed by Mwagiru who contended that the current East African Community is

based on the earlier thinking that the whole idea of integration and the functionalism that it

entails precludes the emergence of conflicts between the member states. Mwagiru termed this

approach idealist and utopian and he considered the omission as the Treaty's great failure.[20]

It is apparent that the sub-region did not learn from the mistake of the first attempt at the

Community which poses even a greater risk now with the expansion of membership with the

incorporation of Rwanda and Burundi. There are current initiatives within the EAC which

[19] Results of study done by Njenga between September-October, 2009

[20] Mwagiru, M *Conflict in Africa: Theory, Processes and Institutions of Management*, Nairobi, CCR Publications, 2006, p 154, Op cit

have culminated into the development of a peace and security strategy which recognizes peace

and security as pre-requisites for the success of the EAC region integration process. One of

the stated goals of the strategy is the development of a mechanism for conflict management

and resolution. The strategy intends to pursue the goal through the development of an EAC

protocol for conflict prevention, management and resolution and development of a protocol on

conflict early warning. This approach concurs with Mwagiru's assertion that lack of a conflict

management mechanism is a risk to the goal of integration.[21]

4.8 EALA Members familiarity with role in Conflict Management

On the assertion that members of EALA were not conversant with their role in managing

conflict, 33.3% responded to the negative, 16.6% agreed while 50% were undecided.[22] This

shows that the respondents are not clear on who should be responsible for managing conflicts

or how it should be undertaken. As Molukanele noted earlier, parliaments are well placed to

manage conflicts, yet as the above data shows, members of EALA are not explicitly clear

about what role the Assembly should play.

4.9.1 Chapter Summary

The chapter intended to identify conflicts and their prevalence and the strategies which have

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21 For a further discussion see debates in chapter 1
22Results of study done by Njenga between September-October, 2009

been employed by the East African Community and specifically by the East African

Legislative Assembly, the effectiveness of the strategies in managing conflict in the sub-

region and ways to improve capacity to manage old and emerging forms of conflict. This has

been achieved through analysis of findings which followed both qualitative and quantitative

approaches. This forms the basis to draw conclusions in chapter five.

5.0   CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Overview of the Study

This Chapter begins by a summary of the preceding chapters and a review of the set

objectives and hypotheses and concludes with recommendations.

Chapter 1 outlined the history of co-operation in East Africa, rationale for regional and sub-

regional co-operation, attempts at integration in East Africa which started with a statement of

intent by heads of state of Kenya, Uganda and Tanzania in 1963 that culminated into the

Treaty of Kampala of 1967 that provided for East African Co-operation and its eventual

collapse in 1977. Reasons for the collapse were explained. Subsequent efforts at restarting the

East African co-operation dream were traced to, among other measures, the creation of the

Permanent Tripartite Commission for co-operation in 1994 which ended with the signing of

the Treaty for the establishment of the East African Community on 30[th]November,1999. The

chapter also outlined the organs of the Community, with emphasis on the East African

Legislative Assembly and measures taken to implement the Treaty but noted that the goal of

integration was threatened by lack of a mechanism to manage conflicts which are part and

parcel of human existence and argued that legislatures world-wide are well placed to manage

conflicts due to their position in governance arising from the doctrine of separation of

powers in a democratic system.

Chapter 2 expounded concepts on the institutions of legislatures and processes of discharging

their mandate and specifically their role in managing conflict in society. It concluded that legislatures that effectively perform the three functions of representation, lawmaking and oversight have the greatest potential to effect meaningful conflict management and peacebuilding measures.

Chapter 3 focussed on the East African Legislative Assembly as a case study in managing conflicts in the sub-region in the period 2001-2008. The membership of the Assembly was discussed and processes of discharging mandate enumerated and specifically strategies in managing conflict. It also noted the obstacles faced by the Assembly in pursuit of its mandate, which included inadequate budgetary allocations and questions of legitimacy.

Chapter 4 critically analysed the role of the East African Legislative Assembly in managing conflicts exploring the nature of conflicts and the strategies instituted to manage those conflicts, their effectiveness, composition of the Assembly and impact in the performance of its tasks including managing conflict.

The main objective of the study was to assess the role of the East African Legislative Assembly in managing conflicts in the sub-region with sub-objectives being exploring conflicts and their dynamics in the sub-region and management strategies employed by the Assembly and challenges faced as well as examining the role of legislatures in conflict management.

The study was based on the hypotheses that lack of a clearly defined conflict management

mechanism in the EAC causes delays in resolution of conflict threatening economic and political integration; direct elections for members of the Assembly will increase public awareness of the goal of integration and increased support for the Community; election of members to the Assembly by national parliaments in proportion to political party strength transfers national political rivalry to Arusha hence reducing its effect as an organ of the Community; inadequate budgetary allocations to the Assembly constraints its role of managing conflicts; members of the Assembly are not conversant with their role of conflict management which creates confusion when conflicts emerge and that the Assembly is perceived as a law-making body and not as an organ for conflict management which negatively impacts on its role and effect.

The study established that there is consensus that the key mandate of the East African Legislative Assembly revolves around the key pillars of legislation, representation and oversight. It was evident from the study that the East African Legislative Assembly has performed these functions. However, the performance of these functions was not viewed as mechanism of managing conflict. 16.6% of those polled agreed that members were not conversant with their role in managing conflict while 50% were undecided on whether members of the Assembly were conversant with their conflict management role. This implies that it is not clear what role the Assembly has in the area of conflict. This was amplified by the fact that although the Assembly established a committee on Regional Affairs and Conflict

Resolution, the terms of reference were not explicit in addressing the question, as its mandate broadly revolves around the implementation of the Treaty relating to regional affairs.

The study also established that there is no mechanism within the EAC to manage conflicts whenever they break out and that partly explains why the African Union intervened in Kenya last year following the disputed general elections of 2007. The row over the ownership of *Migingo* island was largely left to the goodwill and bi-lateral contacts of the partner states concerned.

Data collected illustrates that respondents believe that the EAC has a role in managing conflicts in the sub-region but regrets that there is no clear mechanism and noted that although the East African Legislative Assembly had utilised its processes as a legislative institution which included observer missions, debates and resolutions, questions to the Council of Ministers and committee enquiries, it was hampered by inadequate resources and lack of a clear mandate in the area of managing conflicts.

Reacting to this apparent contradiction, respondents asserted that although EALA may make recommendations on resolution of conflicts, it does not have the power or mechanism to implement or enforce them. This is illustrated by the report of the observer mission for the general elections in Kenya of December, 2007.

To address these anomalies, respondents recommended that the Treaty should be amended to clearly stipulate and structure how conflicts will be managed in the sub-region.

Abdi lamented that although EALA was given a lot of powers by the Treaty on the budget, it does not include entitlements to draw up or revise budgets which effectively reduces the Assembly to a "rubber stamping organ." There were various factors that were advanced for ineffectiveness of the Assembly in managing conflict which include lack of funds to exercise oversight and the fact that it depends on legislative proposals from the Council of Ministers and does not have mandate to initiate legislation. There were instances cited relating to conflicts over the mandate and status of the Assembly vis-a-vis other organs of the Community due to the organizational structure of the EAC.[1] Abdi recommended that there is need to have a co-ordinated arrangement of the meetings and activities of all the major organs to ensure that there is no clash of programmes.

5.2 Recommendations

Arising from the foregoing, it is evident that most East Africans support the idea of a federation and believe that it is a viable proposition and without exception saw great potential in deepening integration to enhance production and trade across borders. Most people also supported the federation and the fast-track process recommended by the Amos Wako committee.[2] The EAC has subsequently appointed a Deputy Secretary General for political Federation to provide the necessary co-ordination and impetus to the process.

[1] Abdi, A Conference Paper titled, "The East African Legislative Assembly: Mandate, Challenges and Relationships with Other Organs of the Community." Presented at the Strategy Retreat for Key EAC Organs, Kigali, February,2009, Ibid.
[2] Y.K Museveni, speech during the 5th Meeting of the 2nd East African Legislative Assembly, Arusha, 26 February,2008, p 4

However, as the region ponders over the ultimate goal of integration, which will be to form a political federation, a number of fundamental institutional and policy measures will have to be undertaken to overcome the obstacles to political federation, otherwise the whole idea will be based on quicksand without any real chance of attainment.

To address these anomalies, it is therefore recommended as follows;

The Treaty should be amended to clearly stipulate and structure how conflicts will be managed in the sub-region which may include ceding of sovereignty to the Community;

The organisational structure of the Community should be reviewed to clearly define and enhance political accountability of the integration process;

The status of the East African Legislative Assembly should be enhanced as one of the main organs of the Community to exercise oversight over all other organs and institutions of the Community including the Summit; and

To enhance popular ownership of the process of integration and political federation, the East African people must be involved through direct elections for members of the East African Legislative Assembly to ensure that the interests of the people in the region are directly linked to the short and long term projects of the EAC including federalism. The membership of the Assembly must also be representative and therefore the seat allocation to each partner state must reflect the population of the respective countries.

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