

UNIVERSITY OF NAIROBI .

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**“Structural Conflict in Kenya: A Critique of the Post Conflict
Recovery Framework.”**

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International Conflict Management at the Institute of Diplomacy and
International Studies. University of Nairobi**

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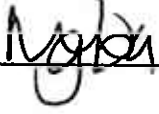
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DECLARATION

I Nancy W. Ngumba, declare that this dissertation is my original work and has not been submitted for the reward of a degree in any other university.

Signed 

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This project has been submitted for examination with my approval and as a University lecturer.

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DEDICATION

I dedicate this project to my mother, Monica Mwarania Ngumba. Thank you, MaMi for your upbringing protection and guidance. At the age of 86, confined to a wheelchair and barely aware of your surroundings, I wish you were here to witness my graduation.

My mother, I wish you God's everlasting peace.

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Special thanks to my husband Peter for his understanding and giving me all the support I need to accomplish the requirements of this degree. To my lovely children Resian, Lantei, Kaoku and Sitei for their patience and love throughout my study period. Thank you Lantei for filling in when I had to be absent.

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In Peace

ABSTRACT

Since independence, Kenya has experienced numerous ethnic, resources, political and even electoral based conflicts. The past political regimes attempted to calm the situation every time conflict arose, but only temporary frameworks were put into place, this has over the years resulted to accumulated tension. The analysis of these experiences and especially after the 2007/ 2008 post election violence shows that there are deep seated issues embedded in the structures and that need attention as illustrated by the Agenda Four of the mediated outcome.

The study makes use of secondary data through an intensive desk review to collect and analyze published materials and information from books, journals, magazines, periodicals, the internet, newspaper articles and other reliable sources in order to establish the reality of the Structuralism theory, the Peacebuilding theory and the Kenyan history of structural violence that highlights unsatisfied basic needs within the social, economic and political structures in Kenya. In focusing at the Kofi Annan post conflict recovery framework, the study critiques the extent to which his team's effort transformed Kenya structures into a positive peace society.

Agenda Four was a long term peacebuilding plan of action that offered hope to end structural conflict in Kenya through the post conflict recovery framework set out by Annan that intended to transform the otherwise conflictual social, political and economic relationships between the diverse ethnic communities. Although Kenya faces another election in 2013, the implementation of the framework has been faced with lack of follow up by the stakeholders, lack of political will from the coalition government and general misunderstanding on the need to transform social relationships hence exposing Kenya to continued violence in future.

LIST OF ABBREVIATIONS

- CIPEC Commission of Inquiry into the Post Election Violence
- DDR Disarmament, Demobilization and Reintegration
- ECOSOC United Nations Economic and Social Council
- FEM February Eighteen Movement
- GEMA Kikuyu, Embu, Meru Association
- ICC International Criminal Court
- IDP Internally Displaced Persons
- KADU Kenya African Democratic Union
- KAMATUSA Kalenjin, Maasai, Turkana and Samburu
- KANU Kenya African National Union
- KNDR Kenya National Dialog and Reconciliation Process
- KPU Kenya Peoples Union
- MCR Mombasa Republican Council
- MOU Memorandum of Understanding
- NARC National Rainbow Coalition
- NCIC National Cohesion and Integration Commission
- NGO Non Governmental Organizations
- ODM Orange Democratic Movement
- PBC Peacebuilding Commission
- PBCR Peace- building and Conflict Resolution Programme
- PEV Post Election Violence
- PNU Party of National Unity
- SLDF Saboat Land Defense Movement

TJRC Truth, Justice and Reconciliation Commission (Kenya)

UDHR Universal Declaration of Human Rights

UNDP United Nations Development Programme

UNHCR United Nations High Commissioner for Refugees

UN United Nations Organization

WW II Second World War

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CHAPTER ONE

1.0 Background: Kenya's Structural Conflict

This chapter begins with a brief background of the structural conflict in Kenya. It continues to state the statement of the problem, the objectives of the study, the academic as well as the policy justification of the study. The literature review that looks at the structuralism theory, the human needs theory and the peace building theory. It also examines the study's theoretical framework, the Hypothesis, the research methodology and the finally the chapter outline.

Since her independence in 1963, Kenya has experience many situations of violent conflict that indicated underlying problems in the social, economic and political structures. Massacres and unresolved political assassinations for instance have been witnessed in Holla Massacres,(1959-Tana River); Kisumu town massacres(1969), Wagalla(Wajir-1984); Isiolo(2009). Arbitrary arrests, detentions and torture as well as politically instigated killings such as those of Tom Mboya(1969), J.M Kariuki(1975), ,Dr. Robert Ouko(1990), Fr. John Kaiser(2000) and others have been witnessed.¹

During the Moi era (1978-2002), the Nyayo House, Nyati House, Kamiti and Naivasha Maximum prisons were centers of torture for prodemocracy activists in order to silence them. The 1982 coup d'état, only four year after taking over from Kenyatta, this was evidence of gross structural issues. The Mwakenya members (1982-1995), the February Eighteenth Movement (FEM from 1995) and the Release Political Prisoners (RPP) lobby

¹ Kenya Human Rights Report 2011. Lest we Forget, The faces of Impunity in Kenya.

groups (1992-2002). Many political activists run away from the country to avoid detention and were taken as dissidents in foreign countries.²

Also widely witnessed in the Kenya society is the emergence of militia such as the 'Mungiki', and the 'Taliban' the Sabaot Land Defence Forces (SLDF) in the Mt Elgon conflict widely mention on the 2007/8 post election violence, have been followed by incidents of their arrests and sometimes extra-judicial executions through security swoops, crackdowns and operations.

Land and land-based resources remain the single most important economic factor in Kenya. 75% of the Kenyan population is directly dependent on land yet its management and distribution had been skewed in many ways lending to massive social economic inequalities hence compromising social status among different ethnic communities.

Illegal and irregular allocation of public land, gross disparities in land ownership and inadequate environmental management, low productivity, endemic evictions and internal displacements have caused value based conflicts over land and land based resources all over Kenya since independence such as those in the Mount Elgon, among the Pokot and the Turkana, in Isiolo between the Borans, Somalis, Turkana, Samburu and Meru Communities, in the Rift Valley among the Kikuyu the Maasai and the Kalenjin.

Besides the decisions and steps taken by the colonial administration to allocate land and other resources among the different ethnic communities in Kenya, the post independence governments have had the responsibility to equally distribute these resources evenly to all including the minorities, the underprivileged or disadvantaged persons, groups and regions in order to ensure equal chances and equal opportunities to all citizens. It is clear that decisions

² Ibid

make by the post independence leaders are the results the conflicts that have negatively affected the wellbeing, autonomy and dignity of individuals and groups and even regions due to differences in access to basic social goods and service such as education, health, access and enjoyment of political rights and freedoms in Kenya over the years.

Kenya's socio political and economic situation has its base in the British colonial administration's interests of her potential in agricultural productivity in the highland areas. Through a succession of land regulations between 1899 and 1915, they expropriated and alienated much of the best land from their inhabitants and reserved it for white settlers therefore alienating African except for their cheap labor.

The post colonial government duplicated this practice first by the Kenyatta government who ensured that only his community would inherit the white highlands through his help and then by the Moi regime that took the opportunity to acquire land formerly owned by others for his ethnic community and also ensured that only those communities that politically maintained him in power would access development. The rest of the more than 40 ethnic communities in Kenya have with time found the inequalities unbearable as their basic needs are far from being fulfilled.

Just like the British, both Kenyatta and Moi's regimes were autocratic democracies, they ensured that they had full authority over all sectors of the economy and dictated how resources would be shared, always favoring their own with the best land and political positions so as to continue abuse of public office by those close to them breach of trust, conflict of interest, misappropriation and embezzlement of public funds, theft and plunder of public resources, rigged elections and other ways of dishonesty.

Corruption and mismanagement of public resources in addition to economic, social and political development have been witness during the Moi and Kibaki regimes resulting to endless commissions to investigate them and whose reports are edited before their release or are not released at all. Besides all this lack of land recourse as well as mismanagement of public resources, many ethnic communities in Kenya continue to live below the poverty line lacking in social amenities, economic wellbeing as well as in political participation creating a situation of structural conflict that often only requires a trigger.

1.1 Statement of the Problem

Kenya gained independence in 1963, since then, it has experienced numerous ethnic, resources, political and even electoral based conflicts. The most serious of them took place after the 2007/8 elections whose disputed results acted as a trigger that saw ethnic communities turn against each other. The analysis of that experience shows that there are deep issues embedded in the structures and that need attention as illustrated in the agenda four³ of the mediated outcome.

The past regimes in Kenya attempted to calm the situation every time conflict arose, but only temporary frameworks were put into place. This resulted to years of accumulated tension that that severally triggered violent conflicts. After the announcement of results of the 2007 elections the same trend recurred. The trend of these conflicts since independence reveal a trend of political, social, as well as economic disparities among different ethnic communities, social classes, gender and age groups.

³ Outlined in the Kenya National Dialog and Reconciliation website www.kndr.co.ke

The post conflict recovery frameworks used in all instances seem to have ignored the structural issues hence the persistence of these conflicts. In this sense, the conflicts seem only to have been settled leading to their recurrence. This study argues that Kenya has been and is still in a state of structural conflict and therefore raises a question about these post conflict recovery frameworks and to critique the approach used for conflict recovery.

In this light, this study aims to answer the question ‘Does the current post conflict recovery framework offer any hope in the long term resolution of the conflict in Kenya’?

1.2 Objectives of the Study

This study aims to:

- i. To examine the nature of structural conflict in Kenya
- ii. To critique and examine the nature of post conflict recovery frameworks in use in Kenya
- iii. To assess the post conflict recovery framework in terms of success and failure

1.3 Justification of the Study

An examination of the Kenyan society to establish the root causes of constant conflicts is essential towards understanding the reasons why they occur. It is evidence that the conflict resolution methods that have been applied in the past only settled the situation otherwise; conflict would not have recurred in such magnitude in form of post election violence. The Kenyan situation therefore needs a re-examination of its social structures that might hold the key to unfulfilled need and value expectations.

Through a thorough examination of the structural dimension of the Kenyan conflict, this study aims to contribute to alternative and durable approaches to the resolution of the Kenyan conflict as well as to shed more light into existing post conflict recovery frameworks that Kenya can make use of towards a positive peace.

To current internal and international peacemakers involved in the Kenyan initiative for peace and who are also the decision and policy makers, this study aims to shed some light on the difference between ‘ conflicts’ and ‘disputes’ and between settlement and resolution methods of conflict management.

This study aims to demonstrate that coercive means such as those used by local courts or the International Criminal Court will not resolve Kenyan conflicts until conflict resolution methods are engaged that will involve a post conflict peace building framework that will establish more socially acceptable structures in the social, cultural, economic and political spheres. This will ensure a positive peace.

1.4 Literature Review

1.4.1 Introduction to Literature Review

This section of literature review examines the literature in three major parts. The first section deals with structuralism theory while the second one looks at the human needs theory. The third section looks at the peace building theory as well as a background on Kenya; it also examines the regional and international post conflict recovery frameworks. Each part of the literature review contributes and leads to the next towards reviewing the topic the study.

1.4.2 Structuralism Theory

This section reviews literature on the structuralist approach in conflict theory also referred to as the system theory. This approach traces its origin to the Marxist tradition. Marxism⁴ states that its history is that of class struggle between the bourgeoisie and the proletariat. The bourgeois exploitation of the world market resulted to universal interdependence of nations through capitalism, Stern⁵ taking this view and argues that the lesser developed economies are at the mercy of the wealthy western capitalist economies and therefore dependent on them. Stern and Marx thus agree that the world structure determines the kind of segments into which the world system is divided and that any imbalance brings a revolution. Structuralism therefore is the term borrowed from anthropology used to explain this situation.

In support of structuralism, Groom⁶ and Stern⁷ agree to this origin by emphasizing that the political, social and economic structure has to be at the core as opposed to other parts of society. For Stern, unless the political and economic systems are constant with each other, there is likely to be a structural problem. Stern suggests that there is therefore a need for a society to review its history to enable an honest assessment of unequal structures in its social, economic and political structures which if ignored, according to Groom and Marx will lead to a revolution.

⁴ Karl Marx and Fredrick Engels. *The Communist Manifesto, A Modern Edition.* (Verso, London 1998) p 35

⁵ Stern Geoffrey. *The Structure of International Society: An Introduction to the Study of International Relations* (Continuum Imprint, London, 2000) p. 39

⁶ A.J.R Groom. Paradigms on Conflict: the Strategist, the Conflict Researcher and the Peace Researcher in Burton John, Frank Dukes (eds). *Conflict: Readings in Management and Resolution* (The Macmillan Press Ltd, London, 1990) p. 81

⁷ Stern Geoffrey. *The Structure of International Society: An Introduction to the Study of International Relations* (Continuum Imprint, London, 2000) p. 39

Mitchell⁸ asserts that conflicts will occur in the process of social, economic and political interactions in those societies where social values and social structures do not match. Marx's agrees that societies in economic and political conflicts may be in situations of scarcity of needs and values brought about by inequalities in the distribution of resource as well as of positions in decision making, which he argues must be shared and if not result to social revolution.

It is thus essential to understand any crucial division within the social system in any structure, Marx⁹ and Stern¹⁰ advice that we must therefore analyze the social relationships as a function of the social economic system because this forms the material base on which all relationships depend. Marx's major concern is the world exploitative nature in the international division of labor and the unregulated markets that he says diminishes people's lives and limits their freedom putting the human race at the mercy of these competitive structures where only the fittest survive.

Linklater¹¹ agrees and recommends understanding and addressing the deeper social relations and material conditions which are at the root of human exploitation and misery. Marx¹² thus concludes that exploitation of some groups by others causes control of profit from the labor power of others which in turn raises suspicion and hostility between separate national, ethnic or cultural groups, he, as well as Linklater advocate for the elimination of

⁸ Mitchell C.R. *The Structure of International Conflict* (Macmillan Press Ltd, London 1981) p. 18

⁹ Marx and Fredrick Engels. *The Communist Manifesto, a Modern Edition.* (Verso, London 1998) p.20

¹⁰ Stern Geoffrey. *The Structure of International Society: An Introduction to the Study of International Relations* (Continuum Imprint, London, 2000) p. 41

¹¹ Linklater Andrew. Marxism, in Burchill Scott, Linklater A. et al. *Theories of International Relations* (Macmillan Press Ltd, London 1996) p. 121.

¹² Marx and Fredrick Engels. *The Communist Manifesto, a Modern Edition.* (Verso, London 1998) p.20

fear, ignorance, material scarcity in the context of exploitation and the creation of a society in which all human being are free to develop a range of creative powers.

Galtung¹³ agrees with Marx¹⁴ that problems within the social, political and economic structures can result to violence which can be direct with visible effects such as killings, the wounded, displacement and material damage and it can also be within the structures and therefore having invisible effects. He thus notes that structural violence is more vicious because it portrays inequalities in the physical and social wellbeing and thus he argues it causes direct violence, when violent actors who revolt against the existing social, economic or political structures, use violence as an instrument.¹⁵

In all societies the relations of human behavior has to be regularized by social and cultural norms, in this view, Burtons¹⁶ adopts Maslow's¹⁷ hierarchy of human needs that explains why people behave the way they do in everyday social interaction. It is Maslow who first attempts to explain that all human beings have needs and that there are certain conditions that must be fulfilled in order for the basic human needs to be satisfied among them the freedom to express oneself in order to be able seek new information.

Human needs are social needs, Burton notes that when people are recognized in a society, they have a sense of self identity and are able to seek opportunities that belong to them; they are able to develop themselves. Societies do not seek these qualities through forceful means, the existing structure take into consideration their social, economic and

¹³ Galtung Johan. *On the Meaning of Nonviolence*, Journal of Peace Research. Vol. 2 No. 3 (1965) p. 228- 27

¹⁴ Marx and Fredrick Engels. *The Communist Manifesto, a Modern Edition*. (Verso, London 1998) p.44

¹⁵ Galtung Johan. *Violence, Peace and Peace Research*. Journal of Peace Research, Vol 6. No. 3 (1969) p. 170

¹⁶ Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993. p. 18

¹⁷ Abraham Maslow. *A Theory of Human Motivation*. Psychological Review, Vol. 50 #4(1943) pp. 370-396.

political needs, thus these need are satisfied in a world that treats all spheres and peoples equally.

In looking at the real interaction between states, Morgenthau has a different perspective ¹⁸ in that he sees state power and dominance as the only means of preserving peace within societies, he emphasizes that overwhelming power in the form of material force and irresistible social pressure ensures that societies remain in the limits of the law. Burton,¹⁹ like Jeong²⁰ and Marx²¹ reject this view and although they agree that political structures and institutions are the steering wheel towards the fulfillment or to the failure of the fulfillment of human needs, they note that individuals will defy social norms because their inherent needs have not been satisfied, social groups will be prepared to defy the wider society even if at the greater cost in the pursuant of their goals.

Societies are therefore able to use other means to revolt against the status quo resulting to violent conflict, Burton²² thus differs with Morgenthau and asserts that attention must be shifted from the state as the unit of analysis and more attention be given to identity groups such as religious groups, militia groups, ethnic communities, political parties, clans, age groups, gender and non state actors to which individual owes loyalty and allegiance in order to be able to understand and explain structural conflict from a social perspective. He rejects the power model of the state which he explains has failed to explain why states are

¹⁸ Morgenthau Hans. *Politics Among Nations. The Struggle for Power and Peace* (Kalyani Publishers, New Delhi 2004) p. 461

¹⁹ Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993. p. 18

²⁰ Jeong Ho-Won. *Peacebuilding in Postconflict Societies. Strategy and Process* (Lynne Rienner Publishers, London 2005) p. 12

²¹ Marx and Fredrick Engels. *The Communist Manifesto, a Modern Edition*. (Verso, London 1998) p.47

²² Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993.

unable to meet social, economic and political needs and why they destroy their own structures leading to structural conflicts that result to violence.

The importance of analyzing societies in terms of needs may bring in an understanding of social behavior; Burton²³ and Mitchell²⁴ explain the importance of the differences between values and needs because they account for different conflicts. They argue that conflicts on values and needs cannot be compromised, traded or repressed and require structural transformation. The methods used therefore should be a process that reveals the hidden motivation and intention so that the underlying structural needs and values becomes clear²⁵. Mitchell²⁶ adds that understanding the causes of goal incompatibility is core and has a profound effect on the development, resolution and transformation of conflict and thus is essential to post conflict reconstruction. Mitchell notes that changing the psychological dimension of adversarial relationships in society and understanding different views is inevitable in reducing tensions within societies.

1.5 Peace Building Theory

Although it is social relationships that define social behavior, the absence of direct violence in society does not explain how to deal with unacceptable social behavior. When violent conflict occurs, its control and reduction is essential, also of importance are hierarchical relationships among the warring parties in order to mend structures which are

²³Ibid.

²⁴ Mitchell C.R. *Structure of International Conflict*. (Macmillan Press Ltd. London 1981) p. 35

²⁵ Ibid p. 28

²⁶ Ibid p.41

responsible for violent conflict. According to Galtung,²⁷ these relationships can either be in negative or in positive peace.

He associates negative peace with those social structures that are exploitative, unequal, derivative and injustice and result to a divided and unsatisfied society. In contrast, he argues that a society in positive peace is desirable because it is legitimate and just in its social, political and economic spheres and therefore results to the presence of peaceful interpersonal and societal relationships in all its spheres. It is therefore evident that in a society emerging from conflict, social relationships must be transformed in an effort to build peace. Jeong²⁸ notes that such a society is characterized with unequal relations which occur because reform considerations tend to ignore the imbalances between groups in the political and economic structures.

Ledarach²⁹ notes that peace is centered in relationships and hence it is a long term process structured by understanding, equality, and respect in relationships and thus it is important to see the deeper relationship pattern that forms that context of the conflict by creating a platform that addresses the context in order to find creative responses that and solutions that are responsive to human needs.

Jeong³⁰ agrees with Mitchell that conflict does not just disappear from society but it must be well managed to transform adversarial relationships. He insists that post conflict societies need to focus on the long term relationships as they tackle the immediate ones.

²⁷ Johan Galtung, "Three Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding," in *Peace, War and Defense: Essays in Peace Research, Vol. II*, ed. Johan Galtung (Copenhagen: Christian Ejlertsen, 1976), 297-298.

²⁸ Jeong Ho-Won. *Peacebuilding in Postconflict Societies. Strategy and Process* (Lynne Rienner Publishers, London 2005)

p 11

²⁹ Lederach Paul. *The Little Book of Conflict Resolution.*(Good Book 2003)

³⁰ Jeong Ho-Won. *Peace and Conflict Studies. An Introduction* (Ashgate Publishing Ltd, London 2000)p 4

Jeong³¹ argues that to transform these relationships, it is important to deal with psychological transformation of the population, change of the perceptions, and promotion of education by reconciliation alongside cultural reformation to prevent the recurrence of violence and to break the circle of violence.

Galtung and Jeong advocate for peace building, which they say aims to create sustainable peace by addressing the root causes of violent conflict embedded in the structures. Boutros Ghali³² recommends that peace building safeguards social structures and processes associated with power imbalances and transform them to identify and supports structures that consolidate peace and adds that it would contribute to economic and social development and enhance confidence among warring parties, introduce equitable and participatory strategies, return the displaced populations, establish a stable political structure and deal with all institutional structures that are fundamental to peace'.³³

The strategies and frameworks put in place towards peace are essential, Joanne³⁴ supports the idea of going deeper into the root causes of these conflicts and asserts that post conflict societies are profoundly destructive and therefore if the root of the problem is not dealt with, the latest victim preoccupies himself with the next possibility of revenge, and the avenger lives in fear of attack.

As a first step to transforming these adversarial relationships, Mitchell³⁵ notes that peace settlements have to be observed or enforced and that peace does not depend on

³¹ Ibid

³² UN Secretary General 1992-1996

³³ Agenda for Peace'. A speech by the UN Secretary General Boutros Boutros Ghali 1992.

³⁴ Santa Barbara Joanne. *Reconciliation* in Weber C. and Galtung J, *Handbook of Peace and Conflict* (Routledge, London 2007) p. 173

³⁵ Mitchell C. R. Problem Solving. in Sandra Cheldelin et al (eds). *Conflict: From Analysis to Intervention*(Continuum, London 2003) p. 300- 315

violence control measures or therapy imposed on unwilling parties rather, problem solving workshops that approaches conflicts not from a situation of 'conflict to be won' but from a point of view of a 'problem to be solved' changes the way parties in a conflict frame the situation into another which accepts that a mutually shared situation exists. He argues that this removes negative misconceptions and stereotypes and therefore parties accept involvement in one another's problem.

In support of bringing small groups in problem solving workshops, Azar³⁶ calls it a collaborative process to overcome deep seated mistrust and hatred among parties in a conflict in order to rebuild normal communal relations. Burton³⁷ agrees that problem solving responds to frustrated needs by discovering them and analyzing them in order to come up with possible mutual options towards a structural transformation.

Of paramount importance in transforming these relationships, Jeong notes that because the kinship, territorial, cultural and economic ties are usually broken, there is need to break this cycle. He recommends reconciliation between adversaries so as to create new relationships of trust. He notes that new and more positive ways of thinking are needed to bring about reconciliation; the healing process begins with a personalized description of the traumatic events by victims or their representatives, each side must be invited by a neutral third party, to talk about their experience.

Jeong and Mitchell insists that the acknowledging of the tragedy and injustice by the aggressor accompanied by formal apologies and request for forgiveness while establishing an

³⁶ Azar Edward in *Protracted International Conflicts: The Ten Propositions in Burton John et al. Conflicts: Readings in Management and Resolution* (Macmillan Publishers, London 1990) p. 146-147

³⁷ Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993. p. 19

atmosphere of safety and respect for all parties leads to change in relationships from that of threat to mutual understanding and empowers victims to overcome fear and thus transform future relations. Jeong acknowledges that fear in such societies is sustained by the failure of perpetrators to voluntarily acknowledge that their acts of aggression were unjust.

The voluntary and mutual understanding is important to warring parties in reconciliation and key to transforming relationships in post conflict societies. Other frameworks of choice can be judicial settlements that are a challenge in conflict transformation in that they do not give individuals an opportunity to be part of their own healing. Mwangiri³⁸ agrees with Burton³⁹ that these settlements tend to consolidate existing values and institutions on past practices and therefore any attempts to widen the decision making role of courts to take into account altered values gives courts a political legislature, this, he explains, states cannot accept. Burton observes that a judicial process when applying a political or a political related dispute is likely to leave one party dissatisfied, with a grievance and hence creating a new conflict situation and thus that conflict is likely to recur.

Mwangiri argues that this is because courts cannot address the root causes of conflict and thus cannot transform them or even assist parties in reaching solutions which both parties feel legitimized. Burton explains further that courts are coercive in that they involve political and social sanctions even in the absence of enforcement procedures. They assume that conflicts are always over interests, in which the gains of one party are the loss of another,

³⁸ Mwangiri Makumi. *Conflict in Africa: Theory, Process and Institutions of Management* (CCR Publication, Nairobi 2006) p. 112

³⁹ Burton J.W. *Conflict and Communication, the Use of controlled Communication in International Relations* (Macmillan, London 1969) p 150-152

therefore inhabiting the exploration of alternative solutions that are so essential to peace building.⁴⁰

1.6 Theoretical Framework

This study is based on an examination on the structural conflict in Kenya and the post conflict recovery framework that have been used. In order to evaluate the social, economic and political sources and causes of structural violence, the study uses the structuralism theory to help explain the deep rooted structures that may have given rise to structural conflict. Structuralism is used to establish incompatibilities in the Kenyan society that may explain the consistent in this conflict behavior.⁴¹

Structuralism theory has its base in Marxism. This study examines the Marxist theory that helps us to understand the crucial divisions within the social, economic and political system that is within the Kenyan structure. This theory helps this study analyzes social relationships as a function of the social economic system by going deeper into the structural causes that have over time engineered social consciousness and resulted to conflict.

In its objective to establish the extent of Kenya's structural violence, this study aims to establish if this conflict is value and needs based or interest based. Burton's human needs theory⁴² is highlighted to helps us look at the social as well as identity groups and thus to analyze the sources and courses of incompatibilities and the extent to which social group grievances have resulted to violence and if these were resolved or settled.

⁴⁰ Burton J.W. *Conflict and Communication, the Use of controlled Communication in International Relations* (Macmillan, London 1969) p 155-156

⁴¹ Burton John and Frank Dukes (ed). *Conflict Readings in Management and Reconciliation* (Macmillan Press London, 1990) p. 80

⁴² Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993. p. 18

This study also pursues the peace building theory that helps us understand the decisions made by the political regimes towards post conflict recovery since independence. Initiative towards national peace building after conflict must have frameworks towards peace. This study examines these frameworks as well as international ones which might have influenced their application. The study will thus critique these frameworks on their success as well as failure in transforming structural conflict in Kenya

1.7 Hypothesis

- I. Social, economic and political inequalities in Kenya led to structural conflict
- II. Social, political and economic inequalities did not lead to structural conflict in Kenya.
- III. There are no social, political and economic inequalities in Kenya that can lead to structural conflict

1.8 Research Methodology

1.8.1 Sources of Data

This study aims to make use of secondary data. In its data collection, this study will engage in a desk review through the collection and analysis of published materials and information from books, journals, magazines, periodicals, the internet, newspaper articles and other reliable sources.

1.8.2 Research Design

Descriptive Survey Design as well as the Case Study Research Design will be the designs used by this study. The Descriptive Research Design will aim at collecting, classifying, analyzing, comparing and interpreting data on structural conflict as well as post

conflict recovery framework efforts as they have been used. The study will also describe the existing international efforts towards post conflict recovery in peace building in relation to local efforts. The case study will assess the protracted nature of the Kenya structural conflict since independence.

The intention of the information collected will be to establish the reality of the structural theory by highlighting the satisfaction of basic needs within the social, economic and political structures in conflict prone areas in Kenya. It will also aim at testing the peace building theory by reviewing the post conflict recovery efforts made in Kenya by the political administration and the influence or assistance acquired from the international community in the post conflict recovery to ensure Kenya's conflict is transformed to positive peace.

This study will use the non probability sampling design because it maximizes on the range of various ethnic communities that have been affected by conflict in Kenya. Purposive sampling is used to target on those communities whose experiences are relevant to the objectives of this study. In the case study as well, purposive sampling will be used on a family that has been moved severally due to conflicts.

1.8.3 Data Analysis and Presentation

The research will be centered on the Kenya's past experiences on structural conflict, and the post conflict recovery efforts made. Data analysis will therefore be based on thematic analysis under these themes in order to obtain relevant information to the research question and objectives.

A coding system based on the two themes, structural conflict and peace building will be developed. Each theme will then be classified according to major issues or topics in it, for

instance in structural conflict, emerging issues could be summarized as land, political participation, social amenities and so forth.

From each topic in a theme, key insights and interpretations will then be highlighted depending on the frequency of their occurrence after which the main idea will be highlighted. All coded material under that major idea will be placed together under that topic and under its theme. After this process, a summary report, identifying major themes and topics and the association between them will be produced.

This study will to a lesser degree make use of content analysis method. Special attention will be paid to the intensity or number of times certain words or phrases or descriptions are in various topics. A close attention will be paid to the frequency of methods or ideas, techniques, or descriptions in order to use them as a measure of importance, of interpretation, attention or emphasis. A relative balance of favorable attributes or ideas will be regarded as a measure of a balance.

. Both inductive and deductive methods of data collection will be used in this study. The inductive method will assist in identifying similar or varied themes, methods or patterns while the deductive method will assist in the quantifying the frequency of similar information from the different contexts in order to extract trends and issues of interest to the study's objective.

This study faces a time constrain because it started late due to late approval of the topic. This means that all other stages are late. Extra working hours will therefore be considered. The availability of data that helps this study meet its objectives is difficult to obtain. Information on land clashes, various political conflicts, reports on various

commissions of inquiries some of which have never been released etc. it will also be expensive to obtain past newspapers on these events. A lot of time will have to be taken visiting the various offices where this information can be obtained and hopefully for free

1.9 Chapter Summary

Chapter One: Introduction to structural conflict in Kenya, addresses the objective of the study, the justification of the study, the literature review, the theoretical framework, the research methodology, the study's hypothesis and ends with the chapter outline. Chapter two has the conceptual framework of the structural conflict in Kenya that comprises of an introduction to the social, economic and political structures in Kenya, the influence from Westphalia to the era of capitalism, the rise to collective security and introduction of human security on which peace building and therefore the structural conflict acquires its background, foundation and strength.

Chapter Three: A case study of Kenya and describes structural factors that may have contributed to conflicts. It also describes the efforts and frameworks that the political arms as well as the non state actors have applied in post conflict recovery. Chapter four is a critique and an analysis of the findings of this study. Lastly, chapter five is the findings and recommendations. In findings, a summary of sources and causes of structural conflict in Kenya will be outlined as well as the post conflict recovery framework in use. Under recommendations, a summary of the study's view on both structural conflict and post conflict recovery frameworks will be highlighted.

CHAPTER TWO

2.0 Chapter Introduction

This chapter traces the meaning as well as the evolution of structuralism theory as well as its application internationally and tries to explain what these mean to contemporary peace building. It also traces the development and evolution of peace building internationally up to the current period and traces its characteristics, its actors as well as its achievements globally, highlighting its practicability while endeavoring to show the relationship between structuralism and the peace building theories. Finally, it critiques their practical uses and thereby drawing a conclusion.

2.1 The Evolution and Development Of Structuralism

The theory of structuralism can be traced back in Europe during the age of revolutions in science and industry. The improvement of medicine as well as the creation of jobs and business opportunities improved the quality of life and people's living standards and resulted to a population explosion.⁴³ It is Marx who examined the nature of societies and noted that people had to seek employment while others sort for better ways of wealth creation. This resulted to different classes of people in the urban as well as the rural communities.⁴⁴

For Marx, due to industrialization, the method of producing goods and services evolved from subsistence to commercial and to capitalistic⁴⁵ ventures, this undermined the

⁴³ Derek Wilson. *Peoples, Revolutions and Nations AD 1700-1970* (Evans Brothers Ltd. London 1971) p.4

⁴⁴ Marx and Fredrick Engels. *The Communist Manifesto, A Modern Edition.* (Verso, London 1998) p 40

⁴⁵ Derek defines capitalism as a name given to an economic system in which private individuals own the means of production(farms, mines, factories etc) and pay workers of various kinds(farm laborers, miners, factories workers) to work

landowning and peasant classes displacing people from the countryside to the rural cities and creating classes of rural workers, urban wage workers and those with vast economic power of ownership and control of capital. In Africa, the imperialists, seeking fertile land for agriculture and mineral exploitation, prohibited many natives from accessing these resources and subjected them to forced labor. Those who collaborated were rewarded while those who did not remained poor.

In an endeavor to explain a 'class' in contemporary society, Weber's ⁴⁶ says that 'classes are not communities but merely represent possible and frequent bases for communal action, property and lack of property are the basic categories for class situations'. Lenin, like Marx, sees imperialism as interference by the colonialists in the African social setting as well as to their economic power, especially land. He argues that it is uneven and unequal, advancing the interest of some groups while subjecting others to new form of poverty, indignity and equality which he argues created conflict within the structures.⁴⁷

The meaning of structuralism has its base in the class factor in that it changed social relationships from their interactive and collaborative nature to one that was now competitive, large populations had to individually seek for survival, the struggle to survive now became individual and materialistic, achievement became personal not communal. ⁴⁸ Capitalism came to Africa through imperialism, private ownership of capital advanced setting up competitive and unequal social structures that advance poverty and inequality in some classes and power in others in post independence regimes.

for them . the government interferes as little as possible with the running of the businesses and with the relations between capitalists and workers

⁴⁶ Coser Lewis et all (eds). *Sociological Theory. A Book of Reading*(Macmillan London 1969) p. 388-9

⁴⁷ Marx and Fredrick Engels. *The Communist Manifesto, a Modern Edition.* (Verso, London 1998) p. 38

⁴⁸ Burton John. Conflict Resolution: The Human Dimension. *International Journal of Peace.*

Individual land ownership for instance meant that those who owned large tracks of land could produce a lot of food and better quality livestock to trade with. They had the advantage of high earnings that made their probability of having more investments higher. In post conflict regimes in Africa, these were mostly the elites who also held political power and therefore continued to be rich against the poor. Another class that prospered were those that worked in the administration of the new independence governments because they had earnings, they also had at least a minimum of education, the post colonial mentality in Africa gave them a higher level in communities they came from.

Marx⁴⁹ saw the inequalities in society as division that would bring in social relations and therefore argued that in order to understand these gaps within society; we must analyze the social relationships as a function of the social and economic system because it is on this that all relationships depend. He argued for instance that the unregulated markets in the international market diminish people's lives amidst competitive structures where only the fittest survive creating a depreciation and poverty in the social structures for third world countries. As imperialism flourished, Jeong⁵⁰ asserts that in capitalist societies, caring and empathetic relationships were ignored in the competitive pursuit of interests

The Westphalia system of government came following the Treaty of Westphalia in 1648. It is a system in the international society comprising sovereign state entities possessing the monopoly of force within their mutually recognized territories. Relations between states are conducted by means of formal diplomatic ties between heads of state and governments, and international law consists of treaties made or broken by those sovereign

⁴⁹ Marx and Fredrick Engels. *The Communist Manifesto, a Modern Edition.* (Verso, London 1998) p.20

⁵⁰ Cheldelin Sandra et al in *Conflict : From Analysis to Intervention*(Continnum. New York 2003)p. 182

entities. Therefore it separates the domestic and international spheres, such that states may not legitimately intervene in the domestic affairs of another, whether in the pursuit of self-interest or for sovereignty.⁵¹

Then came the right of states and its leadership to exercise authority through the principle of the sovereignty of states, fundamental right of political self determination, the principle of legal equality between states and the principle of non-intervention of one state in the internal affairs of another state.⁵² Morgenthau, in support of state power and dominance elaborates the realist view that a major way of preserving peace within societies is overwhelming power in the form of material force and irresistible social pressure to remain in the limits of the law⁵³.

A lot of discontentment was witnessed over the Westphalia system and especially in post independence African countries in the late 1950s and early 60s. Weber notes that even with the rise of nationalism, democratic states under the neorealist ideology continued to put majority populations against minorities asserting their needs of identity, recognition and security and as a result, these newly democratic governments⁵⁴ sow in the seeds of inequality and conflict. It is this that led other branches of the international system to doubt if states are the appropriate unit of analysis within the international society.

⁵¹ Rochester, Person. *International Relations. The Global Conditions on the Late 20th Century*(Addison-Wesley Company, 1984) p.55-57

⁵² Pap Daniel S. *Contemporary International Relations. Frameworks for Understanding* (Macmillan Publishing Co. New York 1991) p.33

⁵³ Morgenthau Hans. *Politics Among Nations. The Struggle for Power and Peace* (Kalyani Publishers, New Delhi 2004) p. 46

⁵⁴ Bobbio Norberto. *Democracy and Dictatorship: The Nature and Limits of State Power* (University of Minnesota Press, Minneapolis, Torino 1978) p. 137

The rise of capitalism came with a huge demand for industrial raw materials. In the process of the scramble for colonies, conflict resulted between and among states. The League of Nations, whose main aim was to maintain world peace after this war, was founded as a result of the Paris Peace Conference that ended the First World War. Its Covenant, which states agreed to prevent wars through collective security, disarmament, and settling international disputes through negotiation and arbitration. The World War II proved that the League had failed to prevent future world war.⁵⁵

The United Nations replaced the League after the WW II in 1945 and had a wider mandate including the facilitation of cooperation in international law, international security, economic development, social progress, human rights, and world peace. Most importantly, the UN was to provide a platform for dialogue between states.⁵⁶

In its mandate of maintaining world peace, the UN makes use of peace enforcement, peacekeeping as well as peacemaking strategies. Peace enforcement involves monitoring and enforcing a cease-fire agreed to by parties in a conflict in an atmosphere where peace exists and where the parties prefer peace to continued war. Options of use of force may be used in enforcement to bring warring parties to negotiations. Peacemaking on the other hand involves reconciliation through negotiations and mediation usually through a facilitator or a mediator. When applied in criminal justice matters, peacemaking is usually called restorative justice, for instance when cases are heard at the International Criminal Court, an affiliation of the UN.⁵⁷

⁵⁵ Lipson E. *Europe in the XIX & XX Centuries 1815- 1939* (Adam and Charles Black, London 1962) p 325

⁵⁶ Lowe Norman. *Mastering Modern World History* (Palgrave, London 1997) p. 164

⁵⁷ *Ibid.* p. 168

The United Nations has also, since the 1990s, focused on peacebuilding in order to reduce the conflicts relapsing by strengthening national capacities for conflict management, and to lay the foundations for sustainable peace and development. Peacebuilding requires sustained international support for national efforts across a broad range of activities including monitoring ceasefires; demobilizing and reintegrating combatants; assisting the return of refugees and displaced persons; helping organize and monitor elections of a new government; supporting justice and security sector reform; enhancing human rights protections and fostering reconciliation after past atrocities.

In 2002, for instance, the Council established the ECOSOC Ad Hoc Advisory Groups assist define long-term programmes of support for countries emerging from conflict. The result was the creation of two and created two groups, one on Guinea Bissau and another on Burundi. While the mandates of the two Groups have been terminated as the peacebuilding challenges of these countries are now being addressed by the Peacebuilding commission (PBC). In another role the Council provides advice to Haiti on a long-term development strategy to promote socio-economic recovery and stability through. South Sudan has been another recent engagement.⁵⁸ In its resolution the Council invites, in particular, the governing of the United Nations funds and programmes to pay particular attention to the situation in South Sudan and to the coordination of their activities in the country.

Structuralism grew further after the Second World War. Galtung⁵⁹ suggests that there was constrain in the traditional Westphalia method of dealing with conflict and noted that it

⁵⁸ Through UN Resolution 2011/43

⁵⁹ Galtung Johan. *On the Meaning of Nonviolence*, Journal of Peace Research. Vol. 2 No. 3 (1965) p. 227- 228

is not just the absence of war that matters because this only maintained negative peace, yet conflict lay in the structures. Galtung notes that the UN strategies of peacekeeping and peacemaking tend to be reactive and may fail to deal with power differentials in society, he explains that peacekeeping, by threatening to remove or eliminate violent people from society without attending to the structural roots of violence, can lead to acceptance of "law and order" societies where individuals who commit criminal offenses are punished and societal structural changes are ignored. Galtung also critiques framework of peacemaking and argues that it is limited in part because those who have power can insist on peaceful means of resolving disputes, while ignoring socially unjust ends; he therefore suggests way that looks at inequalities and promotes the realization of human potentials for all members of a society.⁶⁰

The idea of collective security by the League of Nations and then by the United Nations of peacekeeping and peacemaking are preventive and only meant to avoid physical violence.⁶¹ Under such strategies, stability can only be maintained by an oppressive system such as deterrence that is compatible with structural violence and which can only assure the absence of physical violence. The elimination of violence cannot however be visible when force remains a value. Structuralism therefore demanded that there needed to be a more socially humane method to resolve violence conflicts.

The understanding of structuralism became even clearer inwards the end of the 20th century. Galtung⁶² saw constraint on human potential due to economic and political

⁶⁰ Johan Galtung, "Three Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding," in *Peace, War and Defense: Essays in Peace Research, Vol. II*, ed. Johan Galtung (Copenhagen: Christian Ejlertsen, 1976), 297-298.

⁶¹ Ibid

⁶² Galtung, J. (1969). Violence, Peace and Peace Research. *Journal of Peace Research*, 6(3), 167-191.

structures such as unequal access to resources, to political power, to education, to health care, or to legal standing, as violating the social structures and would lead to direct violence. The conflict in Northern Ireland,⁶³ for instance, has been marked by economic disparities between Northern Irish Catholics and Protestants. The Catholics claim they have higher unemployment rates and less formal education. In Rwanda, huge disparities between the Hutu and Tutsis eventually led to ethnic massacres, while in Kenya, inequalities in the distribution of resources especially land has led to frequent ethnic clashes. Marx insists that these divisions in society create the basis for struggle.

Rubenstein⁶⁴ however acknowledges that such conflict are an inescapable feature of our social life and on the one hand agrees with Coser⁶⁵ that its effects are beneficial as they clarify differences, lets off steam and generates needed change and on the other, that they must be made rare. Lederach⁶⁶ sees conflicts as a variable opening to grow and increase our opportunity to understand ourselves and others, a change that keeps relationships and social structures dynamically responsive to human needs and insists on a closer look at the these structures to maintain peace.

In Africa, authoritarian regimes continued to rule during and after the Cold War, conflicts increased because in the bi polar alliances, states failed to include other institutions as well as decision making as a human element, these regimes did not employ available intellectual resources on a continuous basis to reassess institutions and social norms and thus solve problems as they emerged. Galtung notes that although peace was differently defined at

⁶³ Cairns, E. & Darby, J., (1998). The Conflict in Northern Ireland: Causes, consequences, and controls. *American Psychologist*, 53(7), 754-760.

⁶⁴ Rubenstein Richard. Sources. In Cheldelin Sandra et al in, *Conflict : From Analysis to Intervention*(Continnum. New York 2003) p. 59

⁶⁵ Coser A Lewis et al. *Sociological Theories. A Book of Readings* (Macmillan Company.London, 1969) p.218

⁶⁶ Lenderach John Paul. *A Little Book of Conflict Transformation* (Good Book, London 2003)

the time, it guaranteed positive human conditions and has to be obtained by changing social structures that are responsible for death, poverty and malnutrition.⁶⁷

State dominance continued in the period of the cold war that lasted between 1947 and 1991 and that came after the success of a temporary WW II alliance against Nazi Germany the left both the United Soviet Socialist Republics and the US as the most powerful states and yet with huge economic and political differences. It was sustained by a permanent state of political and military tension between the western powers and their allies who included African states. The main feature was that both sides possessed nuclear weapons, whose use would guarantee great destruction. Countries aligned with either of the two powers, while some chose to remain neutral with the Non-Aligned Movement.⁶⁸

It ended when, in the 1980s, the US increased pressures on the Soviet Union which was then facing economic stagnation. President Gorbachev had introduced reconstruction measured liberalized the economy opening up the country and its satellite states to a wave of revolutions that led of its collapse in 1991.

By the end of the cold war evolved a new world order of global governance that aimed to go beyond the capacity of individual nation-states to solve world problems. The rise of non states actors challenging the nation-state's sovereignty over internal matters through advocacy for societal issues increasingly become vital in national opinion building especially on humanitarian and human rights issues. The emerging paradigms aimed to understanding the increasing global vulnerabilities, the individual and the larger society rather than on states. The human security paradigm exposed the threats to the survival of

⁶⁷ Jeong Ho-Won. *Peace and Conflict Studies. An Introduction* (Ashgate Publishing Ltd. England 2000) p. 24

⁶⁸ Papp. S Daniel. *Contemporary International Relations, Frameworks for Understanding* (Macmillan Publishing Company. New York 1991. P. 130

societies, groups, and individuals and insisted that people-centered view of security that gives opportunities and empowers is necessary for global peace and stability.⁶⁹

The problems facing human security and idea of human rights are as old as time but its universal basis can be traced back to the 19th century; Maurice⁷⁰ argues that the theory of evolution showed the common origin of the whole organic world including man. It proved that there was no distinction between man and other animals and thus no distinction either between different races of men. Maurice explains that with time, the increasing interdependence of different parts of the world made it clear to individuals and social groups that it was to their interest to concern themselves with the welfare of others. He notes that this stimulated the sympathetic imagination and a human feeling and impulses in relation to those in the rest of the world that were suffering, this she argues was the origin of humanitarianism and the principles it has continued to foster more prominently since the 1990s.

The idea of Collective security failed to prevent war and the use of force was put into question. The members of the United Nations expected among other things, support to maintain their jurisdiction. Its Charter⁷¹ clearly states that states must take collective measures and cooperate to maintain world peace and security. To them this time, prevention did not imply threat but policies that would anticipate response and therefore avoid conflict. Peacekeeping and peacemaking operations therefore preoccupied the UN agenda in the post Cold War era.

⁶⁹ Okoth Godfrey, Ogot Bethwel. *Conflicts in Contemporary Africa*. (Jomo Kenyatta Foundation. 2000) p.57

⁷⁰ Parnelee Maurice. *The Rise of Modern Humanitarianism*. American Journal of sociology Vol 21 No 3. 1951

⁷¹ Charter of the United Nations. Chapter 1, Article 1

The Westphalia system had focused on the state as dominant and argued that security anywhere is derived from the system's anarchic nature. International security therefore was focused on ensuring the security of an allegedly insecure state. Nation states were the basic building blocks of the international system with unlimited sovereignty whose primary function was to survive and enhance its power in an anarchical and conflictual international system. The cold war changed, the international system began to focus on human Security that was based on protecting people as individuals and groups, not only against war and other forms of unstructured violence but also against hunger, disease, terrorism, drugs and development rather than the power to acquire arms.

The international system continued to experience conflict in the 20th century; post independent African countries were facing frequent coup d'états, ethnic and religious violence as well as economic, social and political issues in their efforts to develop and create stable regimes. Rubenstein⁷² states that human nature as well as social structures is the major causes of conflict. He gives a narrative of the biblical story of Cain and Abel where God accepted Abel's sacrifice and refused Cain's. He asserts that 'aggressiveness is a behavioral capacity that becomes manifests only in response to certain situations that the individual finds extremely threatening or frustrating. He argues that when the level of threat or frustration gets high enough, anti social behavior will occur like it did to Cain.

The nature of violent conflict globally and especially in Africa took a different dimension at the turn of the century. Civil Wars increased to replace world wars, besides, these wars were now fought with machetes, stones, tree trunks instead of guns and nuclear

⁷² Rubenstein Richard. Sources. In Cheldelin Sandra et al in *Conflict: From Analysis to Intervention* (Continuum. New York 2003) p. 59

weapons, they were being fought by uninformed underage boys and youths in villages who belonged to some militia or liberation movements who killed and maimed even women and children indiscriminately, raping, burning homes, abduction women, taking fresh food supplies and retreating in forests, unlike when soldiers were known to be in battle in the battlefields. Even deterrence had no chance. The concept of looking at the interest of humanity continued to gain momentum.

Burton's⁷³ supported the concept of looking at what was ailing social societies and argued that the cause of anti social behavior had roots because conflict has only been defined in physical terms yet there are non- material human values and needs to be satisfied that provoke such aggression. He suggests that the need for recognition and identity in particular are frustrated whenever there is any sense of injustice. Rubenstein supports this concept by demonstrating that both the psychoanalytic theory and the human needs theory explain the sources of conflict, the former due to rejection, in this case on social needs, as Cain was and the anger is repressed to a more vulnerable target, Abel who becomes the scapegoat because it is impossible to ravage on God.

Rubenstein⁷⁴ confirms that structural conflict therefore is maintained by this displaced anger which is as a result of unmet needs. People have certain fundamental, irrepressible, imperative needs that must be satisfied if destructive feelings and behaviors must be avoided, especially the need for identity and recognition that if not satisfied produce violence more than material needs and desires would. Burton⁷⁵ differentiates between conflicts on values

⁷³ Ibid. p. 65.

⁷⁴ Rubenstein Richard. Sources. In Cheldelin Sandra et al in, *Conflict : From Analysis to Intervention*(Continnum. New York 2003) p. 59

⁷⁵ Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993

and needs that cannot be compromised, traded or repressed and require a structural transformation and conflicts of interest that can be bargained for. He argues that issues in the social structures are value based and must be met for peace to prevail.

In its endeavor to resolve and transform post conflict societies, the international system therefore has engaged structuralism by going deeper into society with an objective to identify these values and needs in order to improve the nature of people's lives, with their own participation and with an equal partnership between people themselves, the state, international organizations, donor agencies, recipient governments and 'grassroots' civil society.⁷⁶ Among the major actors as been the United Nation whose mandate is to maintain world peace using its agent to reduce poverty, inequality and human degrading elements in society.

2.2 · The Origin, Evolution and Development Of Peace Building

Peacebuilding has been defined in many ways, in 1972, Galtung called for the creation of peacebuilding structures to promote sustainable peace by addressing the root causes of violent conflict and supporting indigenous capacities for peace management and conflict resolution.⁷⁷ On this bases Boutros Boutros-Ghali in his 1992 report, 'An Agenda for Peace' and later the report on the causes of conflict and the promotion of durable peace and sustainable development in Africa,⁷⁸ defined peacebuilding as action to solidify peace and avoid relapse into conflict.

⁷⁶ World Bank. World Development Report 1996

⁷⁷ UN Peacebuilding. An Orientation. UN support Office. September 2010

⁷⁸ Report of the Secretary-General: The causes of conflict and the promotion of durable peace and sustainable development in Africa , A/52/871 – S/1998/318, 13 April 1998 (para.63)

The Brahimi Report of 2000⁷⁹ was formed by Kofi Annan tasked with a responsibility of making a thorough review of UN peace and security activities and to recommend improvements that would make the organization a credible force for peace.. The final report recommended the establishment of information capabilities that would address the world major threats among other issues. The report defined peacebuilding as “activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war”.

On the other hand, the Secretary-General’s Policy Committee’s⁸⁰ definition was that “Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development. Peacebuilding strategies must be coherent and tailored to the specific needs of the country concerned, based on national ownership and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives”

The absence of peace first became evident in the international system after the First World War when state collectively decided to establish the League of Nations. Collective security was the bases of its formation whereby, states determined that they would guarantee peace by their dominant power in order to avoid war. It was evident than that while Marx had ensured the role of production in transforming the physical environment and the social

⁷⁹ Brahimi Report (para. 13). A report of the Panel on United Nations Peace Operations (2000) convened by the Secretary-General Kofi Annan tasked with making a thorough review of United Nations peace and security activities and recommending improvements.

⁸⁰ The Under-Secretary-General also serves on the Secretary-General’s Policy Committee, the highest decision-making body within the U.N.

conditions in which human beings lived, his idea was now widening and collective social responsibility that resulted to social freedom became central, the international system no longer advocated for individualism but for the freedom of the whole human race, for collectivism.

Papp⁸¹ argues that tensions have existed in the international relations on these two value systems that emphasize the responsibility of the individual to themselves and those that emphasize the responsibility of the individual to society. Marx⁸² brought in the idea that the major source of conflict was inequality and injustice with these structures; and determined that human beings are largely determined by a collective identity, which, in turn, is defined by the economic system and that the class system only divides social relations in the midst of competition enforcing individualism.

Peacekeeping has since evolved, traditionally, it involved lightly armed troops to monitor a truce or to observe a trans-border conflict or to stabilize ceasefires and situations on the ground, so that efforts could be made at the political level to resolve the conflict by peaceful means.. Contemporary peacekeeping operations are multidimensional, it not only maintains peace and security, but also facilitates the political process, protect civilians, assist in the disarmament, demobilization and reintegration, support the organization of elections, protect and promote human rights and also assist in restoring the rule of law. UN

⁸¹ Pap Daniel S. *Contemporary International Relations. Frameworks for Understanding* (Macmillan Publishing Co. New York 1991) p. 571

peacemaking expanded in the 1990s, as the end of the Cold War created new opportunities to end civil wars through negotiated peace settlements.⁸³

In the place of competitiveness, Galtung suggests positive peace that is pegged in the whole social structures and determines that changing human conditions not only by controlling and reducing overt violence but also working on social development that is responsible for hierarchical relationships between people are essential to peace.⁸⁴

The emergency of independence states combined with rivalries of the cold war period, civil conflicts become a central cause of emergency situations forcing the UN to embrace humanitarian aid to save human lives. At the same time, the principles of consent, impartiality and non-use of force except in self-defense were thrown into question by a changing security environment. By the 1980s major paradigm shifts re appeared advocating for the participatory model. It put strong emphasis on collaborative governance involving the recipient state, local civil society as well as the international community.

It advocated that authority rests with local actors within communities as well as non-state actors who were organizations with sufficient power to influence and cause change in politics which are not established institution of a state but have legal sovereignty and some measure of control over a countries people and territories. They consisted of local Non Governmental Organizations (NGOs), multinational organizations and the civil society organizations. The traditional UN peacekeeper was joined by the private sector as a new entrant into post conflict stabilization and recovery operations.

⁸³ www.un.org/en/globalissues/peacesecurity

⁸⁴ Ibid. p. 25

By the end of the 20th century, the United Nations and other non state actors had recognized the importance of human security in international peace and security. The first UN Human Development Report of 1990⁸⁵ therefore saw the need to put people in the centre of the development process in order to fulfill their long term wellbeing and let development enlarge their choices. The report expanded the scope of global security to include economic, food, health, environmental and personal security.

2.3 The Phases of Post Conflict Recovery

In the spirit of ensuring human security in the social structures after conflict, the broader peace building agenda initiated by the UN gave more attention to structural problems in societal relations between individuals and groups in post conflict societies. Jeong supports the broader view and says that its bases lies in understanding the sources and the causes of structural conflicts in which one needs to go deeper to understand the adversarial relationships that are derived from the political, economic and social division which serves as the basis of power differentiation. He attributes this to malfunctioning institutions and oppressive social structures which is characterized by one party taking advantage of others and maintaining this status quo though coercion, exclusion and powerlessness, which he calls the products of an oppressive system⁸⁶

In order of go deeper into these structures, post conflict recovery framework is usually determined by the history of the conflict and the process the particular conflict has gone through hence the uniqueness in the recovery of every conflict, however, there is a general broad framework dimension that is universally followed that involves three phases

⁸⁵UN World Development Report. 1990

⁸⁶ Cheldelin Sandra et al in, *Conflict : From Analysis to Intervention*(Continnum. New York 2003)p. 182

that include the emergency phase, the transition phase and the development phase. The emergency phase is the period that follows the end of hostilities and aims to establish a safe and secure environment and an emergency response to all immediate consequences of the conflict such as humanitarian relief. It is also characterized by entry of external actors to engage in basic survival and re organization of social and political systems.⁸⁷

The transition phase of peacebuilding includes the appointment of a transitional government and probably the writing of a constitution depending on the nature of conflict so that elections are done according to it. It also focuses on developing legitimate and sustainable internal capacity by shifting focus from relief to recovery, rehabilitation and reconstruction. Programmes may include the rehabilitation of basic social services like health, education, internal trading, infrastructure, job creation as well as mechanisms for governance and participation, security sector reforms including the police and the military to represent the communities they serve so that they take up appropriate roles. The development phase supports the new government and the civil society in fostering reconciliation, boosting social and economic reconstruction as well as establishing political legitimacy.⁸⁸

These three phases must first take into consideration the issue of human security then immediately handle a peaceful political transition, governance and equal participation. It must then be followed by ensuring social and economic development and then establish mechanisms and maintain human rights, justice and reconciliation of all populations. Finally

⁸⁷ African Post Conflict Reconstruction Policy. NEPAD AND AU Initiative. June 2005. p. 6

⁸⁸ Ibid. p 8

as cross cutting issue, it must co currently handle coordination, management and resource mobilization of the entire recovery programme.⁸⁹

Security ensures safe and secure environment in which humanitarian relief, recovery, rehabilitation and reintegration happen in order to prepare for recovery programmes. Security in the transition phase focuses on the security sector reform which enables credible security by reviewing, reforming and transforming the sector, disarming, demobilizing and reintegrating (DDR), reducing small arms and enhancing general security.

The political transition, governance and participation phase should involve developing legitimate and effective political and administrative institutions that ensure equal participation and representation in all sectors. The phase also ensures free and fair election, public sector management, effective local governance, strong legislature and active civil social, strong political parties. It should also give a chance to the rebels and militias a chance to surrender them and join viable political parties in order to ensure the rule of law based on the constitution that support justice and its reform.

This phase should therefore ensure pluralism, inclusion, dialog and the participation of all stakeholders. The focus on the development phase should be to build on a shared purpose and a broad based leadership in all areas and especially in deeply ethnic, racial or other segregated communities, in order to develop a based national capacity in terms of skills and resources that translate to equal opportunity and therefore sustainable political, social and economic development.⁹⁰

⁸⁹ African Post Conflict Reconstruction Policy. NEPAD AND AU Initiative. June 2005. p. 11

⁹⁰ Ibid

The social development period of post conflict recovery focuses on recovery, rehabilitation and reconstruction of the basic social and economic services so as to be able to reintroduce the populations to normal life. This involves the return, resettlement, reintegration and rehabilitating displaced populations including refugees and internally displaced persons (IDPs) as well as coordinating humanitarian relief and long term strategies to sustain, ensure economic recovery and reduce poverty to ensure social cohesion among these populations. The provision of social services such as education, health, social welfare, employment generation, trade and investment as well as legal and regulatory reform and continuity.⁹¹

The Universal Declaration of Human Rights of 1948⁹² is a source of many treaties that form the international law and regulation. The UDHR urges UN member states to promote human, civil, economic and social rights, asserting that these rights are the foundation of freedom, justice and peace in the world. Human rights, justice and reconciliation sub phase of development is very essential in post conflict recovery. It must ensure accountable justice systems that defend the rights of victims, promotes reconciliation among warring parties and enhance nation building as well as oversee the promotion of human rights of all. Justice sector reform ensures the establishment of law and order in and among communities in conflict.

In retaliating the importance of social relations in the promotion of peace, Lederach,⁹³ states that while issues of content and substance are essential to a conflict, the less visible aspects of relationships involves how people perceive what they pursue and how they

⁹¹ Jeong Ho-Won. *Peacebuilding in Postconflict Societies. Strategy and Process* (Lynne Rienner Publishers, London 2005) p.136

⁹² Universal Declaration of Human Rights. www.un.org/event/humanrights

⁹³ Lederach John Paul. *A Little Book of Conflict Transformation* (Good Book 2003)

structure these relationships, it shows how close people should be as a society, how they use and share power, how they perceive themselves and others and what patterns of interaction they wish to maintain. He argues that these principles, if shared, brings out to the surface the fears, hopes, goals of all the people involved in society and therefore in a conflict when it occurs among them.

The promotion of a national dialog and reconciliation process through truth and reconciliation commissions is core to transformation perceptions and attitudes while at the same time focusing on monitoring human rights in these initiatives. This would include ensuring public knowledge of human rights in local languages as well as in schools and colleges to empower the youth. Important also is the establishment of a system that accommodates both restorative and retributive justice, cases which would be too sensitive in local courts or that include gross violation of human rights should be referred to the International Criminal Court(ICC)⁹⁴

In Africa, attention must be paid to values and traditions of conflict prevention, management and resolution that already exist. These, as well as ensuring that the environment is conducive for peace, justice and reconciliation, must be guided to be inclusive of vulnerable and minority groups. The aim should be to rebuild trust and social relationships that cut across all former incompatibilities. The strategies should ensure that they invest in society's ability to mediate everyday's conflicts before they become violent as well as build relationships between the state and the people to ensure a strong social cohesion.

⁹⁴ www.inttreaty.un.org/cod/icc/statute/romeffa/htm. *The Rome Statute*. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes; the crime of genocide ,Crimes against humanity, War crimes, the crime of aggression.

The post conflict recovery programme must also be coordinated, managed and resourced have to be mobilized to attain its objective. This cross cutting function must develop strategies that determine the objectives, the plans as well as share information, divide roles and responsibilities as well as mobilize the required resources for the whole recovery process. It synchronizes the mandates, roles and activities for all stakeholders and actors concerned through joint efforts to prioritize and harmonize the programmes to meet the common objective to sustainable peace.⁹⁵

Lederach⁹⁶ notes that conflict transformation is essential in post conflict peace building because it looks at relational and historical patterns in which the conflict is rooted and therefore connects the past and the present, the potential to change therefore lies in our ability to recognize, understand and redress what happened and create new structures and ways of interaction in the future. Burton⁹⁷ insists that the structuralist approaches suggest that destructive conflict can be resolved by altering the social environs that generated them and that where basic needs are concerned, deterrence does not deter, more peaceful and effective methods must be used. Jeong⁹⁸ concludes that negative peace strategies only focus on present, short and the near future term, not on long term strategies that guarantee permanent peace.

2.4 Conclusion

Structuralism evolved from looking at the class structure in Marxism, through a period of state centrism after Westphalia, to collectivism under which the League of Nation was formed. The UN through peacekeeping and later peacemaking was introduced to a more

⁹⁵ African Post Conflict Reconstruction Policy. NEPAD AND AU Initiative. June 2005. p. 12

⁹⁶ Lederach John Paul. *A Little Book of Conflict Transformation* (Good Book 2003)

⁹⁷ Burton John. Conflict Resolution: The Human Dimension. International Journal of Peace

⁹⁸ Ibid.

human dimension on peace by Galtung and thereafter was born the peacebuilding model of going back to the social, economic and political structures to ensure positive peace. The United Nations and other multinational and nongovernmental organizations have designed post conflict recovery frameworks enable them transform these adversarial relationships to sustainable peace.

CHAPTER THREE

3.0 Chapter Introduction

The chapter comprises of the case study, Kenya. It introduces it by giving a brief geographical and population data followed by its colonial history and its effects to the current structural issues in Kenya. A political, economic and social analysis of both the regimes of Mzee Jomo Kenyatta as well as that of Daniel Arap Moi aims to highlight the sources as well as the root causes of the issues and the events that have resulted to violent conflict since independence.

The chapter brings in the 2007/2008 post election violence that witnessed international attention as an opportunity in which the mediators took to make use of post conflict peacebuilding frameworks that would transform the conflict. The chapter then ends with a summarized critique of those frameworks.

3.1 Kenya: Location and Demography

The Republic of Kenya is located in East Africa and lies within the Equator. The Indian Ocean is located to its south-east, it is bordered by Tanzania to the south, Uganda to the west, South Sudan to the north-west, Ethiopia to the north and Somalia to the north-east. It covers an area of 582,646 sq. km. The country has since independence been divided into eight Provinces that include the Rift Valley, Nyanza, Western, Central, Eastern, North Eastern, Nairobi and Coast province.⁹⁹

Kenya has a population of 39 million people comprising of over 40 ethnic communities. The Kikuyu are the majority comprising of 17%, the Luhya 14%, the

⁹⁹ www.wikipedia.org/wiki/history_of_Kenya

Kalenjin 13%, the Luo 10%, the Kamba 10%, the Kisii 6%, the Mijikenda 5%, the Meru 4%, the Turkana 2.5%, the Maasai 2.1%. 9% of the population consists of smaller indigenous groups below 1% population each. The Arabs, Indians and Europeans make up another 1%.¹⁰⁰

3.2 The Kenya Colonial Administration

Since the 19th century, Europe had started to explore and discovery Africa and had in the process entered Kenya. The origin of Kenyan colonial history can be traced back to the Berlin Conference in 1885, when East Africa was first divided into territories of influence by the European powers. The British Government founded the East African Protectorate in 1895 and soon after, occupied the Kenyan fertile highlands for agriculture, maintaining the ‘white settlers’ policy that denied Africans any participation in government. Africans were instead forced into labor in the farms. To make it worse, they were restricted into overcrowded reserves or villages, a method of control in the policy of dividing the ethnic communalities, existing power structures were broken up to prevent smaller power groups from linking up.¹⁰¹

The colonial power therefore used the divide and rule system of administration that involved allying with some ethnic communities against others, the Bantu-, Nilotic-, and Cushitic-speaking peoples into ethnic classifications based on linguistic variations and locality obvious, a form that they had not known before.¹⁰² The ethnic groups were assigned to live in separate areas of the colony. Within each subgroup, colonial administrators designated one “chief,” who became responsible for collecting taxes levied by

¹⁰⁰ Kenya population Census 2010 results from the Ministry of Planning and Vision 2030.

¹⁰¹ Kyle Keith. *The Politics of the Independence to Kenya* (Palgrave Macmillan, London 1991) p.6

¹⁰² Ibid

the colonial state.¹⁰³ The results was that some ethnic communities that collaborated with their colonial master were rewarded in with positions and it was at this stage that ethnic and differences among the Kenyan societies became a crucial rallying point for the British colonial administration and even later on. It became the basis of structural incompatibilities among Kenyans as many believed collaboration always meant betrayal.¹⁰⁴

The colonial administration instituted policies barring Africans from owning land in this area and restricted them to native reserves. Pastoralist groups that enjoyed customary rights over land found themselves excluded from areas they had used in the past. The creation of this white area, reserved for British settler occupation, dislocated and disinherited thousands of Africans who had lived in the Rift Valley. Additionally, the colonial government introduced coercive measures to create a large, cheap African labor force to service the white settler farms.

Increased nationalism led to the formation of protest movements in the early 1920s and peaked between 1952 and 1956. Several political associations that included the Young Kikuyu Association, the East African Association, Young Kavirondo Association, North Kavirondo Central Association and Taita Hills Association, were formed to forward grievances against forced labor, low wages, heavy taxation, continuing land alienation, and racial discrimination.

The pastoralist population in the area, lacking farming experience, proved unsuitable for providing cheap agricultural labor to the settlers. To overcome the labor shortage, the colonial administration recruited labor from the neighboring areas (now Central, Nyanza and

¹⁰³ Kyle Keith. *The Politics of The Independence to Kenya* (Palgrave Macmillan, 1991) p. 9

¹⁰⁴ Boahen A. Adu. *Perspectives on Colonialism* (The John Hopkins University Press, Baltimore 1987) p.41

Western Provinces). Kikuyu, Kisii, Luhya, and Luo squatters were brought into Rift Valley Province as laborers in the early 1900s.¹⁰⁵

Kenyan nationalism during this period was influenced by events in the international system and especially the demand for human rights as well as the continued increase of educated natives who were being informed and influenced by events in the international system.¹⁰⁶ Also of importance there was the issue of land alienation that led to increasing discontent with British colonial rule. These events led the native to conclude to see that structural issues that were not right in their society thus strengthening the nationalist movement to independence.

In 1952, a state of emergency was declared by the British in response to the rise of an armed independence movement known as the Mau Mau, which was led predominantly by the Kikuyu squatter population. Due to continued resistance over lack of land and poverty among the natives, the British were forced to make concessions, to improve the economic structure of the natives and a new policy in the White Highlands was introduced that allowed Africans to buy land and farm there.¹⁰⁷

Continued demand for better rights and improved social economic structures between 1944 and 1960 intensified political activities and by 1944, the first nationalist party, Kenya African Union (KAU) was formed. After the Mau-Mau revolt abated, the British increased African representation in the colony's legislative council, by 1961, there was an African majority. Africans still resisted the slow political and economic change and soon led to the breakdown of law and order. In 1952 Governor, Sir Evelyn Baring declared a state of

¹⁰⁵ Hughes Lotte. *Moving the Maasai. A Colonial Misadventure.* (Palgrave Macmillan. New York 2006) p. 27

¹⁰⁶ The Declaration of Human Rights in 1948

¹⁰⁷ Ibid. p 106

emergency following the outbreak of the Mau Mau rebellion. A new political wing, the Kenya African National Union, (KANU) was formed in March 1960, dominated by the Kikuyu ethnic community. On 11 June 1960, it was registered as a mass political society.

The social economic situations improved and freedom from the colonial masters became evident but a new threat was emerging in the political structures. The smaller ethnic communities feared domination by the larger ethnic groups, such as the Kikuyu who were the majority. On June 25, 1960, they formed the Kenya African Democratic Union (KADU). The first election was held in 1961, and was won by KANU. In another election in May 1963, KANU captured 83 of the 124 seats in the House of Representatives and formed the Madaraka¹⁰⁸ Administration on 1st June 1963, and the independence Government on 12th December 1963, under Mzee Jomo Kenyatta, from the Kikuyu ethnic community and the head of the Kenya African National Union (KANU), who became Kenya's first president.¹⁰⁹

Jaramogi Oginga Odinga formed the rival Kenya People's Union (KPU), which drew much support from his ethnic group, the Luo. In response, Kenyatta used his extensive presidential powers and controls to counter what he considered to be a challenge to his leadership. He banned Jaramogi Odinga's party, detained its leaders, and called elections in which only KANU was allowed to participate. For the remainder of his presidency, Kenya remained a one-party state, he made use of detention, appeals to ethnic loyalties, and careful appointment of government jobs to maintain his position. He was re elected president in 1969 and 1974 both times unopposed¹¹⁰. Kenya's structural conflict in the social political and

¹⁰⁸ Kiswahili word meaning freedom

¹⁰⁹ Kinyatti wa Malna. *History of Resistance in Kenya, 1884-2002* (Mau Mau Research Centre, Nairobi 2008) p. 348-349

¹¹⁰ Ibid

economic dimension has since been based on these divergent struggles for power and resources through an ethnic lens.

3.3 Jomo Kenyatta: The Post Independence Political, Social and Economic Development 1963-1978

Kenyan's social structures were strong in the first two decades after independence and were characterized by strong economic performance and huge gains in social outcomes. For instance, improved health conditions contributed to a decline in mortality in the first two decades after independence. Between 1960 and 1986, life expectancy at birth rose from 45 to 58 years. From 1960 to 1980, adult mortality fell 24 percent for males and 9 percent for females while Infant and child mortality dropped by 48 and 56 percent respectively.¹¹¹

The economic situation between 1963 and 1970 grew at an average growth rate of 5 percent and between 1970 and 1980 it grew at 8 percent.¹¹² In his attempts to reform agriculture, Kenyatta's promoted the cultivation of cash crops such as tea, coffee, and hybrid maize and the development of dairy farming. Rural incomes rose by 5 percent every year from 1974 to 1982, and the smallholders' share of coffee, maize and tea production rose to 40 and 70 percent respectively in the early 1980s. The immediate post independence economy was doing well.

Between 1963 and 1980, sustained commodity exports provided foreign exchange earnings, which in turn favored investment and capital imports. In industry, the Kenyatta's administration ensured alliance between business and the political arm that provided the possibility of implementing an industrial strategy based on import-substitution. Generally,

¹¹¹ UNDP Report: Kenya, Microeconomic Evolution since Independence 2002.

¹¹² Ochieng W.R , Maxon R.M.(Eds). *An Economic History of Kenya* (East African Educational Publishers Ltd, Nairobi 1992) p xii

Kenya was peaceful and stable, the economy developed and grew rapidly and attracted high levels of foreign investment, a local professional and business middle class was established, these classes were the beginning of structural differences¹¹³.

But, Kenyatta's style of administration was authoritarian with elements of patronage, favoritism, tribalism and nepotism. Upon his re-election in 1966 he changed the constitution to extend his executive powers.¹¹⁴ He largely only trusted and surrounded himself members of his Kikuyu ethnic community. As a result, Kenya has remained a confederation of competing tribes. Structural incompatibilities were causing inequalities among the different ethnic communities.

Kenyatta's land policy required that land ownership be on the basis of willing-seller, willing-buyer. The independence constitution enable Kenyans the right to purchase property anywhere in Kenya, the government would neither confiscate land from anyone, nor would it give it away for free. Out of this principle, two problems presented themselves, one, it disadvantaged those ethnic communities who had not yet established stable incomes and therefore could not afford to buy land. Secondly, the British settler interests were safeguarded, even when pastoral ethnic groups such as the Maasai claimed back land originally taken from them from the Rift Valley area¹¹⁵, the British settler farmers were given the option to retain the land even after colonialism, displacing many citizens and leaving

¹¹³Ibid p. 259

¹¹⁴Kirimi Joseph, Ochieng Philip. *The Kenyatta Succession* (Transafrica Press, Nairobi 1980) p. 16

¹¹⁵Hughes Lotte. *Moving the Maasai. A Colonial Misadventure.* (Palgrave Macmillan. New York 2006) p. 171

others without the scarce resource.¹¹⁶ This only enhanced landlessness and poverty among many communities.

The British settlers were also given the opportunity to sell land that never belonged to them in the first place, either to the newly independent Kenyan government or to individual Kenyans. It was then only individuals who had previously been into squatter labor, who could afford to buy land that were mainly from the Kikuyu ethnic community and they did so assisted by Kenyatta himself. It is evident in Kenya that the clique that included Kenyatta himself acquired vast pieces of land and commercial properties and thus beginning the wealthiest, most powerful and most influential class in Kenyan to date.

The result is that in post independence Kenya public officials using power and influence of their offices also followed suit, accumulating wealth thereby deeply entrenching corruption in the system and creating huge disparities. A close friend of Kenyatta, JM Kariuki who became was very vocal about the widening gap between rich and poor as well as the unfair distribution of land, that was mainly given to Kenyatta's close friends was brutally murdered by the regime.

Another method used to acquire land was through collective schemes such as cooperatives, societies, and companies. Among the Kikuyu, unlike communal pastoral groups such as the Maasai and Kalenjin, farming was an established enterprise and therefore many were eager to take advantage of the opportunity, large numbers of them bought land in the Rift Valley during the 1960s and 1970s, and moved from the overcrowded Central Province. The other residences of the Rift Valley were the Maasai and the Kalenjin who were

¹¹⁶ Conference Report. *National Conference on Equity and Growth.. Towards a Policy Agenda in Kenya*. May 2006, Kenya School of Monetary Studies. p. 9

pastoralists. Other communities who had settled there were the Kisii, Luhya and Luo who, although they did not have farming experience, had provided the European settler with cheap agricultural labor. The Rift Valley Province therefore had been cosmopolitan even before independence.

3.4 Daniel Arap Moi: Kenya's Decline 1978- 2002.

Moi served as a cabinet minister and then as Kenyatta's Vice President between 1967 and 1978. He is from the Kalenjin ethnic community who occupy Rift Valley Province. He became Kenya's second president in 1978 after Kenyatta's death. His first task was to consolidate his power having been doubted by many who thought he would be a passing cloud, to do this he made Kenya a one party state. Two months later, he faced a coup from the armed forces unhappy about the reforms he had initiated thereafter reorganizing the armed forces. Moi from then on, ensured absolute authority over the country's political and judicial systems, he repressed pressure for political change by detentions, torture, and killings, and by control of the media and the courts.

Kenya's economic performance during the 1980s and 1990s went down. Between 1991 and 1993, the country experienced the worst economic performance since independence. Growth in GDP stagnated, and agricultural production shrank at an annual rate of 3.9%. Inflation reached a record 100% in August 1993. In the mid-1990s, the government implemented economic reform measures to stabilize the economy and restore sustainable growth but still the economy grew by an annual average of only 1.5% between 1997 and

2002, which was below the population growth estimated at 2.5% per annum, leading to a decline in per capita incomes.¹¹⁷

By the late 1970s, Kenya's growth potential started to decline due to both local and international factors. Internationally, Western donor countries were getting alarmed by the misappropriation of aid and at the same time demands for a more just society started in the early 1990s, with the collapse of the eastern European bloc countries and the Soviet Union. By the early 1990s Kenya had lost its reputation as one of Africa's most stable and prosperous countries. Pressure from foreign donors forced him to accept a multi-party democracy and elections were held in 1992,¹¹⁸ which he won.

Moi, like his predecessor surrounded himself with a clique of advisors from his ethnic community and also placed many in high and influential positions in government, a fact that displeased other ethnic communities.¹¹⁹ Klopp¹²⁰ indicates that when faced with declining patronage resources such as those from the international community, Moi and his clique turned to public lands, because it was less fettered by international scrutiny, as a patronage resource and instrument to maintain control.

Kenya's economic and social situation continued to get worse for its population. Survival became difficult due to aid freeze in the late 1980s and through the 1990s. Moi's government witnessed greater international scrutiny due to corruption amongst them the

¹¹⁷ US Department of State. Department of African Affairs. www.state.gov/r/pu/ei/bgn/2962.htm.

¹¹⁸ Moi Daniel T. *Kenya African Nationalism. Nyayo Philosophy and Principles* (Macmillan Publishers, London 1986) p. 178

¹¹⁹ Koigi Wa Wamwere. *Towards Genocide in Kenya. The Curse of Negative Ethnicity* (Seven Stories Press, New York 2003) p. 147

¹²⁰ Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya *Africa Today* Volume 47, Number 1

Goldenberg Scandal¹²¹ as well as intense political competition in multiparty politics. He turned to public land as a patronage asset which was readily available and accessible to him and under no scrutiny by international community. He illegally converted his constitutional powers as trustee of public lands to de facto ownership powers.¹²²

Unfortunately, those close to Moi, family, friends, the wider ethnic community as well as those in high government positions and other public officials were in fear that a change in Government after multiparty would end their privileged access to public resources, they therefore engaged in a quick accumulation and disposal of land and other properties. Many cases of illegal and irregular allocations made to corporate bodies were reported whose files were not available at Registrar of Companies, their records were removed to hide the identities of those properties and their owners.¹²³

It was clear that by the end of the second decade after independence, the government was expanding in a very big way within a short duration of time, its expenditures therefore increased by 60 percent. There was also number of international trade shocks which the Moi administration employed poor macroeconomic responses. He also initiated changes in the structure of the economy whereby his government become increasingly dominating in all areas, to make it worse, almost all sectors were characterized by distortions and inefficiencies.¹²⁴

¹²¹ The Kenyan government was found to have allegedly subsidised exports of gold far beyond standard arrangements by paying the company Goldenberg International 35% more (in Kenyan shillings) than their foreign currency earnings. This money went to politicians including Moi himself.

¹²² The president has powers to make grants of freehold and leasehold of un-alienated government land to companies and individuals for the public good.

¹²³ The Ndungu Land Report . Indicates vast forest area formally owned by the government was given to companies which already have titles but their files are missing from the registrar of companies hence the commission could not tell who these companies belong to.

¹²⁴ US Department of State. Department of African Affairs. www.state.gov

This poor economic performance was largely due to inappropriate agricultural, land, and industrial policies compounded by poor international terms of trade and poor governance by Moi. Besides there was increased government intrusion into the private sector, poor import substitution policies made the manufacturing sector uncompetitive. The government's policy environment coupled with tight import controls and foreign exchange controls, made the domestic environment for investment unattractive for both foreign and domestic investors.¹²⁵

The new industrial structure created by the state-owned enterprises as well as the new import substitution policies increased inefficiencies and decreased the economy's capacity to adjust to changing external conditions. Policy response by government was too weak. Unfortunately this was followed by an international oil crisis, deteriorating terms of trade and to a balance of payments crisis between 1974 and 1978 and again by the second oil shock that continued falling all through the 1980s to 1994. Moi's government economic performance in the 1990s and beginning of 2000 continued to be very poor, characterized by high interest rates, high transaction costs and high business uncertainty that resulted to low employment and slow output growth.¹²⁶

Government officials in Moi's government became involved in high corruption deals to enrich themselves with not only the taxpayers money but also donor funds, this not only worsened poverty and inequality within societies, it also inhibited the realization of economic, social, and cultural rights of many, corruption diverted resources from the intended public use in realization of rights to decent livelihoods into private bank accounts.

¹²⁵ Ibid

¹²⁶ IMF Country Report No. 09/192. June 2009

There were therefore extreme income inequalities because land was only given with preferential treatment ¹²⁷

3.5 Kenya Ethnic Conflicts 1991- 1993 And 1997

At the same time, the period surrounding general elections were marked by serious conflicts mainly over land on which the majority of the population depends on. It has become a source of resentment in an already ethnically divided country. Sectarian mobilization became increasingly common in Kenya for instance, Muslim population, prohibited from registering the Islamic Party of Kenya, has clashed several times with the police in riots protesting government's action. In September 1993, a group of prominent Kikuyu called for the resurrection of the defunct ethnically based group, Gikuyu (Kikuyu) Embu and Meru Association (GEMA). ¹²⁸ Increasingly, the political debate in Kenya became polarized on ethnic lines, especially within the political opposition.

The ethnic clashes in the Rift Valley Province ¹²⁹ were based on land and which ethnic community should own it, as Kenya's most fertile region, it has remained a sensitive whose climax came in October, 1991, ¹³⁰ initiated by Moi's ethnic community, the Kalenjin ¹³¹, against the Kikuyu, the Luhya, the Kisii, and the Luo also residing in the Rift Valley. A group of Kalenjin warriors distributed leaflets warning all other communities except the "true" Rift Valley residents namely the Kalenjin, Maasai, Samburu, and Turkana who called themselves the 'KAMATUSA' to leave otherwise they would continue to loot, destroy, kill, and burn the houses those who would not go away from what they considered to be their

¹²⁷ Matiba S.N. Kenneth. *Kenya Return to Reason*. (Special Edition Book, Nairobi, 1993) p.75

¹²⁸ Kinyatti wa Maina. *History of Resistance in Kenya, 1884-2002* (Mau Mau Research Centre, Nairobi 2008) p.416

¹²⁹ known as the "White Highlands" during British colonial rule, is Kenya's most fertile farmland.

¹³⁰ Maupeu Herve, Musambayi Katumanga et al (eds). *The Moi Succession. The 2002 Elections in Kenya* (Transafrica Press, Nairobi 2005) p. 69

¹³¹ The Kalenjin are an ethnic community comprising of the Nandi, the Kipsigis, the Pokot, the Tugen and the Marakwet

land¹³². By the end of this phase of fighting, it was estimated that at least 1,500 people died and 300,000 were displaced. In 1992, new clashes erupted between the Kisii and the Maasai and between the Kalenjin and the Luhya in Bungoma as well as in Olonguruone between the Maasai and the Kikuyu, thousands fled their homes to the local markets. Violence continued in 1993 and spread to most parts of the Rift Valley, Western, and Nyanza border areas as well as the border of West Pokot and Trans Nzoia Districts.¹³³

The Kenyan Coast Province has also not been spared by constant conflict. Some of its land problems date back to pre-colonial Arab-Swahili landholding. Before independence, British colonial authorities confirmed the supreme control of the Zanzibar Sultanate over the "ten mile strip" along the coast in order to secure acceptance of inclusion of the coast into the Kenyan state. This meant that the local Mijikenda communities do not have recognized land tenure. While much of the Arab-Swahili control over coastal land has been eroded because it was not the local communities that profited from land ownership a lot of this land has gone to large-scale agro-industrial ventures, the tourist sector and private developers along the ocean shore. Most of this land is controlled by foreigners or "up-country" Kenyans, powerful individuals have acquired titles to the plight of local communities who are now squatters on their own land. They find it difficult to continue fishing operations as hotels and other plot owners have blocked access roads to beaches. Land conflicts around conservation projects and National Parks¹³⁴

The coast region also claims political marginalized, in that only a few people of Coastal origin hold executive positions in the central administration, civil service and

¹³² A Story of Indelible Damage, "Weekly Review, March 20, 1992, p. 10.

¹³³ "Kenya Cleansed," BBC Focus on Africa, Vol. 4, No. 3, July-September 1993, p. 18.

¹³⁴ Tana River Delta Campaign 2008

parastatals. The Coast Province overall Human Development Index (HDI) is indicated to be average and points to severe deficits of human development with a poverty level of 62%.¹³⁵ This has resulted to frequent demands for majimbo¹³⁶ and similar demands for devolution for a greater degree of local control over local resources.

As part of their grievances, the Muslim community who are largely concentrated at the coast widely feels that the central government's security agencies, supported by the United States government especially after the terrorist attacks in Nairobi and Mombasa in 1998 and 2002, treats them as second-class citizens, regarding them as a security risk, and committing human rights violations against individuals who are alleged to be linked to terrorist organizations.¹³⁷

With her fruit basket, the rift Valley Province in conflict, the Kenyan government started experiencing serious food shortages by the end of 1993, Maize, Wheat, milk¹³⁸ production fell tremendously. The Internally Displaced Persons (IDPs) in Rift Valley Province needed 7,200 tons of cereal and 1,080 tons of other food items in emergency aid.¹³⁹ In May, President Moi announced that Kenya needed food relief of approximately 176,000 tons in cereals and US \$31.6 million to transport the food to Northern Kenya and the Rift Valley Province.¹⁴⁰

¹³⁵ UNDP Report . 2006: 14-15, 51)

¹³⁶ A Swahili name for Regionalism.

¹³⁷ Hendrich Boell Foudation *Usipoziba Ufa Utajenga Ukata . Land, Elections, and Conflicts in Kenya's Coast Province.* 2010

¹³⁸ Reuters, June 9, 1993

¹³⁹ Priority Issue is Food Security, "Daily Nation, May 14, 1993, p. 6 and "The Real Causes of the Food Deficit," Daily Nation, May 23, 1993

¹⁴⁰ The Food and Agriculture Organization (FAO), in a report released in 1993

In the same year, a UN Disaster Management Team¹⁴¹ visited Rift Valley Province and noted in their report that the IDPs were living in appalling conditions with irregular supplies of food, inadequate shelters, no access to school for children and only occasional access to basic health facilities. They reported insecurity for those who had trusted in the Government's assurances that security had been re-established just to return home to face sudden death at the hands of their former neighbors.¹⁴²

3.6 The Post Conflict Framework: Tribal Impunity and The Blame Game

A post conflict recovery framework by the government to deal with the conflict was nonexistent. In March 1992 the government released a statement claiming that the political opposition was responsible for instigating the clashes through the recruitment of a Libyan-trained terrorist squad. It also accused it of planning to sabotage vital installations and impersonate the regular police force as well as infiltrating the press, which it claimed continued to highlight the atrocities and deliberately attribute them to the government, the president threatened to enact banning orders against such newspapers. Besides the accusations, little was done to deploy adequate security, reconcile or to provide relief assistance to the victims of the violence. The Kenyan judiciary on the other hand appeared unwilling or unable to punish speedily those responsible.¹⁴³ The report stated that the attacks were organized under a central command, often in the presence of local administration and security officers and those warriors who were arrested were often released unconditionally.¹⁴⁴

¹⁴¹ The delegation consisted of David Whaley, UNDP; Vincent O'Reilly, UNICEF; ElseLarsen, WFP; Steve Oti, WHO; G. Guebre-Christos, UNHCR; Don Ferguson, UNDP; and Robert Palmer, UNDP

¹⁴² UN Disaster Management Team, Mission to the Affected Areas of Western Kenya affected by the Ethnic Clashes, May 1993, p. 1-2

¹⁴³ Robert F. Kennedy Memorial Center for Human Rights, Justice Enjoined: The State of the Judiciary in Kenya (1992)

¹⁴⁴ A report released by a task force formed by representatives from the NCKK, the political opposition parties, the International Commission of Jurists (ICJ-Kenya), the Law Society of Kenya (LSK), the University of Nairobi, and the Women's Lobby Group. The task force had been setup following an inter-party symposium in May 1992.

In a statement to Parliament in March 1992, almost six months after the violence broke out; Vice-President¹⁴⁵ announced in Parliament that the government would provide food and other relief supplies valued at Kenya Shilling 10 million to the displaced clash victims. This was a very little amount to resettle and compensate the hundreds of thousands of victims who had been made homeless. From then on, many victims were suspicious of any government assistance and often will not accept it, they could only accept relief from those they trusted¹⁴⁶

The church linked the violence to high-ranking government officials, obviously from the Kalenjin ethnic community and also that that, one, the Kalenjin leadership wanted to utilize their time in power to reward and empower their community with free land by allowing its members to permanently occupy land previously held by other groups in the fertile Rift Valley Province.¹⁴⁷ Secondly, it was an opportunity to make use of violence to destabilize areas from which the political opposition would have been able to garner considerable political support and hence defeat Moi¹⁴⁸ and they succeeded because The International Commonwealth Monitoring Team that observed the election estimated that as many as 1.5 million eligible voters had not been registered to vote.¹⁴⁹ Thirdly the violence was meant to punish ethnic groups that have supported the political opposition. This gradual transformation of the Rift Valley Province into a Kalenjin area, as non-Kalenjin abandoned

¹⁴⁵ The Vice President Was then George Saitoti, a Maasai from Kajiado who were sympathizers of the Narok Maasai

¹⁴⁶ "Ethnic Strife," Weekly Review, March 20, 1992, p. 5

¹⁴⁷ Since the Rift Valley Province is allocated the largest number of seats in Parliament, the KANU government was making long-term political gains in a future election by consolidating Kalenjin political hegemony

¹⁴⁸ Daily Nation, November 10, 1991, as reported in NCCK, *The Cursed Arrow: Organized Violence Against Democracy in Kenya*, April 1992, p. 25.

¹⁴⁹ Commonwealth Secretariat, *The Presidential, Parliamentary and Civic Elections in Kenya*, The Report of the Commonwealth Observer Group, December 29, 1992, p. (viii).

or sold their farms brought in the idea of regionalism, a further division that would cause serious social economic and political implications.¹⁵⁰

A Parliamentary Select Committee, set up in May 1992 whose intention was to divert public outrage over the clashes, chaired by MP for Changamwe, Kennedy Kiliku,¹⁵¹ travelled around the country conducting extensive interviews, Kenya was still under one-party rule at the time, and so all members were KANU Members of parliament. In September 1992, the Committee released a 238-page report, which verified that the clashes were politically motivated and orchestrated by Kalenjin and Maasai individuals close to the President. 'The Kiliku Report',¹⁵² proved as true the misplaced idea that some ethnic communities were supported and paid by numerous Kalenjin officers in government, to chase away other ethnic communities in order to acquire their land. Government vehicles and helicopters were used to transport the warriors. The Committee unanimously agreed that the provincial administration and security forces, by often refusing to assist clash victims and releasing attackers who had been arrested, did not react to the situation with the required urgency

The main aspirants of the 2007 elections in Kenya were the immediate former president Mwai Kibaki, from the Kikuyu ethnic community who ran under the Party of National Unity and Raila Odinga from the Luo community who ran under the Orange Democratic Movement. The elections took place on December 27 but the results, which were supposed to be announced the same day were delayed and were announced until the

¹⁵⁰ National Council of Churches of Kenya (NCKK), *The Cursed Arrow: Organized Violence Against Democracy in Kenya*, April 1992

¹⁵¹ The Committee consisted of J. Kennedy Kiliku, Bahati M. Semo, P.P.L. Angelei, Mwacharo Kubo, J. Muruthi Mureithi, F.T. Lagat, Agnes M. Ndeti, Bob F. Jalang'o, G.K. Parsaoti, J.J. Falana, Zedekiah M. Magara, Wasike Ndombi, and Mohamed Sheikh Aden. Republic of Kenya, *Report of the Parliamentary Select Committee to investigate Ethnic Clashes in Western and Other Parts of Kenya*, p. (v).

¹⁵² Republic of Kenya, *Report of the Parliamentary Select Committee to investigate Ethnic Clashes in Western and Other Parts of Kenya*, p. 75.

December 30. Kibaki was announced the winner over ODM candidate Raila Odinga, a victory widely regarded as the result of rigging, provoking protests and riots throughout the country.

The post election violence started in Uasin Gishu District and in various parts of the Rift Valley and spread to several parts of the country between communities perceived to be pro-Kibaki, such as the Kikuyu and Kisii, and communities perceived to be pro-Raila, the Luo, Kalenjin, and Luyha. Massive gangs of 1,000-2,000 ODM supporters mainly Kalenjin youth, carrying machetes, bows and poisonous arrows and firearms blocked and manned roads with trees trunks and huge rocks burning old tires and vehicles passing by vehicles. They started killing mainly the Kikuyus, Kisiis, and other suspected PNU supporters driving them out of from their homes, raping, looting, burning and destroying their property.¹⁵³

Due to economic problems that began well in the eighties and to the ethnic conflicts of 1991, 1991-1993 and then 1997 that resulted to massive displacement of populations, many displaced youth moved to the slums of Nairobi forming a mafia like gang that began extracting money from tenants, landlords, business owners and the transport system as taxes to substitute various needs that existed due to lack of essential amenities in the slums. Soon, these gangs grew in various parts of the country to include the Mungiki, associated with the Kikuyu ethnic community, the Taliban and the Bagdad Boys associated with the Kalenjin ethnic Community, the Chinkorokoro that is affiliated to the Kisii community, the Kanjeshi and many more. These militia groups grew supported and tolerated by political authorities

¹⁵³ The Report of the Waki Commission. p 42

selling their services to them. By the elections of 2007, most had sidelined themselves with the already ethnically divided political parties.¹⁵⁴

Ethnic reprisal attacks quickly followed as ethnic militias, mobs and gangs spearheaded the evolving inter-group clashes throughout the country, violent confrontations between demonstrators and police forces as well as by an unfolding spiral of gruesome acts of inter-ethnic Violence. All the major roads including the Mombasa- Uganda highway and railway were under siege, transport in Kenya was violently interrupted.

In the coastal town of Mombasa, Muslim also took to the streets to protesting the same and airing their earlier years grievances and looting shops and houses. Nairobi slums of Mathare mainly inhabited by Kikuyu and Kibera inhabited by Luo experienced the worst violence and some of the worse ethnically motivated attacks made worse by their extreme poverty as well as the presence of criminal gangs and militias. The violence continued sporadically for about two months, particularly in the Rift Valley.

The post election violence was attributed to historical and long term tensions in the conflict prone areas that seem to have endured since independence,¹⁵⁵ and intermittently boiled over to trigger violence after the perceived rigging of the 2007 December presidential polls. A total of 1,133 people died as a consequence of the violence. Most of the deaths concentrated in the Rift Valley Province (744), Nyanza (134) and Nairobi (125), Uasin Gishu (230), Nakuru (213) and Trans Nzoia (104). Approximately 350,000 persons were displaced from their homes or business into churches, police stations, trading centers or administration

¹⁵⁴ The Waki Report

¹⁵⁵ Akiwumi Commission in 1997

posts. About 1,916 sought refuge in Uganda.¹⁵⁶ Five years after the conflict, about 3000 IDPs are still in camps.

The visit of President John Kufuor, the then chairman of the African Union, in January 2008, resulted in the creation of a Panel of Eminent African Personalities, composed of former UN Secretary-General, Mr. Kofi Annan (Chair), former President of Tanzania, Mr. Benjamin Mkapa and former South African First Lady, Mrs. Graca Machel.¹⁵⁷ Kufour announced that Kofi Annan the immediate former UN secretary general would arrive, under the umbrella of the African Union, as a third party to mediate a solution between the two political parties.

Annan held meeting with both parties as well as their representatives. The results were that the two rival leaders had agreed on an agenda for peace talks. The Kenya National Dialogue and Reconciliation Process (KNDR). Over the course of 41 days signed important agreements centered on four main agenda items that included; one, immediate action to stop the violence and restore fundamental rights and liberties, two, addressing the humanitarian crisis, promoting reconciliation, healing and restoration of calm, three, overcoming the political crisis, and lastly the long-term issues and the root causes of the conflict, including constitutional, legal and institutional reforms.

In addition, three commissions were also established to facilitate the return of peace. The Independent Review Commission on the 2007 Elections, the Commission of Inquiry into the Post-Election Violence, and The Truth, Justice and Reconciliation Commission.¹⁵⁸ These

¹⁵⁶ Ibid

¹⁵⁷ Became known as the Kenya National Dialogue and Reconciliation Committee (KNDR or "National Dialogue")

¹⁵⁸ Mainly following the 1991-1993 and 1997 ethnic violence and the subsequent Kiliku and Akiwumi Reports.

commissions were supposed to submit their reports in two years. Both the Independent Review Commission and the Commission of Inquiry into the Post Election Violence have since submitted their reports but the TJRC has not yet. Its establishment was a step to dealing with Agenda Four of the National Reconciliation and Dialogue Accord and had the objective of promoting peace, justice, national unity, healing, reconciliation and dignity among the people of Kenya, a fundamental step before another election, its mandate is derived from the TJRC Act of 2008.¹⁵⁹

Its lack of deliverance of a report for the last close to five years means that the victims of historical injustices, who have testified before the commission still await because its release would lead to revelation of sources and causes of the conflict and at the same time lead to some form of acknowledgement to horrible injustices that victims of PEV suffered. It is the commission's report and recommendations that would determine the best way to deal with injustices, inequalities and abuse and denial of human rights that has existed in Kenya since independence. By his last visit to Kenya in October 2012, four months before the March 2013 elections, the TJRC confirmed that the report was not ready.¹⁶⁰ mainly because it has had long periods of disagreements over its leadership after its chairman's integrity was questioned. This has heavily impaired the resolution of the structural conflict in Kenya because the sources and the causes of the conflict have never been put on the table by a credible source.¹⁶¹

¹⁵⁹ The Truth, Justice and Reconciliation Act, 2008

¹⁶⁰ Statement by H.E Kofi Annan, Chair of the AU panel of Eminent African Personalities on conclusion of the panels visit to Kenya. Nairobi 11th October 2012

¹⁶¹ The Kofi Annan Foundation. www.kofiannanfoundation.org/kenya-national-dialog-and-reconciliation

Annan and his team believed the first three of the four points needed a short term resolution then embark on agenda four. As a conflict manager, he must have evaluated agenda four to require a long term strategy because it involved structural issues of land, resources , historical injustices and inequalities and therefore needed a an elaborate post conflict peacebuilding framework.

Annan managed to broker an agreement in mid February from the two sides on a range of reforms, including the improvement of electoral laws and human rights, as well as a review of the constitution, although they had yet to agree upon the composition of a power-sharing government. On February 28, Kibaki and Odinga signed the agreement meant to end the crisis, which came to be known as the National Accord and Reconciliation Act in which they agreed to form a coalition government with Kibaki as president and Odinga as prime minister therefore bringing the violence to an end in much of the country.

3.7 The Search for Justice and Reconciliation

The Truth, Justice, and Reconciliation Commission of Kenya (TJRC) was mandated to investigate, analyze, and report on what transpired in Kenya between 1963 and 2008 with regard to gross violations of human rights, economic crimes, illegal acquisition of public land, and marginalization of communities, ethnic violence and to outline the circumstances in which the crimes occurred. It is also mandated to educate the public; recommend prosecutions, reparations for victims, institutional changes, and amnesty in exchange for truth for perpetrators who did not commit gross human rights violations. It also endeavors to give victims and perpetrators an equal voice in hearing and on educating the country about the history of violence, and emphasizes promoting reconciliation through revealing of truth. It

therefore invites and encourages the public to participate as well as make submissions. Victims may also apply for reparations if they qualify.¹⁶²

The Special Tribunal Bill was rejected by the Kenyan parliament claiming that it raises important constitutional question because provided for retroactive criminal offences.¹⁶³ It therefore became impossible for the country to be responsible for taking action against perpetrators of the post-election violence (PEV). Instead, parliament decided to pursue justice in respect of the post-election atrocities in the Kenyan courts, through Kenya's justice system which it claimed would be restructured first through a thorough changes of the judiciary and which have been completed since although nothing has been done to give a hearing to the victims. Those who would bear bigger responsibilities over crimes against humanity would be tried at the International Criminal Court (ICC) in The Hague.

The problem with the special tribunal bill was that it would oust the High Court's jurisdiction in respect of post-election crimes as well as key criminal justice agencies such as the Attorney General and the police from its operations. If it is passed into law, it would provide for retroactive criminal offences, yet there is a constitutional prohibition against charging individuals with acts which at the time of their commission are not recognized as crimes in Kenya hence violating due process rights and specifically the principle of legality or *nullum crimen* that is contained in Section 77(4) of the Constitution of Kenya. The contrary would be a massive change in the constitution which would require a national referendum.¹⁶⁴ Changing the constitution again after it has just been approved by the masses

¹⁶² The Truth, Justice and Reconciliation Act, 2008

¹⁶³ Kenya Shuns Special Poll Tribunal. BBC News 30th July 2009.

¹⁶⁴ International Centre for Transitional Justice

would present a structural problem in a society that has experienced the frequent change of the constitution to benefit political ends.

Other alternatives suggested to victims of the PEV were private prosecutions under the Kenya's judicial system. These can however be terminated or taken over by the AG as provided for under the current constitutional and legal framework if they became too sensitive and thus be frustrated by the constitutional court. They also have the disadvantage that they must be filed in respect to only one individual, leaving out thousands, in the case of PEV affected persons, these would end up being too long and costly.

The direction of transforming structural conflict in Kenya did not get a peace building strategy toward healing the wound that have worsened over time in continued conflict. It seems judicial judgments such as those of the special tribunal and the ICC have been given more emphasis than going deep into the social structures to transform the conflictual relations between different ethnic communities. The effect is that judgments can be made but people's attitudes and perceptions towards each other will remain the same and hence recurrence of conflict when another trigger emerges

3.8 Conclusion

Kenya has since independence been dependant on agriculture on only 17% of arable land. In 1963, Kenya's population was 8.3 million,¹⁶⁵ today, the same land is the economic base of over 39 million people, and 80% of this population lives in rural areas.¹⁶⁶ The social economic characteristics present today that were not present then include overpopulation,

¹⁶⁵ The New York Times. December 12, 1963

¹⁶⁶ UNICEF. www.unicef.org/kenya/overview

landlessness, and unemployment, lack of basic social amenities, poor infrastructure and general poverty with 46% of the population living below the poverty line.

In these circumstances land grabbing which had its genesis in pre-independence Kenya when the white settlers were allocated all Kenya's landmass consisting of the best agricultural land, the post colonial government of Jomo Kenyatta used the land formerly held by settlers for patronage purposes-to solidify support and build alliances. This trend continued and intensified in the successive Moi regime used his position to enable his ethnic community take up these highlands. In addition, the social economic situation in Kenya deteriorated and became more ethnic based during Moi's regime hence breeding resentments.

Agenda four of the 2007/2008 post election violence foresaw these problems and set forth a post conflict recovery framework that was meant to transform social economic and political situations that would then result to durable peace. The emergency phase ensured the return of peace and security over a period of time. Although external assistance was witnessed especially in the IDP camps, humanitarian assistance for basic needs was wanting and so was the security of the internally displaced persons.

In the transition phase, the formation of a transition government was essential to peace. The rehabilitation of physical infrastructure and the restoration of production sectors ensured that the economy continued as before. However, in the last five years since the conflict ended, the coalition government has failed to follow up with the National dialog and Reconciliation process and implement essential steps of the framework. The Annan team has also failed to follow up unfinished business. Although the Judicial reforms were implemented and are under scrutiny, other major reforms that include security sector reforms,

dealing with the militia, national reconciliation and dialog as well as social economic issues on poverty reduction and unemployment have not been addressed.

Kenya faces other general elections in March 2013 yet, a lot remains to be done to change the attitudes and perceptions militias as well as of the victims of the 2007/2008 post election violence. Little has been done to deal with Agenda four that emphasized on inequality in the Kenyan social economic and political structures.

CHAPTER FOUR

4.0 Chapter Introduction

This chapter introduces post conflict recovery framework and the role it plays in peacebuilding in post conflict societies. It brings out the main actors in the African regional conflict management arena as well as in the international system and in so doing; it captures the characteristics and examples of other post conflict recovery frameworks.

Under this perspective, the chapter introduces the Kenya post conflict recovery framework adopted by mediator Kofi Annan after the post election violence in 2007/2008. The chapter continues to give an analysis and a critique of the framework in relation to its implementation, strengths, weaknesses, its successes as well as its failure. The chapter concludes with a brief recommendation.

4.1 The Role of a Post Conflict Recovery Framework In Peacebuilding

Article 33 of the UN Charter makes provisions for the promotion of peace by stating that “parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means.”¹⁶⁷

In order of assist post conflict societies to rebuild their economies, the United Nations introduced peacebuilding and defined it as comprehensive efforts to identify and support structures that will consolidate peace and advance a sense of confidence and well-being

¹⁶⁷ United Nation Charter, Art, 33

among people.¹⁶⁸ To achieve this, the UN recommended concrete cooperative projects to be formed that would contribute to not only economic and social development but also to enhance the confidence that is fundamental to peace. The aim of post conflict peace-build therefore is to prevent conflict recurrence.¹⁶⁹ It should undertake medium to long-term process of rebuilding the political, social and economic structures that have been destroyed by conflict.

Although the Charter of the United Nations includes an explicit provision against interference in the domestic affairs of member states with an exception in the case of enforcement measures under Chapter VII, the Constitutive Act¹⁷⁰ of the African Union has adopted a wider field of engagement options, from mediation to using force to intervening in specific circumstances. Article 4(h) of the Constitutive Act specifies that “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”

One of the principal objectives of the AU, stated in Article 3(e) of the Constitutive Act, is to “encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights.” While Article 53(1) of the UN Charter requires that any enforcement action by regional arrangements be authorized by the Security Council, Article 52(2) encourages regional organizations to “make every effort

¹⁶⁹ United Nations ‘Agenda For Peace’ Part VI
¹⁷⁰ African Union Constitutive Act 2002

to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.”¹⁷¹

Given that Kenya was not an “enforcement action,”¹⁷² the AU was well-placed to act quickly and with the implicit support of the UN Charter. Due to the regional impact that the crisis was already having catastrophic consequences that seemed to go out of control, there was undoubtedly a need for speedy action.

4.2 The Perspectives of Kenyan Structural Conflict

The histories of conflict in different countries differ and so is the post-conflict situation. Conflicts tends to be more complicated in poor developing countries that have been in continued violence than those still faced by poverty but is in considerable negative peace. Kenya is in the former category characterized by severely weakened state capacity, poor physical, human and social capital, low economic incentives, widespread poverty and huge unemployment especially of the youth. The security operatives have to frequently deal with criminal networks that become active when elections approach.¹⁷³

Annan came to Kenya with an understanding of Kenya’s structural conflict, which was essential in order to inform its management. In the long term, the colonial regime had its part to play and so were the post colonial regimes. The Country’s history gives an account of the short term and long term causes that portray a social, economic and political mismanagement that explains the constant lack of state legitimacy witnessed in constant ethnic conflicts.

¹⁷¹ UN Charter Art. 52(2)

¹⁷² Which would require peace keeping troops.

¹⁷³ Recommendation of the Kiliku Commission Report

In the long term, Kenya has been facing huge demographic growth that has resulted to large migrations to cities. The effects of this have been the weakening of African traditional cultures and authority among the majority of populations who are mainly the youth. A lot of pressure has been put on the little land available and other natural resources causing ecological imbalances, tension in the midst of competition, fueling of resentments and political violence. With a background of poverty, ethnic inequalities, illiteracy and large scale unemployment, these youths have been an easy target for crime recruiters and have formed militia groups that politician have used for their own ends.

In short term, other causes of conflict were fuelled by direct negative behavior and attitude of political regimes. In both the Kenyatta and Moi regimes and to some extent, the Kibaki regime. Large groups of the population were excluded from the economic, social and political participation on the bases of their ethnicity. This resulted to inequalities and economic differences that produced deep frustration. On the other hand, what was considered democratic elections was followed by deliberate policies of exclusion the over the years only made tensions worse.¹⁷⁴

In particular, a majority kikuyu ethnic community elite controlled the state during Kenyatta's regime as and to a large extent in the Kibaki regime. Moi followed suit and a majority of his ethnic community, the Kalenjin, controlled the affairs of state during the 24 years that Moi was the head of state going to an extend of 'ethnic cleansing' a whole province to settle his own.¹⁷⁵ This combined with poor governance, endemic corruption; widespread poverty and profound inequality have constantly triggered resentment and

¹⁷⁴ Peter Wanyande, Mary Omosa. *Governance and Transitional Politics in Kenya* (University of Nairobi Press, Nairobi 2007) p.10

¹⁷⁵ The Kiliku Report

political instability. To make it worse, economic failure weakened state power and resulting to degradation of social services, as well as infrastructure.

In his endeavor to resolve this conflict, Annan with the assistance of the African Union and the international system needed to go deeper into the Kenyan society with an objective to identify these values and needs in order to improve the nature of people's lives by enabling them to resolve conflicts when they recur.¹⁷⁶ After the initial stages of calming the situation, it was essential to include a people oriented strategies of conflict management in order to understand the root causes of the conflict aiming to transform them.

Besides this background, Annan come to a country that hosts many international organizations including the UN and its affiliated agencies; it's also a major trading partner and transit point of goods to landlocked Uganda, Rwanda and Burundi as well as the major economic hub of the East African region. The international community was therefore watching and getting involved with the Annan mediation with great interest.

4.3 Agenda Four: A Critique of The Post Conflict Framework

Under the auspices of The African Union, Kofi Annan come to mediate the Kenyan post election violence that were as a result of disputed elections between the Party of National Unity (PNU) lead be Mwai Kibaki and the Orange Democratic Party (ODM) lead by Raila Odinga. Kofi Annan is a credible mediator on conflict in Africa, not only does he uses the good office of the UN Secretary General having once occupied it in the past but he is an African himself and therefore a heterogonous mediator who understands the region and may have interests to promote his position as an international mediator through his own

¹⁷⁶ UN * Agenda for Peace

foundation. To such a dignitary, the African Union invited him to be the lead mediator, in the Kenyan post election violence.

The African Union (AU) is mandated to maintain peace in the African region. At the same time it has put in place an AU policy on Reconstruction and Development of post conflict countries which recognizes the importance of an appropriate response to conflict emergencies, to social and political transition following conflict, and to a long long-term development, a policy which guided Annan and his team.

External actors such as the AU, the UN and other multinational and nongovernmental organizations usually come into such engagements with self-ascribed mandates to assist with the peacebuilding process, aiming to rebuild the political, social and economic sectors broken by the effects of the conflict. Such an exercise as was the case of Kenya's post election negotiations requires that different programmes run simultaneously. The coordination of the multiple actors and issues becomes of great necessity in order to ensure coverage, to avoid duplication and waste of human and financial resources.

As portrayed by the issue on Annan's agenda in the Kenyan post conflict mediation, such coordination must be based on the sources and the causes of the conflicts so that it is geared towards the gap and the needs of the local target population otherwise it becomes in futile. All actors must establish a level of symbiosis in their post-conflict recovery efforts in order to be of use to those in need.

The AU Framework has five dimensions that include security; political transition, governance and participation; socio-economic development; human rights, justice and reconciliation; and, coordination, management and resource mobilization.¹⁷⁷ It enforces that

¹⁷⁷ AU Policy on Reconstruction and Development in Post Conflict Countries.

these five dimensions reinforce and complement each other. It also recommends policy planning in order to establishing coherence among within the five areas.

The framework also recognizes that each conflict setting is unique and therefore the strategy adopted must correspond to the specificities of the particular situation and that post-conflict recovery strategies must be relatively flexible to respond to changing situations. For instance, the four agendas set by the Kofi Annan team reflected that conflict was still continuing and needed to stop, that humanitarian relief was required urgently and that the return of a functional government would facilitate the return of security and at the same time, check of the other four dimensions of post conflict recovery. The long term agenda four would then respond to longer term dimensions such as inequalities in the distribution of resources including land, all these would have to be based on needs of the people based on the problems at hand.

The AU framework is also supported by the UN efforts in peacebuilding. Recognizing the need to better anticipate and respond to the challenges of peacebuilding, the UN Peacebuilding Commission¹⁷⁸ was established in order to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery.

Annan drew his framework based on the AU post conflict policy¹⁷⁹ that has the emergency, transition and development phases and realities of the Kenyan situation. In the emergency phase,¹⁸⁰ he aimed at immediate action to stop the violence and restore fundamental rights and liberties as well as address the humanitarian crisis. In his transition phase he aimed to deal with overcoming the political crisis that had reaches a deadlock and then

¹⁷⁸ United Nations. Resolutions 60/80 and 1645(2005)

¹⁷⁹ AU Post Conflict Reconstruction and Development and the African Post Conflict Recovery Policy Framework

¹⁸⁰ African Post Conflict Recovery Policy Framework

aim at promoting reconciliation, healing and restoration of a calm situation. In the development phase, he chose to deal with the fourth and last agenda to look at the long-term issues and the root causes of the conflict, including constitutional, legal and institutional reforms.

To begin with, in the emergency phase of the post election violence, Annan called for humanitarian assistance to provide for the internally displaced with provisions such as food, health facilities and shelter. Considerable assistance was extended by the UNHCR and the Red Cross and many other Nongovernmental organizations in the month that followed. It is essential for external and internal actors to coordinate and to complement each other. The process of following up with the resettlement of IDPs however was not adequate although nongovernmental organizations have resettled thousands, the government had financial problems and five years on, about 3000 are still in camps in Naivasha and Kisumu.

The Kenyan situation demanded an agreement between the two principals before calm could be restored, it was therefore difficult for Annan to fulfill his first agenda before the signing of the peace accord, the two principals tried to calm the population but violence only completely ceased when the coalition government agreement was signed in the transition phase.

The transition phase ensures that medium term strategies such as the delivery of a new constitution that was so timely because it created hope that the next elections would be free and fair. The mechanisms for governance in the new constitution are being laid but besides that, the phase demands that other changes such as the resettling of IDP be effected, improvement of basic social services and preparations for a free and fair elections.

Agenda four is duplicated in the African Union's framework of the development phase, a long term framework to put back the country to people oriented development as well as peace. Annan considered long term issues of constitutional reform, institutional reform the reforms the judiciary, the police (security Sector reforms) the civil service and parliament, land issues, poverty, inequity and regional imbalance, national cohesion and unity; transparency , accountability and impunity.

Constitutional reforms are essential because Kenya has been operating on the colonial constitution which has been amended many times as well as being abused for political gains. Kenya got a new constitution in 2010 and the necessary bills are being passed to enable the enacting of the responsible laws. The enactment of the devolved system of government will ensure that developing the social, economic and political sectors is concentrated in counties instead of a central government. Social services that satisfy people's needs will be closer and concentrating on a smaller population. The counties are also more ethnically based which means that different ethnic communities with advance their counties aiming to benefit directly. Monies from the central government will also be shared in a fair manner to benefit all.

The New constitution of Kenya is already in force having been subjected to a referendum on August 4, 2010. It was approved by 67% of Kenyan voters and promulgated on 27 August 2010. To the Kenyan population, the most important chapter include the integrity chapter, requires an Independent Ethics Commission to be set up that will monitor compliance with integrity in all government institutions and make investigations.¹⁸¹ The other is the Independent National Land Commission created to maintain oversight and

¹⁸¹ Kenyan Constitution (Chapter Six)

manage all public Land belonging to national and county government and recommend policy on addressing complaints from public and also advise the government on management, planning, and dispute resolution over land

The independence of the judiciary is essential to Kenya to ensure that their rights are respected. Also important is that all members of the public have a right to bring up a case against the government on the basis of infringement of Human Rights and the Bill of Rights.¹⁸² Also that the courts and government institutions are bound to the Bill of Rights¹⁸³ and that the constitution representation in elective bodies has to effectively meet gender equity constitutional requirement of no more than two-thirds of members shall be from either gender in its makeup.¹⁸⁴

Institutional reforms consisted of reforming the judiciary that is essential towards peace because it ensures the rule of law is maintained by having a transparent judicial system that ensures justice to all as a basic human right. The judiciary was the first institution to be reformed although it has not had a major role in post conflict peace building. Kenya waits to see if the two presidential candidates facing trial at the ICC of crimes against humanity during the post election violence will compromise the chapter six of the constitution the deal with the integrity and be allowed to vie for presidency, yet many still wait for justice.

The International Criminal Court (ICC) is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression.

¹⁸² Kenya Constitution Article 23(1)(2)

¹⁸³ Kenya Constitution Article 2(1), Article 10(1)

¹⁸⁴ Kenya Constitution Chapter 7, Article 81(b)

The Rome Statute¹⁸⁵ grants the Court jurisdiction over these four crimes. The Statute defines each of these crimes except aggression. The crime of genocide is unique because the crime must be committed with 'intent to destroy'. Crimes against humanity are specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population. The Statute provides that the Court will not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted.

The second institution that agenda four targeted were the police reforms because the Kenyan police have over the years been extensively corrupt to an extent of compromising the judicial system. The AU framework had the responsibility to ensure the establishment of a safe and secure environment by ensuring the development of legitimate and stable security institutions that are responsible of securing all other institutions. The Kenyan police have a very negative reputation of lack of motivation as well as corruption. In the post election violence, that government did not allow external security and therefore local security forces were in charge. The CIPEV report indicated that the highest number of perpetrators in rape and other cases were done by the Kenyan security forces.¹⁸⁶ This reform was therefore a priority in the Annan agenda towards reassuring a post conflict divided society.

On the contrary, security sector reforms, an important component that promises a responsive and representative, corrupt free police force has never been operationalised even as Kenya faces polls in a few months. This not only lays doubts on the security of conflict

¹⁸⁵ Kenya Constitution .Article 5

¹⁸⁶ The Waki Commission.

prone areas but also the credibility of poll results when security cannot be assured. Pockets of militia have already been witnessed at the Kenyan coast initiated by the Mombasa Republican Council (MRC), in the Tana River Massacres and increased insecurity in North eastern province.¹⁸⁷

The principles endorsed in Agenda four also wanted reforms in the civil services in order to raise morals, ensure commitment, transparency and accountability. Government operations are essential in peacekeeping because they made services to the people more efficient. Most social and economic sectors are made through government for instance education, health and service sectors in which government has the largest share such as water and electricity. Unfortunately besides that fact that the deadline was one year, civil service reforms have just began to be effected by the selection of a new commission to affect it.

The third institution to be reformed is parliament. The Kenyan parliamentarians continue to earn very high salaries besides the fact that many in the country are faced with hunger and poverty. Corruption and poor Service delivery to constituents has over the years deteriorated social services rendering them inefficient and unreliable. Reforms in parliament have begun and there is hope that in the new devolved governments, parliamentarians will be more accountable to the people.

Land is the major issue in agenda four because it has been attributed to the 1991/1993, 1997 and 2007/8 conflicts. The Land Act and the Land Commission have been formed mandated to ensure issues of land tenure to curb the problem of landlessness and unfair distribution of land. Although progress has been made in enacting laws, no tangible reforms have been witnessed. The issue of land is closely related to poverty, inequity and

¹⁸⁷ No report on causes of these conflicts which seem to be based on land inequalities.

regional imbalance that agenda four also seeks to address and the constitution largely intended to address in the form of devolved governments that would decentralize development to smaller counties and according to ethnic divisions.

It is hoped that this system will work to address these three in the long term. Unemployment especially of the youth is a serious problem that has resulted to the rise of militia who are used to execute violent conflict. The government has little capacity to create jobs and efforts have been made to create employment through youth entrepreneur enterprises¹⁸⁸.

Under social economic development is the creation of employment which is critical in this case. The last census showed that the majority of Kenyan population is made of the youth and the majority is unemployed. It is clear that in Kenya, creating youth employment would tap the positive energy and skills that are otherwise becoming a real challenge. Since the 1991/1993 and later 1997 ethnic violence, they have found themselves in a vicious cycle of violence, poverty, illiteracy and social exclusion thus fueling resentment in communities.

Groups of ethnic militias¹⁸⁹ have consequently destabilized the authentic security system, been used by the political regimes but unfortunately even the Annan post conflict recovery framework has not addressed in its transition phase. A gap exist though when dealing with the militia who have co existed sometimes in collaboration with politicians, the AU framework allows former rebels an opportunity to form political parties in order to conform to the rule of law. Because this did not happen, there are chances that this militia

¹⁸⁸ The 'Kazi Kwa Vijana' involves the giving the youth jobs in government public works sectors and paying them a daily wage.

¹⁸⁹ The Mungiki affiliated to the Kikuyu, the Tuliban affiliated to the Kalenjin, the Chinkorokoro affiliated to the Kisii community and many others

may cause chaos in the 2013 elections. When the devolved governments are in operation, it is hoped that more jobs will be created and the national rate of unemployment will come down.

The African Union (AU) is a union consisting of 54 African states. Among its objectives is to achieve peace and security in Africa as well as to promote democratic institutions, good governance and human rights. Its Peace and Security Council was proposed at the Lusaka Summit in 2001 and established in 2004 under a protocol to the Constitutive Act adopted by the AU Assembly. The protocol defines the PSC as a collective security and early warning arrangement to facilitate timely and effective response to conflict and crisis situations in Africa. Other responsibilities conferred to the PSC by the protocol include prevention, management and resolution of conflicts, post-conflict peace building and developing common defense policies.¹⁹⁰

The AU post conflict policy recommends human rights, justice and reconciliation in the long term. Annan ensured that the post conflict situation in Kenya was addressing past and ongoing grievances by establishing the Truth and Reconciliation Commission¹⁹¹ as well as the National Cohesion and Integration Commission¹⁹² that was intended to initiate a conflict transformation system and the process for reconciliation as well as monitor the provision of basic human rights within communities. Such a system would not only be based on international norms but also, in the African concept, it would ensure that societies inherited a mechanism of resolving their own conflicts when they occur.

Post conflict peace building encourages reconciliation as a means of healing victims of injustices in post conflict societies. Kofi Annan formed in the National Dialog and

¹⁹⁰ www.africa-union.org

¹⁹¹ Truth Justice and reconciliation Act 2008

¹⁹² National Cohesion and Integration Act 2008

Reconciliation formed the National Cohesion and Integration Commission (NCIC) the Truth, Justice and Reconciliation Commission (TJRC) as well as the Commission of Inquiry into the Post Election Violence (CIPEV) where the issue of national reconciliation as well as transitional justice in the Kenyan post conflict peacebuilding is emphasized.

The National Cohesion and Interregional Commission was the realization that long lasting peace, sustainable development and harmonious coexistent among Kenyans requires deliberate, institutional processes of nation hood, national cohesion and integration Its mandates includes the increased knowledge and transformational practice on national reconciliation cohesion and integration, eliminating all forms of discrimination, strengthening good governance, equitable access to public resources, facilitation of operation of laws, policies and practices counter ethnic, racial and religious tensions .¹⁹³

Among the objectives of the principles was to establish and operationalize a policy and institutional framework for a Peace-Building and Conflict Resolution Programme (PBCR) and early warning mechanisms on social conflict, including a PBCR monitoring and evaluation system and a restructured Secretariat, and enactment of the Alternative Dispute Resolution Bill. These have not yet been considered by the neither by the government or by the Annan follow-up team.¹⁹⁴

The use of retributive justice is meant to punish past crimes and deter of future ones. It involves the trial of individuals accused of committing gross human rights violations and hoping to that it leads to reconciliation. The lack of trust in the justice system in Kenya made

¹⁹³ www.cohesion.or.ke

¹⁹⁴

the exercise impossible locally. The idea of a local special tribunal was rejected hence referring the cases to the ICC. The importance of transitional justice ensures reparations that are obligations of a wrong doing party to redress the damage caused to an injured party and can the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In Kenya, this might not help in reconciliation because it will not ensure lack of recurrence; the ICC process may not go a long way to transforming the Kenyan conflict.

On the other hand, Annan recommended reconciliation by recognizing that for Kenyans to heal, there is an urgent need to redress the harm caused by concentrating the members of society to participate meaningfully in the whereby eradication both the risk of recurrence. Although the PBCR was never established, the TJRC was mandated to make a past historical record of human rights violations, address impunity, and promote healing and reconciliation and hence respond to needs of victims and prevent the recurrence of violations of abuses.

The aims and objectives of the TJRC include The TJRC's goals and objectives, truth by establishing an accurate, complete and historical record of human rights violations and historical injustices, and educating the public, Justice which would include criminal justice as well as restorative justice, social justice through recommendations for prosecution, amnesty, reparations, peace and national unity and healing and reconciliation at the national and individual levels as well as restoration of the human dignity of victims and perpetrators.

The understanding and the guidance to widen the roles of the TJRC as well as to coordinate its activities, support and finances and the alternative to credible peace and reconciliation in the post election period rested on the principal mediator and well as the political will of the coalition government. The principal mediator was brought in not to rush over the formation

of a coalition government but to observe a post conflict framework whose results would ensures positive peace.

While it is true that the post-conflict processes in Kenya depend principally on the commitment and efforts of the primary actors in a dispute, the coalition government that was formed, the role for external actors and especially the framework initiated by Kofi Annan and other intergovernmental organizations is essential to follow up and see to the implementation.

Two years into its establishment, the TJRC that is so essential to peacebuilding in Kenya had not commenced its operation citing underfunding and lack of political will from the government which had resulted to lack of credibility and legitimacy. Annan and the AU coordination arms did nothing about this situation. Furthermore, TJRC had a leadership gap,¹⁹⁵ its chairman had been implicated in Wagalla massacre¹⁹⁶ that had taken place years before and the commission members had then decided that that they did not want him anymore.

At the same time, the TJRC Act has flaws that prevented it to carry out its mandate. It involved the authority given to the commission through the Act to recommend amnesty to persons who make full discloses of facts in relation to acts associated with gross violations of human rights and economic rights as well as the provisions to use immunity to protect all persons who appear before the commission from civil or criminal responsibility in similar

¹⁹⁵ Standard Newspaper, 11, November 2011. P 1

¹⁹⁶ A massacre of ethnic Somalis by Kenyan security forces 1984 in Wajir District, North Eastern Province, Kenya. at the Wagalla Airstrip. Kenyan troops were sent there to diffuse clan-related conflict. These soldiers took about 5,000 Somali men prevented them from accessing water and food for five days before executed them.

matters. This mandate needed a strong and trusted security system as well a conflict transformation strategy that would transform relationships positively, otherwise, without forgiveness; people would kill each other in revenge. This is a step that neither that government nor that post conflict framework foresaw.

The commission also faced problems with the fact that the government never made use of the recommendations of the Commission of Inquiry into the Post Election Violence (CIPEV) referred to as the Waki Commission which was a product of the Annan framework. The Commission established by the mediation team finished and recommended in its report, the establishment of a special tribunal which would have dealt with the retributive justice of the cases the TJRC recommended, instead, parliament opted to send only a few victims to the International Criminal Court, claiming that they could not trust the justice system in Kenya.

Kofi Annan himself handed the envelope to Luis Moreno-Ocampo, the Prosecutor at the ICC. The Kenyan Government was then given 1 year, beginning to set up a Tribunal to deal with issue, which it never did. ¹⁹⁷ Neither the chief mediator nor the NCIC recommend how Kenya would then deal with the deep rooted issues that were facing it, they only say the ICC as the most adequate strategy for reconciliation into the post election violence. If he had envisioned the TJRC to partake the responsibility, then the commission would have been given that attention it has required. The turn of events surrounding what should be a process of peace and reconciliation towards the healing of psychological and physical wounds in the structural conflict in Kenya seems to have been highly underrated if not misunderstood.

When Kofi Annan left Kenya on March 3rd 2008, six weeks had passed but this was only the beginning of a longer and more difficult road ahead toward sustainable peace in

¹⁹⁷ Daily Nation, July 13, 20

Kenya. The technical elements of agenda item three were left in the hands of Attorney-General Amos Wako to draft the necessary bills for the implementation of the power-sharing agreement into law.¹⁹⁸

The negotiations over the root causes of the crisis, however, were left in the hands of Nigerian Foreign Minister Oluyemi Adeniji, who was tasked with addressing the last item on the agenda: the land issue, historical injustices, the cycles of dispossession, and the steps needed to move toward reconciliation. Adeniji did not continue with the peace and reconciliation agenda envisioned by the African Union neither has there been a concrete process by the regional or international system to lead Kenya into reconciliation of its population from deep seated ethnic differences that have resulted to serious divisions.

4.4 Conclusion

International support for peacebuilding must go beyond targeting small workshop based dialogue into supporting more innovative approaches that involve key local actors and institutions, such as elders' councils, women's groups, and media, in pro-peace mobilizations and well as interested international actors, it must aim to transform these groups to sustain their communities in continued dialog.

It is evident that the level of government response to efforts towards post conflict recovery remains largely the responsibility of nongovernmental organization who are mainly urbanized and only focus on sporadic small projects such as youth exchanges, and workshops instead of building both rural and urban strategies to advocate for needed local structural

¹⁹⁸ <http://kofiannanfoundation.org/kenya-national-dialogue-and-reconciliation>

changes, including addressing historical grievances, cultural practices and traditions that can aggravate tensions and interethnic relations.

It is therefore clear that the AU framework driven by Annan's failed to introduce conflict resolution and management frameworks that would have dealt with the issues at hand. The structural issues at the centre of the Kenyan conflict can only be transformed through peace and reconciliation of communities that were and are still affected by the effects of the violence. The ICC is not a venue where individual cases of victims will be heard, it only reinforces the human rights perspective in the international system in order to maintain the international law.

It is essential to acknowledge that while post conflict recovery frameworks attempt to recover the political and economic spheres of post conflict societies, these can easily be destroyed by violent conflict if structural issues are not determined and adequate conflict resolution methods sort to take care of deep seated incompatibilities in social relationships. The Kofi Annan post conflict recovery framework may have lead to the formation of a coalition government but, Kenya is still in a state to negative peace.

CHAPTER FIVE

5.0 Chapter Introduction

This chapter begins with a summary of the finding of this study. It then presents a more detailed presentation of the findings which begins by proving that Kenya is in a state of structural conflict. It then presents the findings on the effects of the post conflict recovery framework used after the post election violence and ends with a conclusion.

5.1 Findings and Conclusion

This study begins by an understanding of both the theory of structuralism as well as the peace building theory. Their analysis were able to conclude that social relations determine the relationships in society and that unsatisfied social economic and political needs can lead to structural violence which if triggered can be violent. The Marxist theory was used to determine the need for equality with these structures.

The study also found that the rise on non state actors such as the UN led to the concept of human security which then gave meaning to individual rights as well as their human rights. This was the birth of peacebuilding that emphasized on going deep into the structures in order to transform social relations and lead to a society that is in positive peace.

This study then establishes that Kenya is in a state of structural conflict and analysis the post conflict recovery framework used by Kofi Annan after the 2007/8 post election violence and proves that due to lack of proper coordination mechanisms, the agents that could have transformed this conflict were not enabled to do so. The study therefore concludes that the Kenyan conflict could easily recur.

5.1.1 The Derivation of Kenyan Structural Conflict

The pre colonial communities in Kenya adjusted themselves to their ecological niches, the Agikuyu and the Miji Kenda developed agricultural economies, the Maasai and the Samburu practiced pastoralist, the Luo and the Abagusii adapted themselves to a mixture of crop cultivation and livestock keeping, the Ogiek thrived on hunting and gathering, production was primarily for collective subsistence rather than individual accumulation.

The Kenyan post colonial kinship system was on the basis of ownership of factors of production which included land, livestock and labor. Labor was largely cooperative within the family and the larger kin group and its rewards were mostly redistributed in kind and according to family needs. There existed little differences in wealth possession, classes were unknown. Reciprocity and the egalitarian ideal ensured that individuals never slid into abject poverty.

Then came colonialism that was a product of imperialism, which introduced the highest form of capitalism to many African communities most of which were characterized by the presence of many divergent ethnic groups. In Kenya, colonial boundaries immediately divided single communities by drawing borders without consulting them, nurturing negative ethnicity as different communities competed for colonial favors and resources. Inter-ethnic competition began to characterize the nationalist struggles and spread into post-colonial politics. Since the 1990 for instance, the minority Kalenjin and coastal communities have attempted to establish quasi-federalism as a counterpoise to Kikuyu-Luo domination in independent Kenya.

The effects of the divide and rule tactics were many, recruiting collaborative agents into leadership positions while at the same time military expeditions killed others in genocide and forced migrations was made worse mainly because it was done according to ethnic collaboration therefore centralizing, ethnicity, power and enforcing autocratic rule. Further, colonial education fostered the emergence of collaborative and obedient elites, also ethnic based serving the colonial state and economy as semi-skilled workers, clerks and chiefs, including Johana Owalo, Harry Thuku, Jomo Kenyatta, Dedan Kimathi, Oginga Odinga and Tom Mboya. Unfortunately for Kenya, this was the same method the colonial state used to carefully chose the leaders of the independent regime as it laid the grounds for neo-colonialism, on ethnicity.

The colonial economic policies in Kenya were capitalist. Colonial commodity production, led to widespread environmental degradation. Forest concessions, which were granted to individuals and companies resulted to massive deforestation evident to this day and largely affecting food and dairy production in the highlands. These policies also were characterized by geographical as well as structural disadvantages in the post colonial Kenya in that development activity concentrated in few urban areas mainly Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, and Naivasha.

Another major problem was structural due to the fact that development was centered on only a limited range of activities, agriculture and a very limited range of secondary industries. This means that Kenya's economy has a narrow base; it is not adequately diversified because it relies on a few primary commodities including coffee, tea, pyrethrum and flowers for foreign exchange. As a consequence Kenya's economy lacks the desired auto-dynamism and yet it operates at the mercy of fluctuations in world prices. A factor the

Marx argues that it causes divisions in the international system due to inequality between the centre and the periphery.

Colonialism had its own share in the country's inequality and poverty as it promoted rural-urban, regional and class differences in development, the consequence the contradictions in post colonial Kenya are clear. Social relations in today's Kenya are based on who is able to import what commodity or idea, which is the bases of production between the international and domestic bourgeoisie, the domestic bourgeoisie thus produces locally and competes with international goods and ideas. On the other hand the competition between the local poor- the rural peasantries and the rural bourgeoisie. And lastly between capital and labor, the peasantry has to work for the bourgeoisie. In keeping to the standards of the colonial state, the post-colonial state regimes of Kenyatta and Moi had to cope with these series of contradictions. The post colonial bourgeoisie had to make use of high level corruption to accumulate wealth and power. They also invoke racial and ethnic sentiments to maintain that power. Land, influence political position, intimidation and the use force became central to political leadership

It is evident therefore that the Kenya's post-colonial state has largely built on the colonial heritage which successfully ethnicized its social, political and economic spheres as the political class continues to mobilize the citizenry around ethnic political parties, in so doing it failed to democratize the state.

In affirming Kenya's structural conflict is its continued struggle for positive peace. The post colonial Kenya has been riddled with conflict and violence in its almost fifty years

on independence. To begin with, Kenya was ruled by the iron hands from 1963 to 2002, first by Jomo Kenyatta (1963-1978) and then by Daniel Moi (1978-2002).

The foundations of unequal social structures have had its roots in a weak national constitution that progressively lacked healthy checks and balances between the executive, legislative and judicial branches of government. In 47 years, amendments to the post colonial constitution have greatly strengthened presidential powers creating a dictatorship that abuse power without restraint.

In 2002, however, there were changes, the ruling political party, the Kenya African National Union (KANU) that had ruled the country since independence, collapsed beneath a new political party of an alliance that had formed between all of the major Kenyan tribes, the first willing tribal alliance, the National Rainbow Coalition (NARC). People from all tribes across Kenya had hope that the country's government was finally on the verge of alliance government that would have equality and accountability through shared power.

Peoples' hopes for amelioration quickly depreciated, within weeks of the election, the memorandum of understanding (MOU) that forged the tribal factions into the NARC alliance and that got Kibaki elected had effectively collapsed, Kibaki, from the Kikuyu tribe, broke his election promise thus following in the footsteps of his presidential predecessors, disintegrating the NARC party and braking the promises of a shared government that would give a new constitution.

The immediate former government of Moi had left the country in a deep economic crisis. Kibaki's actions left many citizens tasting deep frustrated over their expectation of

change come 2002. This frustration fueled the violence that took place after the election in 2007 and that was of a different magnitude.

Over the years therefore, the attitudes and behaviors of people in the Kenyan societies became regularized by existing social norms while traditional cultures had been eradicated by colonial mentalities¹⁹⁹ Maslow explains the need to fulfilled basic human need, but in the Kenyan situation, continue absence of these needs explains why the already deeply ethnically divided society changed in term of its social interaction to become more violent, evidently, their needs were continuously being frustrated²⁰⁰ among them were equal distribution of resources mainly land, political participation, free and fair election all that resulted to extreme poverty among the majority of ethnic communities.

Human needs are social needs, Burton notes that when people are recognized in a society, they have a sense of self identity and are able to seek opportunities that belong to them; they are able to develop themselves. Societies do not seek these qualities through forceful means, the existing structure take into consideration their social, economic and political needs, thus these need are satisfied in a world that treats all spheres and peoples equally.

The realist model of the use of force by subsequent political regimes has only reinforced and weakened its social structures and resulted to continued violent conflict, evidently, individuals as well as groups have continues to defy security operatives and the wider society pursuant of their goals.²⁰¹ The formation of militias in Kenya is a strong

¹⁹⁹ Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993. p. 18

²⁰⁰ Abraham Maslow. *A Theory of Human Motivation*. Psychological Review, Vol. 50 #4(1943) pp. 370-396.

²⁰¹ Morgenthau Hans. *Politics Among Nations. The Struggle for Power and Peace* (Kalyani Publishers, New Delhi 2004) p.

indication of social structures that have not met the social, economic and political needs of the masses.

Contract to state centrism, post election violence was not only a reaction to unmet needs but also due to the effects of changes in the international system that have advocate for people centered development Burton²⁰² shifts the attention a social perspective. This attention is witnessed in Kenya's perspective where the state is unable to meet social, economic and political needs and instead turned to destroy it own structures through a failed economy that does not satisfy the need of its own citizen hence violence.

5.1.2 The Ad Hoc African Union Post Conflict Recovery Framework

Galtung's differentiation of positive and negative peace was not in vain. He makes it clear that when violent conflict occurs, its control and reduction is essential; also of importance are hierarchical relationships among the warring parties in order to mend structures which are responsible for violent conflict.²⁰³ This became the basis with which the United Nations build on the theory of peacebuilding and on which its members, Kenya included benefit from when faced with such a challenge.

The post election violence of 2007/ 2008 was by all means internationalized. The United Nations ensures regional arrangements to facilitate the preservation of human life in times of emergencies. The AU is therefore mandated to carry out such engagements and therefore was quick to assist Kenya in the post election violence.

²⁰² Burton John W. *Conflict Resolution as a Political System*. Working Paper No. 1. Reprinted August 1993.

²⁰³ Johan Galtung, "Three Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding," in *Peace, War and Defense: Essays in Peace Research, Vol. II*, ed. Johan Galtung (Copenhagen: Christian Ejlert, 1976), 297-298.

Kofi Annan, in his role as mediator, fronted by the African Union's post Conflict recovery and Development²⁰⁴ had also considerable assistance and attention from international actors, most of whom have diplomatic missions here in Nairobi; besides, he has worked with peacebuilding missions with the UN. He also had the advantage of being coming from the regional conflict system and therefore understood better the perspectives of the Kenya post conflict situation.

He therefore understood his mission not only to deliver peace in an otherwise 'peaceful'²⁰⁵ country but also out of the realization of the foundation of peacebuilding which are that conflict does not just disappear from society but it must be well managed to transform adversarial relationships and long term relationships as the short term ones tackled, psychological transformation of the population, change of the perceptions, and promotion of education by reconciliation alongside cultural reformation to prevent the recurrence of violence and to break the circle of violence.²⁰⁶

The framework adopted fulfilled the first and second agenda that consisted of humanitarian assistance that was mainly delivered by of the international organizations as well as nongovernmental organizations. The Agenda four in the National Reconciliation debate made it clear that Kenya had experienced continued conflicts and therefore had structural issues that needed attention in the longer term.

²⁰⁴ Africa Post Conflict Reconstruction Policy Framework

²⁰⁵ Kenya is generally regarded as peaceful compared to other African countries most of which have experienced several coups and the fact that the ethnic clashes that have happened in the past are not stayed within her borders

²⁰⁶ Jeong Ho-Won. *Peace and Conflict Studies. An Introduction* (Ashgate Publishing Ltd, London 2000)p 4

Transitional justice can bring back material elements of victims of the violence but it cannot bring reconciliation. ²⁰⁷ Annan focused to fulfill the reconciliation through the formation of the Truth Justice and Reconciliation Commission (TJRC), the National Cohesion and Integration and the Commission of Inquiry into the Post Election Violence 2007/2008. The envisioned Peace Building and Conflict Resolution Programmed planned in the agenda four was never formed. While the CIPEV delivered its report that lead to the referrals of the cases to the ICC, the NCIC continues with its mandates. What is clear though is that a conflict resolution mechanism that would begin a national healing process that would transform the conflictual social relationships in Kenya has never been effective.

It was evident that the TJRC was and has failed in its mandate to deliver a report in two years, and has until October 2012 not done so. The effect are that without a report that informs the extent of structural divisions in the Kenyan social structures, there cannot be a well informed mandate of establishing a healing, peace and reconciliation process in Kenya. The lack of follow up by the AU and Kofi himself in his interest as a peace builder as well as the lack of political will cannot be more emphasized.

5.2 Conclusion

Kenya has been in structural conflict since independence and is still threatened in the years to come. This is because the idea of conflict resolution and transformation in peacebuilding and its importance in the Kenyan society was reflected by the Annan mediation through the National Reconciliation and Dialog and by the use of the African Union Post Conflict Recovery Policy Framework. However, neither Kofi Annan, nor the

²⁰⁷ Burton J.W. *Conflict and Communication, the Use of controlled Communication in International Relations* (Macmillan, London 1969) p 150-152

coalition government and its agencies have followed on its implementation; the AU has failed its mandate for peace in Kenya, the coalition government has been too busy in competitive politics that the whole importance of national reconciliation was immaterial; Annan's coordination has been absent.

In the aftermath, the current post conflict recovery framework, although it offers hope in the long term resolution of the structural conflict in Kenya, its implementation is far from being actualized, meanwhile, the structural conflict remains unresolved and far from being transformed.

Meanwhile, Kenya faces another election in four months. One sees that the use of force, by a security sector that has not undergone restructuring, may be the only strategy to calm a society in negative peace.

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