THE ROLE OF HATE SPEECH AND UNSAVOURY LANGUAGE IN INCITING ETHNIC ANIMOSITY:

AN EXPERIMENTAL CASE STUDY OF THE 2005

REFERENDUM ON THE DRAFT CONSTITUTION IN KENYA

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Research Study Submitted at the School of Journalism in Partial Fulfilment of a Degree of Masters of Arts in Communication Studies
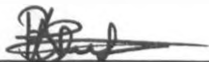
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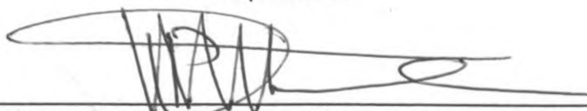## 2007

DECLARATION

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

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Date 12|11|2007

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

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Date 15|11|07

Dedication:

For Dr. Joyce Nyairo, who knows the reason why.

Acknowledgements

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Acronyms

AG	Attorney General
ECK	Electoral Commission of Kenya
FBO	Faith Based Organization
FGDS	Focused Groups Discussions
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
KANU	Kenya National African Union
KBC	Kenya Broadcasting Corporation
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KTN	Kenya Television Network
MOJCA	Ministry of Justice and Constitutional Affairs
NARC	National Rainbow Coalition
NCCS	National Council for Children's Services
NGO	Non Governmental Organization
NTV	Nation Television
RTLM	Radio-Television Libres des Milles Collines
TJRC	Truth Justice and Reconciliation Commission

Abstract

In many countries world over, and especially in Africa, identity politics, hate speech broadcasted in the media has had profound consequences on different ethnic communities. Hate speech has in the past fuelled violent confrontations along ethnic lines, leading to ethnic conflicts that have claimed lives. The 2005 Referendum on the Draft Constitution in Kenya Campaigns were no exception. The campaigns on the both 'yes' or 'no' sides were riddled with hate propaganda and unsavoury language. This information was broadcasted live on many FM stations and the local language FM stations across the country.

This study seeks to investigate whether the exposure of the Kenyan ethnic communities to hate speech and unsavoury language on radio stations in Kenya incites feelings of ethnic animosity against other communities. The study uses an experimental methodology to expose a sampled group of ethnic communities to a select number of utterances made by politicians with a view to establish the extent to which utterances used by politicians and broadcasted on FM stations could excite ethnic animosity.

The study generally seeks to provide documentary evidence that would strengthen the Kenya National Commission on Human Rights (KNCHR)[1] and other actors[2] efforts to put pressure on the Government of Kenya to enact hate speech legislation for the protection of human rights and prevention of ethnic conflicts. It further seeks to support the *ad hoc* efforts by non governmental organizations (NGOs) and faith

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[1] The Kenya National Commission on Human Rights. KNCHR) is an independent National Human Rights Institution established by an Act of Parliament. Its core mandate is to further the protection and promotion of human rights in Kenya.

[2] The civil society, the private sector, the informal sector , professionals and other organized groups

based organizations to forestall acts of violence that use ethnic nationalism as a justification.

The study specifically seeks to:
   a) Investigate whether audio reports made during the referendum process in Kenya are likely to trigger feelings of ethnic animosity amongst different ethnic communities in Kenya.
   b) To investigate whether the reactions of the communities are likely to spur ethnic conflict.

Reporting formats, including facilitator's guides, questionnaires and other data collection instruments including tape recorders were used to collect data. The data collected was qualitative in nature, and was analyzed to prove/not prove the hypothesis.

One of the key findings of this study was that hate speech and unsavoury language used by a number of politicians during the 2005 Referendum on the Draft Constitution in Kenya triggers feelings of animosity amongst different ethnic communities. The study also established that the radio plays a big role in exciting and fuelling feelings of ethnic animosity amongst ethnic communities in broadcasting hate speech and unsavoury language. It further established that when hate speech is unaddressed for a long period of time, it may result into widespread ethnic conflicts. The study thus concludes that hate speech and unsavoury language plays a big role in fuelling ethnic animosity amongst different communities in Kenya.

Among the key recommendations of this study include the need for the Kenyan Parliament to pass the 'Prohibition of Hate Speech Legislation Bill' as a matter of urgency to foster national unity, promote ethnic and cultural diversity, democracy and

preserve public order. The study also recommends to the media to exercise its watchdog role with greater objectivity and social responsibility, and adhere to journalistic code of ethics.

Chapter One

1.0 Introduction

Ethnic clashes are running sore too frequently, breaking out on the face of Kenya[3].
Violence in Kenya has historically been an ethnicised expression of political conflict.
(ECK: 2003) Ethnicity has over the years been construed as the medium of political
violence not its cause. Needless to say, politics in Kenya is deeply ethnic based, and
election results since the advent of multi-party politics in 1992 demonstrate how
Kenyans have tended to cast their vote along ethnic lines. The political elite have in
the past exploited and manipulated ethnic differences to their advantage, thereby
invoking feeling of animosity that often disrupt peaceful co-existence amongst
Kenyan communities.[4]

Ethnicity has been an integral part of Kenya's political landscape both during the
colonial era and after independence.[5] The root of the ethnic clashes run deep in
history and they themselves are the violent children of multi-sourced parentage.
Though ethnic clashes are sporadic, instantaneous and unpredictable, in the short
run there is clear evidence of a recurring pattern to their outbreaks. The outbreaks
are more often than not attributed hate speech by politicians. Hate speech often finds
its way to the broadcast media especially the many FM radios stations and ethnic
language FM stations in Kenya. While there is nothing wrong with the idea that
ethnicity is an important part of ones identity, ethnic chauvinism manifested in
tribalism has emerged as key issue in successive regimes in Kenya. There is no

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See The Akiwumi Report, supra note 9, al paras 99-103
IED/CJPC NCCK,Report on the 1997 General Elections in Kenya(1998)' para 3 2 2, pp 30-31
Quiet Diplomacy and Recurring Ethnic Clashes in Kenya, see http://isanet.org/noarchive/brownstephen.html

doubt that incumbent presidents used their power to favour some ethnic groups. Under the first President of Kenya *Mzee* Jomo Kenyatta, the Kikuyu, the President's community, used a larger share of national political and economic cake while under president Moi, the Kalenjin were over-represented in key positions in the cabinet and within parastatals.[6] The same trend is repeating itself in the current Government. This trend is a key resultant cause of fear, suspicion, bitterness and intolerance among different ethnic communities in Kenya and among other things, may have caused ethnic clashes in the different parts of the country.[7]

Major sources of ethnicity mutually nourish, reinforce and sustain each other. These include the:

- Tribal element that goes back to the beginning of the republic
- Issue of cult personality that depends heavily on hate speech and unsavoury language
- Issue of unfair distribution of land
- Spectres of poverty largely due to marginalization and neglect by successive governments
- Unsettling awareness that outbreaks are frequently linked to elections

This being the case therefore, there is an urgent need for conflict tracking[8], especially as we approach the 2007 General Elections in Kenya.

1.1 Background and justification for the study

According to Nowrojee:1993: 61, politically instigated ethnic clashes in Kenya are more often than not politically motivated, well organised and stage-managed by politicians who have trained and equipped their tribesmen and probably mercenaries

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Massive Internal Displacements in Kenya Due to Politically Instigated Ethnic Clashes; see http://www.reliefweb.int
See IDASA, National Campaign on the Reduction of Electoral Violence; An Evaluation, 2007, Stirling Holden Publishers, (Nig) Ltd. Lagos, Ibadan, Benin City, Jattu-Uzairue

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with sophisticated weapons to kill and destroy and loot from the unprepared and unsuspecting Kenyans. [9]

Tribal clashes can be traced back to 1991, the year before the first multi-party general election, when Cabinet Ministers allied to the former President Daniel Moi's regime were ordered to 'secure' their constituencies, cleaned of *madoadoa'* (other ethnic communities) viewed as opposition supporters. As a consequence, state sponsored violence, many Kenyans were displaced, property destroyed and lives lost. Violence continued relentlessly in the post election period until 1996. [10]

The 1992 tribal clashes have since created suspicion and animosity between communities; and was exploited by politicians to frighten communities and induce them to vote for the then ruling party as a guarantee to their security. The clashes were also used to incite the dominant communities to drive out communities with divergent political views from specific electoral areas.

Such recurrent violence every five years at the time of the General Elections was facilitated by the fact that the perpetrators and instigators benefited from impunity. This impunity has been on going, and seems to be what boosted many politicians' confidence to propagate hate speech against communities, and use unsavoury language in the 2005 Referendum on the Constitution of Kenya Review Process. As the General Elections approaches, there are already indicators of politically instigated violence in various parts of the country including Mt. Elgon and Gucha, areas.

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[9] Binaifer Nowrojee, Divide and Rule: State-sponsored Ethnic Violence in Kenya, Bronwen Manby, Africa Watch Committee, 1993

[10] Ibid

Observers of the harsh ethnic conflicts of the 1990s in Sub-Saharan Africa and other parts of the world, hypothesize that hate speech, unsavoury language and extremist views broadcasted on radio stations has been one of the causes of genocides and/or civil strife in different parts of the world. For instance, radio was the 'sole source of news as well as sole authority of interpreting its meaning' (Des forges: 19971) during the 1994 Genocide in Rwanda. Chretien and his colleagues and other authors of the most comprehensive analysis of the role of the media in Genocide in Rwanda, to date give central importance to the role played by radio.[11]

'Two tools, one very modern, the other less modern were particularly used during the genocide against the Tutsis in Rwanda the radio and the Machete. The former to give and receive orders, the second to carry them out,' (Chretien et al, 1995:191).

The predominant use of subtle but demeaning, dehumanizing and degrading speeches during the referendum campaigns in Kenya in 2005, are very similar to the sort of utterances that provoked ethnic animosity that culminated into genocide in Rwanda.[12]

In Rwanda, seeds of hate were cast on radio. The repetitious and explicit incitement for Hutu to slaughter Tutsi is more than a textbook example of how crudity and skill combined to produce hate speech can accelerate devastating and often genocidal conflicts. In Kenya, politicians preached hate speech in open rallies and under the close watch of the police; while audio and video clips with potentially inflammatory statements are broadcasted on various FM and TV stations.

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[11] Mironko Charles, *The Effect of RTLM's Rhetoric of Ethic Hatred in Rural Rwanda*. The Media and Genocide in Rwanda. Allan Thompson (Ed) 2007
[12] Restructuring the Media in Post Conflict Societies: Four Perspectives: A background Paper for the UNECSO World Press Day Conference, May 2000

Considering the proliferation of FM and local language stations in the country, and given that over 90% of Kenyans have access to radios; the radio is a medium with a widespread audience that should be used with utmost caution. The radio is an interactive forum; callers can phone in to contribute to issues raised in the broadcast and unlike print media radio is immediately present and active. Radio has the power of the human voice and thus adds quality and dimension beyond language to message conveyed. (ICTR Summary Judgement, chapter 25).

Oriare: 2006 provides documentary evidence that the media was biased in the coverage of the 2005 Referendum on the Draft Constitution

The dominant perception among the media fraternity was that various media houses had taken sides in the referendum campaigns Family TV, Radio Waumini and Kiss FM were rated as the most independent, while Citizen TV, Ramogi, Coro and Kameme FM were rated as least independent.[13]

Whereas ethnic conflicts posses a major threat to peace and stability, and is responsible for the death of thousands of Kenyans for decades, hate speech in political rallies and broadcasted on FM and local language stations formed the basic component of a matter of such national magnitude as the referendum on the Draft Constitution of Kenya.[14] It is not surprising that the campaigns took an ethnic angle with many people including the media, predicting the outcome on the basis of ethnic arithmetic. While it was the right of politicians to campaign, and indeed campaign vigorously for the causes they support, it was imperative that their

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[13] Oriare Peter, Media Score Card, The Coverage of the Referendum Campaigns 2005

[14] Maina Kiai, Press Conference, November, 2005

campaigns do not cross the line into demeaning, dehumanizing degrading likely to provoke ethnic animosity.

It is feared that conflicts and violence witnessed in various parts of the country could develop into a 'Rwanda genocide' type in which more than 800,000 majority Tutsis were massacred in a span of 100 days. If negative ethnicity in the country is not addressed urgently as one of the key causes of tribal clashes, there is a likelihood of genocide of magnitude such as Rwanda taking place in the country, in the years to come. This necessitates informing, sensitizing and educating both our politicians and the media on the dangers of negative ethnicity, and the potential role their actions play in generating ethnic tensions and in causing conflicts, and how they can effectively work towards conflict prevention given their role and place in the society.[15]

On the other hand, considering the Media's powers[16] to set the agenda and potential to influence people's perceptions, values and attitudes, it became necessary that this research be conducted as way to build on the available knowledge and provide scientific evidence and useful insights on the role of the radio as a popular medium of communication, and its potential to fuel ethnic animosity amongst local communities in Kenya.

1.2 Definition of Basic Concepts Used

[17]**Ethnicity** refers to selected cultural and sometimes physical characteristics used to classify people into groups or categories considered to be significantly different from others. Similarly, an **ethnic group** or **ethnicity** has been defined as a population of human beings whose members identify with each other, usually on the basis of

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[15] KNCHR Position Paper on Prohibition of Hate Speech Legislation, 2007
[16] See Animus and Apologia, Olawale and Marco (ed) Campaign Advertorial and Gamble for Power, in the 2003 and 2007 Elections in Nigeria
[17] See http://anthro.palomar.edu/ethnicity/ethnic_1.htm

shared common traits[18] which unite them. Self-identification or recognition by others as a distinct ethnic group is often a contributing factor to developing this bond of identification.

Ethnic hatred, inter ethnic hatred, racial hatred or ethnic tension, on the other hand, refers to sentiments and acts of prejudice and hostility towards an ethnic group in various degrees[19], while **genocide**[20] refers to the act or attempt to systematically kill all members of an ethnic group or culture. **Ethnocide**[21] refers to the act or attempt to systematically destroy a people's ethnicity or culture. Usually the term ethnocide is applied to intentional acts resulting in culture death. The legalized "kidnapping" of Native American children so that they could be educated as Europeanized Canadians and Americans during the late 19th and early 20th centuries is an example of ethnocide. Racism on the other hand, is a harmful prejudice, discrimination, and/or persecution based on presumed ethnic/racial differences.

Animosity refers to a feeling of ill will arousing active hostility that may prompt acts of violence. **Ethnic Animosity** refers to feelings of active hostility towards a group of people by virtue of their ethnicity, race, and regions. Ethnic animosity manifests itself in acts of verbal abuse, inflammatory utterances meant to dehumanize, degrade, demean, and offend, threats, intimidation and discrimination, burning of effigies, destruction of property, physical violence, tribal clashes and genocides.

Hate speech refers to any speech that promotes hatred and encourages violence against a group on the basis of criteria that includes ethnicity, race, colour or religion. It includes speeches, publications and broadcasts that represents others as

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[18] http://en.wikipedia.org/wiki/Ethnic_group
[19] http://en.wikipedia.org/wiki/Ethnic
[20] http://anthro.palomar.edu/ethnicity/glossary.htm
[21] http://anthro.palomar.edu/ethnicity/glossary.htm

inherently inferior and degrades, dehumanizes and demeans a group on the basis of the criteria above.[22] Indicators of measuring hate speech include the following: Any written./spoken material, any image or any other representation of ideas or theories, which: insults, reinforces demeaning, dehumanizing or degrading cultural stereotypes (depicts a community as animals, devils, lesser beings, outcasts etc), advocates, promotes or incites hatred, discrimination or active violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as pretext for any of these factors).[23]

Unsavoury language: This refers to language that is distasteful, abusive, and unpleasant and intended to insult. E.g. Pumbavu (stupid) or referring to people as uncircumcised'. It may not necessarily target a community but may ostracise an individual or prompt violence, it may demean or dehumanize or degrade.

Hot Spot, this refers to areas with eminent potential for tribal clashes areas in Kenya.

National Integration: This is a programme undertaken by the KNCHR to address past human rights violations and injustices in Kenya. The programme is geared towards escalating pressure particularly at the grassroots for the government to establish a Truth, Justice and Reconciliation Commission (TJRC) as recommended by a Government task force, (the Makau Task Force) in 2003. It is also aims to promote harmonious co-existence amongst different communities in Kenya, fighting tribalism and promoting patriotism.

"Broadcast" means the transmission, relaying or distribution by wireless telegraphy or by any other means or by wireless telegraphy in conjunction with any other means of communications, sounds, signs, visual images or signals, intended for direct reception by the public.

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[22] Prohibition of Hate Speech Legislation Bill, KNCHR, 2007
[23] 2007 KNCHR Elections Monitoring Tool; See 2005, KNCHR Referendum Monitoring Tool

"Publish" means to cause the print, writing, painting, effigy or other means by which the material is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, that the material becomes known or is likely to become known to the public;

"Section of the public" means any group of persons identifiable by-

   (a) race, ethnic or social origin, religion, conscience, belief, culture, language, gender, marital status, age, disability or birth; or

   (b) any other characteristic where discrimination based on that other characteristic-

      (i) causes or perpetuates systemic disadvantage; or

      (ii) undermines human dignity; or

      (iii) adversely undermines the equal enjoyment of an individual's rights and freedoms;

"Stir up hatred" includes threatening, abuse or otherwise inciting harm or provoking violence against any section of the public;

"Written material" includes electronic records, any sign or other visual representation.

The **Kikuyu (Gîkûyû)** are Kenya's most populous ethnic group. They total about 5,347,000 (1994 I. Larsen BTL)[1], equal to about 22% of Kenya's total population [2]. They cultivate the fertile central highlands and are also the most economically active ethnic group in Kenya. The Gîkûyû have continued to play vital roles in independent

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Kenya's political and economic development. However, it is not uncommon to hear negative commentaries in the local media of the involvement of Kikuyu in government affairs.[24]

The **Luo** (also called Jaluo and Joluo) are an ethnic group in Kenya, eastern Uganda and northern Tanzania. The Luo of Kenya are the Third largest ethnic group (12%) in Kenya, after the Luhya (17%) and Kikuyu (20%). Luos majorly indulge in fishing but they also cultivate small parcels of land. Many years of poor economic management of Kenya, especially during the administration of the KANU party resulted in the Luo and a majority of Kenyans being systematically neglected.[25] Ravaged by AIDS and with little or no infrastructure in most parts, the Luo areas - with high economic potential due to the proximity to Lake Victoria - remains poor and undeveloped. These factors being common in Kenya according the latest survey by the World Bank.[26]

Kalenjin is an ethnic group of Nilotic origin living in the Great Rift Valley in western Kenya. The Kalenjin population is estimated at roughly 3 million. There are several smaller tribal groupings within the Kalenjin: Elgeyo, Keiyo, Kipsigis, Marakwet, Nandi, Pokot, Sabaot, Terik, and Tugen. The Kalenjins are mainly pastoralists and tough recently, a number have ventured in to farming. The former president Daniel Arap Moi hailed for this community. As a result many Kalenjin formed part of the previous government.[27]

[24] http://en.wikipedia.org/wiki/Kikuyu#Origins
[25] http://en.wikipedia.org/wiki/Luo
[26] http://www.worldbank.org/research/povertymaps/kenya/volume_index.htm
[27] http://en.wikipedia.org/wiki/Kalenjin_people

1.3 Problem Statement

In the run up to the 2005 Referendum on the Draft Constitution in Kenya, the Kenya National Commission on Human Rights (KNCHR), a statutory body, and the Kenya Human Rights Commission (KHRC) a local NGO, conducted extensive monitoring of the Referendum campaigns with a view to document and reduce hate speech and unsavoury language. The two organizations were concerned about the extremist, dehumanizing, degrading and demeaning statements propagated by politicians; and their potential to polarize Kenyans along ethnic lines. The KNCHR forwarded the available evidence to the Attorney General (AG) for prosecution and when the AG failed to implement the law, the National Commission instituted private prosecution against the culprits.

According to political analysts, while the referendum was simply a culmination of socio-political currents that have been building over the past 15 years, and was not unlike previous general elections, the referendum was unique in six ways.

1. It demonstrated that the coming together of various parties to remove KANU from power failed to move the country forward in any meaningful way (in other words change in government did not change the structures that make such governments possible).

2. It brought ethnicity to the forefront as the main prism through which Kenyans, (progressive and retrogressive) were and are willing to discuss important national issues, as well as make key national decisions.

3. It demonstrated how powerless the ordinary person is vis-à-vis the political-cum - economic elite who use negative ethnicity to gain power then use state power for

private gain, leaving the people holding the bill and a much distorted perception of self-worth based on imaginary, symbolic ethnic power.

4. It demonstrated that constitutional reform is stalled mainly because of ethnic-based politics.[25]

Clearly, the referendum debate undressed our individual and collective prejudices and sub-national political philosophies and practices thereby putting a strain on the viability of Kenya's continued existence as a united nation-state.[29] During the referendum, the country witnessed division and polarization on religious and ethnic basis, and Kenyans saw the entire political class—on either side of the divide—publicly make inflaming utterances-(hate speech and unsavoury language) with an intention to incite ethnic animosity and physical violence. During the referendum, the country witnessed such immense "ethnic balkanization" with leaders calling for support on the premise that "the community needs to speak with one voice". [30]

Few trends are as dangerous for Kenya as this trend. Other than polarizing countries along ethnic lines, such a trend portends a situation of 'ethnic dictatorships' where decisions by aloud few bind majority, and reduces politics to simple ethnic divisions rather than issues of reform and change.

In such an environment, polluted with attitudes of impunity, disregard for peace, order and rule of law, Kenyans have seemingly emerged far worse than they were before. Rather than seeking consensus and agreement with a will to compromise for the national good, politicians used the referendum to foment tribal schisms in the social fabric. Rather than building bridges between each other with designs of a

[28] Restructuring the media in post-conflict societies: four perspectives A *background paper for the Unesco World Press Day Conference, May 2000*
[29] Ibid
[30] Ibid

harmonious existence in Kenya after the referendum, the political class used the referendum as a tribal strength-test for winning the 2007 elections.[31]

That is how we have come to a point where the tribe is increasingly become the country's number one "enemy", especially if what transpired during the referendum; is prelude to the 2007 General Elections. Increasingly, people only have to belong to different tribes to fight one another, deny each other jobs or give unmerited jobs to their tribesmen, sabotage each other economically, and refuse to support each other politically.[32]

Whereas tribalism has been beneficial to individuals and communities in giving them undue advantage over others, tribalism has been accused to be the cause of nepotistic hiring practices in employment, nepotistic distribution of national resources, political loyalty that keenly follows ethnic lines and ethnic superiority complexes among other negative practices, their by increasing fear, suspicion and ethnic animosity amongst Kenyan communities.[33] Hate propaganda during political rallies and later broadcasted in the electronic media are likely to exacerbate the already precarious situation.

In deeply divided societies, the media shapes opinions and influences decisions related to the nature and scope of conflicts, as well as how to constructively handle actual and potential conflict. Where social, political and economic conflict have degenerated into widespread violence, the role of information in mitigating the effects of violence or in presenting alternatives is crucial. There is little doubt that information

[31] Ibid
[32] Maina Kiai, Chair, KNCHR, Press Statement, November 2005
[33] Constitutional Reform Coalition, Politics of Ethnicity in Kenya, Towards New Nationalism, October 5-6th 2006, Nairobi Kenya

is a key component of power -- power to change social, political and economic conditions for good or ill.

With a capacity to reach large or influential segments of a given population in the shortest possible time, and to provide factual information, analysis and opinion, the mass media helps shape popular perceptions of the nature of a society. In terms of basic human rights, the mass media can transform the ideas of freedom of opinion and expression into a concrete reality, by being able to openly communicate information and ideas and by acting as a "watchdog" on public institutions and leaders. The mass media can also play the converse.

For instance, during the Referendum process, concerns of the audio materials broadcasted on a number of FM stations in Kenya prompted the Government of Kenya's closure of Kass FM 89.0 in November 2005, on allegations that the station was being used to propagate hate speech in order to sway voters to the 'No' side of the referendum. The FM station broadcasts in Kalenjin language and reaches approximately 3 million listeners.[34] The Former President Daniel Moi hails from this community. Tribal clashes have previously occurred between the Kalenjin and the Kikuyu communities; and other ethnic communities residing in the former white Highlands. [35]

Moreover, Moi's Government had expressed strong reservations right from the on set of vernacular radio stations, arguing that they had potential to be used to propagate ethnic hatred. The government was specifically casting a wary eye on Kameme FM - then the only privately owned FM radio station which was broadcasting in Kikuyu

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[34] http://www.ogiek.org/news/news-post-05-11-15 htm
[35] Divide and Rule: State-sponsored Ethnic Violence in Kenya,

language. Such stations, Moi believed could be misused to cause anarchy as happened in Rwanda during the 1994 genocide.[36]

One perfomative aspect of radio RTLM in Rwanda was the skill with which the announcers played off the ideologies of genocide, giving the impressions of frankness and trustworthiness. Like good propaganda, it provided specific responses to opposing arguments, the daily diet of informational updates, operational details, monologues elaborate performance acts, radio interviews, subtle messages from trusted radio personalities punctuated with anti-Tutsi songs from renown and respected musicians a situation akin to the performance in FM stations during the Referendum process in Kenya.

Further, In May 2006, following the Referendum on the Draft Constitution of Kenya, unknown gunmen raided a local Christian radio station, Hope FM, killing a watchman and injuring three others before hurling a petrol bomb in the studio building.[37] The raid was said to be religious differences. It was suspected that the Christian FM station was bombed for broadcasting information that was anti-Islamic.

If such incidences and concerns are anything to go by, then it is imperative that a scientific study is conducted to establish whether hate speech and unsavoury language broadcasted on radio has potential to incite ethnic animosity.

1.4 Study Questions

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[36] Ibid
[37] http://www.kbc.co.ke/story.asp?ID= 36655

a) Does exposure to audio clips of utterances made by politicians during the referendum campaigns excite negative feelings of animosity between ethnic communities?

b) How does the audience react after exposure to the audio clips and why?

c) What is the likely consequence when hate speech and unsavoury language is repeatedly broadcasted on radio goes unaddressed for long periods of time?

1.5 Goal Statement

This study seeks to examine audio clips aired during the referendum and investigate the extent to which utterances made by the politicians excites ethnic animosity.

1.6 Study Objectives

The study generally seeks to:

a) Investigate whether audio clips aired on radio during the referendum process in Kenya are likely to trigger feelings of ethnic animosity and hatred amongst different ethnic communities in Kenya.

b) To examine the reactions of ethnic communities after exposure to audio clips and establish why.

c) To examine the extent to which hate speech a threat to national security and national integration.

1.7 Benefits of the Study

Hate speech is directly linked to conflict in the sense that it is directed not only at the individual but against the group to which the victim belongs, it has the effect of exacerbating divisions between groups. Similarly, violence associated with hate

speech tends to escalate from the individual level to the level of conflicts between groups. This experimental study will be useful as an advocacy tool to:

a) Lobby for the enactment of hate speech legislation as proposed by KNCHR and other actors, in the Prohibition of Hate Speech Bill, 2007

b) Provide evidence that would be used to develop strategies to reduce ethnic balkanization in the country

c) Sensitize the politicians, the press and members of the public on the consequences of hate speech and unsavoury language; and their responsibilities as citizens to respect and promote peaceful coexistence among diverse ethnic communities in the country

d) Foster national unity and respect for diversity of cultures

e) Hold politicians and the media accountable on issues of negative ethnicity and national integration

Chapter Two

2.0 Literature Review and Theoretical Framework

2.1 Introduction

The literature review informing this study revolves around four themes namely: ethnicity, hate speech, unsavoury language, ethnic animosity, ethnic conflicts and the radio as a medium with potential to incite ethnic animosity. The review provides introspection into critical facts and experiences around the broadcast media particularly the radio's role in ethnic conflicts and its attendant resilience in polarizing communities along ethnic lines and/or fuelling ethnic conflicts. A significant portion of literature reviewed are reports, papers, books, newspaper articles and internet materials. Among the key publications reviewed include: The KNCHR Referendum Report: 'Behaving Badly, Deception, Chauvinism, and Waste During Referendum Campaigns, KNCHR, 2005', The Constitution of Kenya, The Penal Code, the International Covenant on Civil and Political Rights, (ICCPR), Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya; Akiwumi Report, IED/CJPC/NCCK; Report on the 1997 and 2002 General Elections in Kenya; the ECK Report on the 2002 General Elections in Kenya, Raila Odinga: An enigma in Kenyan Politics. and web based materials.

2.2 Hate Propaganda, Violence and Ethnic Conflicts

As stated earlier, the idea of this study originated from an examination utterances made by politicians during the campaign rallies of the November 2005 Referendum on the Draft Constitution of Kenya conducted through a joint monitoring project conducted by the KNCHR and KHRC. The referendum monitoring project was informed by the Vienna Declaration on human rights that links democracy,

development and respect for human rights and fundamental freedoms as interdependent and reinforcing. It was hoped that the language and spirit of the declaration would inform and influence the referendum process in Kenya; that freedom of opinion and expression as provided in the constitution would be undertaken in manner that respects the rights of all Kenyans. This was not to be the case; prompting the National Commission embarks on impossible task-holding politicians accountable in system where impunity thrived. [38]

A number of Kenyans have in the past lost their lives in tribal clashes and skirmishes known to have been prompted through hate speech and unsavoury language propagated by politicians from different ethnic communities. The referendum process was no exception.

The monitoring process was further premised on the knowledge that identity-based politics inevitably leads to identity-based human rights violations-which was the basis of the genocide in Rwanda in 1994, and the politically instigated clashes in Kenya between 1992 and 1997 in Kenya. By compiling this report, the KNCHR and KHRC were at pains to emphasize that being a member of whatever community that Kenyans happen to be, must not mean that our choices and decisions are made by the ethnic group they belong to for that would be the antithesis of human rights and freedom to choose without intimidation.[39]

While the report focuses on the use of state resources alongside monitoring hate speech and incitement to violence; this review limits itself to the themes relevant to the subject of study-hate speech and incitement violence. To undertake this project, the KNCHR developed a comprehensive framework consisting of researchers,

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[38] 'Behaving *Badly: Deception, Chauvinism and Waste During the Referendum Campaigns'*, KNCHR, 2005
[39] Ibid

respected media monitoring companies and a variety of monitoring tools. The methodology of the research was this simple-monitors were sent to the ground with audio and video tapes to record information and take pictures while 24 hour hotlines to receive information from members of the public were established. Media monitoring companies monitored all the news and feature items on TV and radio stations. Collected data was analyzed and the report compiled.

The monitoring process for hate propaganda and incitement to violence was informed by Section 96 of the Penal Code Cap 63 of the Laws of Kenya that provide that:

...Any person who without lawful excuse...utters prints or publishes any words or does any act or thing indicating or implying that it is or might be desirable to do or omit to do, any act the doing or omission of which is calculated-

a. *to bring death or physical injury to any person or to any class, community or body of persons; or'*

b. *to lead to the damage or destruction of any property*

c. *to prevent or defeat by violence or by other unlawful means the execution or enforcement of any written law or to lead to defiance or disobedience of any such law or to any lawful authority,*

is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

Paragraph 6 (a) of the Elections Code of conducts also prohibits the use of inflammatory language to incite people to violence.[40] KNCHR and KHRC monitored and documented the utterances made by the politicians during the campaign rallies to establish whether the utterances would amount to incitement as defined by the law.

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[40] *Behaving Badly: Deception, Chauvinism and Waste During the Referendum Campaigns. Pg 20*

The KNCHR position brief justifying the Prohibition of Hate Speech Bill, 2007, points out that the present legislation on hate speech – Section 77(3)(e), is evidently inadequate to properly prohibit hate speech, ethnic intolerance and incitement to hatred. The Penal Code section focuses on controlling "subversive" activities, in practice largely deemed to comprise activities in opposition to the government. Thus, it fails to encompass the proper object of prohibition to incitement to hatred legislation which is to protect individuals, groups or communities from hostility, discrimination or violence. It offers no guidance on what hate speech" may be, and the acts that may be deemed to constitute "incitement to hatred" are obscure. Furthermore, Section 77's prescription of defences to the offence is vague, thus further making it difficult to discern forms of expression constituting an offence.

Indeed, freedom of expression is a fundamental human right. This freedom can only be enjoyed to the extent that it does not infringe on the rights and reputations of others. Interference with the freedom of expression can only be legitimate if:

- It is provided by law;
- It pursues a legitimate purpose; and
- Such interference is necessary in a democratic society.

Law against hate speech and incitement to hatred must be far more proactive than reactive so as to serve a preventative function which is more valuable than dealing with the consequences of intolerance. Disasters such as the 1994 Rwanda Genocide could probably have been avoided if intolerance had been managed before it escalated into mass killings. All due efforts must be put in place to protect against hate-speech engendering inter-communal strife in Kenya.

International human rights law condemns and demands the proscribing of hate speech by national jurisdictions and as such creates binding legal obligations on

state parties to relevant international law instruments including the International Covenant on Civil and Political Rights, the Convention on Elimination of All Forms of Racial Discrimination and the African Charter on Human and Peoples Rights. Kenya is obliged under international law to take measures to proscribe hate speech and it is expected that this should be facilitated by establishing and maintaining a sound legal framework.

Further, the amendment to section 77 of the Penal Code, as set out in Statute Law (Miscellaneous Amendments) Bill, 2007, fails to address the matter of hate-speech comprehensively. Considering concerns that hate-speech legislation may be abused, it is preferable that substantive legislation addressing all possible loopholes be deployed. [41]

The KNCHR/KHRC Referendum Report *'Behaving Badly: Deception, Chauvinism and Waste During the Referendum Campaigns'* merely provides a documentation utterances made by members of parliament and senior government officials during the campaign rallies in Kenya. Whereas it does investigate the extent to which this utterances could polarize communities along ethnic lines as this was not part of its objectives; it provides useful evidence to among other things, enhance the fight against impunity through holding individual politicians and senior government officials accountable to the rule of law.

The report provides useful information to name and shame political leaders, public officials and media agencies guilty of using hate speech and other exhortations to ethnicity as a means of gaining support on their position on the referendum. It also provides useful documentation that could be used to reduce campaign violence by holding to account politicians and public officials guilty of violating public trust. This

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[41] Justification for the Prohibition of Hate Speech Legislation, KNCHR, 2007;www.knchr.org

research has opened a new avenue for further research and challenges researchers to investigate the extent to which hate speech and unsavoury language by politicians may have in the past led to or could lead to ethnic animosity and violence among communities in Kenya.

Other key recommendations of this report require of the Kenyan parliament to enact as a matter of national urgency, hate speech legislation to bolster existing law on subversion to outlaw all forms of speech that demean and dehumanize Kenyans on the basis of race, ethnicity, religion and other forms of discrimination.

Other than merely providing documentation on the use of hate speech and unsavoury language and alluding to the potential to incite ethnic animosity, the report provides a useful discourse on hate speech, identity politics, incitement to hatred ethnic animosity and violence; and human rights. Indeed, as documented in the report, Kenya has had a history of divisive politics that revolves primarily around ethnic allegiances. As a result it has over the years become common place for politicians to appeal to the ethnicity of Kenyans in order to further their own agendas.[42]

The report points out, and I concur, that this type of political mobilization often degenerates into the use of hate speech along ethnic lines and derogatory remarks about other tribes, races and communities.

Further, it has become apparent that many politicians in Kenya engage in hate speech because 'not only does it increase their capital amongst 'their people' but this has not attracted any sanctions. The report asserts that this impunity remains unchecked while Kenya's ethnic diversity has been a source of conflict in the past.

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[42] Ibid

As in the earlier analysis of the Constitution of Kenya, and the Penal Code, the Referendum Report recognizes the right to express one freely as one of the most important pillars of a rights based society. However it asserts that this right must be exercised with restraint in the light of other rights and responsibilities.

The current Constitution of Kenya guarantees the freedom of expression, as does the International Covenant on Civil and Political Rights (ICCPR). Article 20 of the ICCPR postulates that:

'Any propaganda for war shall be prohibited by the law.'

'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by the law'

Further, Article 19 of the ICCPR guarantees the right to freedom of speech in 19 (20) and also provides under Article 19 (3) that: *'the exercise of these rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but all this shall be provided by law and are necessary: for the respect of rights or reputations of others b) For the protection of National security or of public order or for health or morals.'*

The report concludes that any speech conducted during the campaign rallies that advocated national, racial, ethnic or ethnic hatred was not just; and may have impeded the exercise of free political will during the referendum. It asserts therefore that this constituted a violation of human rights. While the reports extensively elucidates the relationship of between hate speech, ethnicity, ethnic animosity and human rights, it fails to define what this term stand for and leaves it to the readers define from other sources what the terms mean. Indeed, these defined in different settings could mean different things.

2.3 Origins of Ethnicity

Ethnicity and supposed "racial" groups are largely socio-cultural and historical[43] constructs rather than biological phenomena; i.e. it is people, who create ethnic identities, not nature. During the 19th century, new ethnicities and ethnic groups were created by European colonial governments in order to facilitate them ruling their new indigenous subjects[44]. Similarly, the colonial powers forced diverse ethnic groups to see themselves as being part of larger nations with common ethnicity. This was the case in India, Malaysia, New Guinea, Indonesia, the Philippines, and much of Africa. In part, these new nations were created to facilitate the control[45] of the territories that the colonial powers had apportioned themselves.

Many scholars agree that ethnic identity is a complex phenomena, on the other hand, is changing dynamically through time as situations alter. It can be created by self definition or others can define it for us whether we wish them to or not. The power to define/label others is the power to control them since definition/labelling can be used to emphasize ethnic differences and create ethnic hatred, tribalism and conflict. Ethnic conflicts can also originate from non-peaceful co-existence, politics, nationalism and feelings of national superiority, real or perceived discrimination or

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[43] In the Western world, the definition of human 'races' on the basis of superficial anatomical characteristics that are easily identifiable at a distance, makes discrimination easier. Focusing on deceptive distinguishing traits as skin colour, body shape, and hair texture causes us to magnify differences and ignore similarities between people. However, these traits are no more accurate in making distinctions between human groups than any other genetically inherited characteristics. Therefore, all attempts to scientifically divide humanity into biological races have proven fruitless. See http://anthro.palomar.edu/ethnicity/ethnic_1.htm

[44] In Australia and much of Western North America where there had been small, independent bands of foraging societies, government officials combined these bands into larger political units in order to simplify their control. Indigenous leadership positions, such as chiefs, were created for peoples who previously did not have the concept of a leader who could act and speak for their societies. See http://anthro.palomar.edu/ethnicity/ethnic_1.htm(Accessed 9th May, 2007)

[45] The _Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya_ (Akiwumi Report) (Government Printer, Nairobi).31st July (at para 525, p 285). observes that in Kenya. harmony among African communities was seen as a threat to colonial domination and the colonialists used the 'divide and rule' approach of emphasizing ethnic differences to check indigenous opposition. See also IED CJPC NCCK;Report on the 1997 General Elections in Kenya(1998)' para 3 2 2, pp. 30-31

marginalisation. Though racial/ethnic groups have used ethnic symbols[46] as badges of identity, to emphasize their distinctness from other groups thus fostering ethnic unity[47], when overemphasized, the resultant ethnic awareness can cause deep rifts between different ethnicities and become focal points for racism, pogroms, genocide, tribalism, ethnic cleansing, racial tensions and other unpleasant manifestations of ethnocentrism.[48]

2.4 Ethnicity: The African Context:

Scholarly works on the theme of ethnicity in the African context suggest that at independence, Africans inherited an alien institution[49], the State, whose *"institutional content has had difficulty adapting to the peculiar ethnic matrix in Africa"*. According to some scholars, Africans took the State, its foreign structures and traditions from;

"...white administrators without considering how to integrate the objective historical conditions of Africa into the foundations of a new state"[50].

Rodolfo Stevanhagen, in 'the Ethnic Question: Conflict, Development & Human Rights, 20(1990)' concisely postulates that;

"...most third world countries have adopted the western model of the nation-state. But given the unique historical circumstances in which this model developed in the

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[46] For example; Religion, language, style of dressing.

[47] http://anthro.palomar.edu/ethnicity/ethnic_2.htm

[48] The feeling that your ethnic group's cultural traditions and values are correct and superior to all others. It is usually coupled with a generalized dislike and even contempt for people who have other cultural traditions. Ethnocentrism is universal in that all people around the world are ethnocentric to some degree. See http://anthro.palomar.edu/ethnicity/

[49] the institution of the State was forced on Africans. This...institution was based on the liberal traditions having its historic bases in the *"peace of Westphalia in 1648 for the said peace in essence set the historic foundation of the modern inter state system"* through out the world. For italicized quote, See Stevanhagen. Rodolfo, The Ethnic Question: Conflict, Development & Human rights, 20(1990), Quoted in Abdullahi, Ahmed Nassir M, Intra-State conflicts in Africa, Providing a Constitutional Mediation for Ethnic Rivalries & Conflicts in Africa, The University of Nairobi Law Journal(UNLJ)Vol. 1(2003)27.

[50] Tiebite Drame, The Crisis of the State, in Steven Ellis (ed), Africa Now: People, Policies & Institutions, 203(1996).

West itself, and the very different conditions under which...modern states have arisen in the in the colonial countries, the model of the nation-state is subject to strong tensions in Asia and Africa, and even in some parts of Latin America. Essentially, it embodies the contradiction between the so-called "nationality principle" on which it is based and the multiplicity of ethnics and people who vie for status, resources, dignity, and power within the boundaries of today's state territories[61].

It is thus argued that, as a result of the institutional incompatibility between the state and ethnicity, ethnicity has been demonised and ignored in the modern African State. Abdullahi, Ahmed Nassir M, in the 'Intra-State conflicts in Africa, Providing a Constitutional Mediation for Ethnic Rivalries & Conflicts in Africa', The University of Nairobi Law Journal(UNLJ)Vol. 1(2003)27 points out that it;

"remains a condemned and abhorred concept of societal organisation[52]. *Governments, leaders and scholars vehemently condemn ethnicity, seeing it as a plague to be fought and eradicated. If there is an issue on which African leaders of all political persuasion agree as to its destructiveness, it is ethnicity as an obstacle to development, progress, cohesiveness and national unity*[53].

Many scholars concur over the irony that despite the vitriol directed at ethnicity, the modern African state has since independence evolved into a tribal state where politics of ethnicity and tribalism take centre stage. And that despite the absence of a constitutional mechanism for tribalising the state, the typical ruler in Africa has practised the politics of ethnicity passionately with a view to obtaining, retaining and

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[51] Rodolfo Stevanhagen, The Ethnic Question; Conflict, Development & Human Rights, 29(1990)
[52] " ethnicity has always been looked upon as an outdated left-over, an exotic curiosity and often as a problem that upsets the advocates of 'nation-state determinism' " Abdelali Doumou, The State & the Popular Alliances: Theoretical Preliminaries in the Light of the Moroccan Case, 48, in Anyang' Nyong'o(ed), Popular struggle for Democracy in Africa at 58(1987). See also J. Gus Liebenow, African Politics: Crisis and Challenges, 45-101, (1986) upon which Abdullahi relies to argue that African leaders have all along considered ethnicity as incompatible with their political aspirations, and especially see it as an impediment to nation building.
[53] Abdullahi, Supra note 15 at 28 To illustrate this point further ,Abdullahi quotes Leroy Vail, Introduction: Ethnicity in Southern African History, in Leroy Vail(ed) The creation of Tribalism in Southern Africa, 1(1989).

consolidating political power[54], stifling opposition and enriching themselves. Smokin Wanjala argues that,

"Ethnic groups have been used or manipulated by the leadership in Africa as a tool for the perpetuation of the status quo."[55]

Indeed, the ethnic nationality that controls organs of state amasses state resources for itself, marginalises and persecutes[56] other ethnic communities within the state as government policy. Abdullahi succinctly expounds on the tribal state;

"Under this system of governance the state and ethnic group of the current ruler merge, forming a tribal state controlled in all spheres by the tribe for the time being in power. During this period four issues come out clearly. First, the tribe of the president assumes an extra-constitutional role of running the country with the president, and assumes a very pivotal role in the management of the state...Second, in the economic sphere, looting of state resources by the ethnic community in power assumes with unheard of ferocity, and the economic powerbase of the state is "privatised" for the benefit of that tribe. Again on the economic front like the political front we will have yet again a fusion of the state enterprises and the tribal economics. This monopolisation of the state resources and the channelling of the state resources to a specific nationality usually exacerbate ethnic rivalries within the African State.[57]

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[54] When the political classes' hegemony is challenged or its misdeeds scrutinized by the governed, politicians may exploit ethnic groups' xenophobia, perceived historical grievances and inferiority complex to fuel ethnic conflicts to serve their agenda of seeking to consolidate the nation, gain electorate by calling for a united struggle against a perceived common enemy, create instability and disunity among the governed or divert attention from the real issues or their misdeeds. See: The Akiwumi Report supra,note 9 at para 354, p 194.

[55] Smokin Wanjala; Presidentialism, Ethnicity & Militarism as impediments to the Re-emergence of Democracy in Africa: Some Reflections on the Kenyan Experience, in Oloka-Onyango, J et al(eds), Law and the Struggle for Democracy in East Africa, 89(1996).

[56] The political and economic elite may define their own ethnic/racial group as being superior and others as being inferior. This can be done by laws that restrict rights and privileges. For example, in the 19th and early 20th centuries, the European American dominated political system in the U S. restricted legal rights of people they defined as being African, Asian, or Native American in ancestry. Their property and voting rights were limited and they were treated as 3rd class citizens. Similarly, in Japan today, second and third generation resident Koreans are given only limited citizenship rights--they are not allowed to be fully Japanese. See *Ethnic Identification Process* available on http://anthro.palomar.edu/ethnicity/ethnic_3.htm & _4.htm(Accessed 9th May, 2007)

[57] Solfo Randrianja, Nationalism, Ethnicity and Democracy, in Ellis, supra note 14 at 21

Third, all other tribes, especially those with the potential of threatening the status quo will not only be sidelined but persecuted. Fourth, the above three factors lead to the loss of legitimacy on the part of the government, and the rest of the country's ethnic communities gang up to replace the status quo through extra-constitutional mechanisms, thus leading to intra-ethnic conflicts on the continent.[58]"

Elsewhere, Abdullahi argues that, *"Many countries in Africa, have faced instabilities as a result of ethnic domination of the state apparatus by just one nationality. This then leads to the politics of ethnic exclusion which leads to disenchantment, discord and in many cases culminates in a civil war. For those states that have failed like Somalia, Rwanda and Liberia, it is ethnicity and its wrongful exploitation that has caused the crisis"[59].*

Some scholars posit that the intra-state conflicts, witnessed between some ethnic communities are motivated by a desire to correct perceived historical grievances or settle old scores. Panjabi contends that;

"in ethnicity and ethnic warfare we may be witnessing a process of reversal as old injustices papered over by the creation of nation states are now coming to the fore".[60]

Indeed, in the struggle to capture and control institutions of the state, politics and political parties have been used to balkanise people along ethnic lines and heighten tribal loyalties and association. Ethnic groups thus identify with a political party and its leaders because of a shared ethnicity. These communities see the parties as their ticket to political power and a bigger share of the national cake and vote for specific

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Abdullahi supra note 15 at p 28

Abdullahi supra note 15 at p.29. The resulting conflict may take the form of civil war, genocide, pogroms, extermination, violence, ethnic clashes, ethnic cleansing, evictions and displacement of some ethnic communities from certain locale

Ranne K L Panjabi, Human Rights in 1990'2 Promise or Peril, Review Easy, 28 Cornell Int'l LJ at 231(1995). See also Akiwumi Report, supra note 9.para 354, p 194 , which states that historical grievances e g, the land problem, cattle rustling, perceived socio-economic and political marginalization spawned existing and latent animosity which was exploited to foment tribal clashes and in the process, achieve political ends

parties as a block[61]. According to the *Report on the 1997 General Elections in Kenya*[62];

"Ethnicity is also the factor behind persistent declarations by ethnic based leaders and their followers that "it is time for us to eat". Leaders and their followers seem to be concerned only with how to get the tastiest pieces of the national cake for themselves and their communities or clan. This kind of thinking is retrogressive and makes issues and politics irrelevant".

One can therefore arrive at a healthy conclusion that ethnic conflict arising from this quest to obtain and retain or consolidate power may lead to the displacement of some ethnic communities from certain locale creating areas exclusively populated by ethnic communities related or aligned to some politicians and the parties in power[63], which vote for these politicians as a bloc. The violence also disrupts the socio-economic lives of the targeted communities, making them vulnerable and interfering with their right and ability to participate in electoral processes by voting.

It is indeed undeniable that politicians recognize ethnicity as a powerful political tool in controlling, marginalizing, and even getting rid of certain ethnic groups, and the political class has adroitly exploited it to crush opposition to, and consolidate their political hegemony. Ethnicity promotes bad governance, and stifles democratic ideals by promoting short-term ethnic interests at the expense of meritocracy and issue-oriented politics. It denies the electorate an opportunity to evaluate a politician based on what he stands for and his ability to deliver. Smokin Wanjala could not have said it better when he concludes that;

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[61] political representation becomes a clarion call for every ethnic group towards acquiring the presidency of the country The Presidency is seen as an assurance of one thing; the prevention of possible marginalization and an assurance for state resources, which in turn will bring development." Aukot, E, The Constitutionalization of Ethnicity; Protecting ethnic minority in Kenya, UNLJ 1(2003) 97

[62] IED CJPC/NCCK;Report on the 1997 General Elections in Kenya(1998)' para 3 2 2, pp 30-31

[63] The Akiwumi Report, supra note 9 at para 358-359 p 196

"The phenomenon of ethnicity continues to eat into Africa's democratization struggle like a cancer. Ethnic groups have been used or manipulated by the leadership in Africa as a tool for the perpetuation of the status quo...the ethnic equation in contemporary African spectrum has blunted the democratic appeal to the masses"[64].

2.5 Ethnicity: The Kenyan Experience

As documented in the *Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya* known as the Akiwumi Report, Kenya experienced fatal tribal clashes before, during and after[65] the 1992 and 1997 General Elections. The clashes affected parts of Rift Valley, Nyanza, Western, and Coast Provinces. Many lives were lost, people displaced, property destroyed and a lot of inter-ethnic resentment is still felt by the affected communities to date; and may have been the cause of intermittent ethnic violence in hotspot areas such as Mt. Elgon, Transmara, Burnt Forest and Molo areas. But whereas land ownership and use, coupled intolerance to diversity and attendant socio-economic challenges are cited in the report as the causes of the tribal clashes, political marginalisation[66] as well hate speech and unsavoury language played the major role.

The Akiwumi Report states that politics in Kenya took a tribal or ethnic slant immediately upon independence and has continued to date[67]. Professor Ojwang J.B[68] argues that the main dynamics of the first phase of multi-partyism emphasized ethnic rivalries, cronyism and contradictions between the ideal of national unity on the one hand and entrenched ethnic and regional orientation on the other.

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[64] Smokin Wanjala, supra, note 20, at 89

[65] The post General Election clashes appeared to be linked to the voting behaviour of certain groups of people as a number of leaders had been quoted in the press warning theses groups of dire consequences if they voted in a certain way See IED/CJPC/NCCK:Report on the 1997 General Elections in Kenya(1998)' para 1, pp 123

[66] The Akiwumi Report, supra note 9, at para 129, pp 77-78, paras 101-112 pp 55-69 para 354 p 194 ; para 153, p 89; para 169, p.97,.

[67] The Akiwumi Report, supra note 9, at paras 99-103

[68] Ojwang, J.B: Constitutional Development in Kenya: Institutional Adaptation and Change(1986)

The 1963 and 1969 elections saw the emergence of ethnic association and loyalties in politics and these re-emerged again following the re-introduction of multi-partyism in 1992. Some communities became hostile to the clamour for multi-partyism[69] following inflammatory statements[70] against multi-partyism, made by their leaders. These ethnic communities perceived themselves as the ruling tribe and viewed any attempt to dislodge certain political parties or their leadership from power as an attack upon the community, which had to be resisted at all costs, hence the ethnic clashes.

Quite unlike the era of the one party state, voting patterns in 1992 and 1997 General Elections followed ethnic lines[71]. The Commission of Inquiry concluded that the clashes did not start by coincidence and that only KANU stood to gain if opposition supporters and sympathisers were displaced to prevent them from voting during the General Elections. Hate speech and unsavoury language in political rallies and repeatedly broadcasted on radio and television became the lethal weapon incitement to violence.

While still on the theme of ethnicity, politics of identity and ethnic animosity, In *Raila Odinga: An Enigma in Kenyan Politics*, a biography of one of Kenya's leading light in politics, Raila Odinga, Babafemi Badejo provides an introspection into the critical facets of Kenyan politics and therefore, an introductory verse and great psychological insights into to Kenyan ethnic groups, lore and traditional idiosyncrasies. [72] In this text, Badejo dissects into the roots of this subject, juxtaposing tribal antecedents and

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[69] The Akiwumi Report, supra note 9, at para 129-130 pp.77-78; See also p.91, para.156.
[70] Lucas Chepkok quoted in Sunday Nation, 22nd September 1991 as having said, in relation to multi-party proponents, "Hit them hard wherever they are"; Ntimama quoted in Sunday Nation, 29th September 1991; Sunday Standard, 29th September 1992 warning alien communities to respect the wishes of the Masaai, who were their hosts or else the community would have to reconsider continuing to host other tribes in the district after the General Elections. See also The Akiwumi Report, supra note 9, p.118 para 211
[71] The Akiwumi Report, supra note 9, p 65, paras 101, 102 ; See also IED CJPC/NCCK:Report on the 1997 General Elections in Kenya(1998) ; and IED: Political Party Organisation and Management in Kenya-An Audit(1998) p.20
[72] Raila Odinga, An Enigma in Kenyan Politics, Book Review by Oseloka Obaze

heritage. He analyses how tribalism drives partisan politics in Kenya. Badejo's book attempts to reveal that political dichotomy that is not so often ethnicity driven, as it is personality driven. This study provides an antithesis of Badejo's view. Its hypothesis is premised on the strong assumption that politics in Kenya is ethnic driven and politicians have perfected the art of polarizing communities along ethnic lines to achieve their own ends at the expense of *Wanjiku.*

According to Oseloka Obaze in a book review, Badejo highlights the ethnic imperative of partisan politics in Kenya using various individuals as key reference points without necessarily alluding to any inflammatory utterances and the extent to which such utterances fuelled ethnic animosity thereby causing ethnic intolerance. He elucidates how ethnicity compelled and/or impeded individuals that were politically inclined, and the negative influence of ethnicity by illustrating its insidious nature when employed as a tool of intimidation and subjugation. In this text, ethnicity does not always play itself out as tribalism, but even in such situations, undertones were always manifest.

In the book review, Obaze points out and I concur that Badejo's text lays bare divisiveness of ethnicity in African politics where the concept of being in the opposition is tantamount to enmity hence the prevalence of unsavoury language, hate speech and name calling, in public rallies and broadcasted live on radio and television as was the case in precipitating the genocide in Rwanda.

2.6 Radio and the Ideology of Genocide in Rwanda

Radio-Television Libres des Milles Collines, *RTLM, broadcasts exploited the history of Tutsi privilege and Hutu disadvantage, and the fear of armed insurrection, to mobilize the population, whipping them into a frenzy of hatred and violence that was*

directed against the Tutsi ethnic groups.' International Criminal Tribunal for Rwanda (ICTR) summary Judgement Chapter 25.

In a collection of papers published by various scholars, historians and journalists; and edited by Allan Thompson, different writers examine the role played by the local and international media in the 1994 Genocide in Rwanda. More relevant to the theme of this research, the publication confirms the repeated and explicit role that the local radio and newspapers played in targeting the Tutsi population for destruction; while elaborately documenting how racism (as a form of ethnicity), negligence and ignorance by developed countries exacerbated impunity and prevented the rest of the world from responding to the atrocities in Rwanda. [73]

Whereas numerous scholarly publications and even popular literature and movies have been harvested enormous content from the Rwandese demise, there has been little if no focus on the role of both the local and international media in the genocide in Rwanda. Most scholars have largely focused on the explicit 'role of domestic hate media, the power of the message and the impact of information in a vacuum'[74] rather than the implicit role played by the international media in fanning the genocide. But whereas the former is the subject of this research and thus warrants greater analysis, for purposes other than for this research, it would be useful to take a detour of the later if only to disabuse the expected notion that the local media, specifically radio RTLM and the local newspaper *Kangura* are the only media to blame especially because of a black ownership and management.

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[73] The Media and the Genocide in Rwanda : Thompson Allan (Ed). Fountain Publishers. 2007. Kampala, Uganda. ISBN 0-7453-2625-0. 467 pages

[74] Ibid

Indeed, scholars have drawn from many existing theories of collective violence to attempt to explain the Rwandese genocide. Right from the so called the premordialist' approaches based on the ideas of reified ancient ethnic hatred (teologically drawing on the earlier episodes of the anti-Tusti violence of the 1950s and 1960s)[75]-initially dominating much of the scholarship of the genocide; to the emerging instrumentalist approaches that emphasize the historicity /contingency of ethnic identities, the role of the manipulative and self serving political elites, crushing economy and demographic pressures among other things.

This being the case through, the one thing that virtually all scholars in the Rwandese demise are unanimous about is the role of radio in perpetuating the genocide. Many scholarly publications explore the role of Radio-Television Libres des Milles Collines (RTLM) in fuelling and sustaining the genocide. Chretein et al 1996 reviewed the kind of racial stereotyping used in the station's broadcasts and unearthed the overlapping networks of power, money, ideology and patronage that brought the RTLM and other extremist media to life.

Others scholars have analyzed the question of perspective of sociolinguistics (Nkusi et al)[76]. In extensively cataloguing and analyzing the broadcasts of RTLM, indeed, these works highlights the station's role in disseminating ethnic stereotypes and inciting specific killings. However, Darry Li's paper, 'Echoes of Violence: Considerations on Radio and Genocide in Rwanda' the Media and the Genocide in Rwanda, (Allan Thompson (ed) 2007:90) argues that this scholarly articles say little about how the messages were received by the intended audiences and how much this broadcasts interacted with other factors at the local level.

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[75] Darry Li, in the Media and the Genocide in Rwanda, Allan Thompson (ed) 2007
[76] Ibid

The scholar argues that this empirical gap allows analyses on the role of radio in the Rwandese genocide to fall back on older magic bullet theories of communication and quotes Jeane-Marie Higiro's justification that 'human beings are considered as automations' (Higiro 1996)- hence the success of the bullet theory. Li asserts and I concur that his brilliant scholarly articles say little about the effects of the messages received on the people, the perspective of the listener and their contexts. Li's paper puts forward an argument that whereas there is little disagreement that RTLM propagated a racist-anti Tutsi ideology, drawing on historical myths, stereotypes, of the Tutsi, and appealed to the Hutu unity (that it often did in thinly veiled code referring to 'work' instead of killing and 'cockroaches' *(inyenzi)*) instead of Tutsi, the accounts of RTLM's ideological role that focuses solely on racists aspects do not explain why the station's particular ideological world views caught more than other stations.[77]

Darry Li further argues that these discourses have failed to show how RTLM transcended ordinary propaganda, from simply propagating certain beliefs or feelings about the Tutsis as an ethnic category to encouraging and facilitating participation in the murders of friends, relatives and neighbours. The scholar points out that the analysis of the ideology of the Rwandese genocide as propagated in RTLM needs to be widened beyond the amply documented anti-Tutsi imagery. He draws the attention of scholars to manipulation of the discourses of history-evoking negative historical memories; the discourse of democracy by reminding people of the numerical weaknesses of the country's Tutsi minority and the discourse of development in post colonial Rwanda-largely used to absolve the Hutus from the blame of exterminating their friends, relatives and neighbours. As radio RTLM seemed to be mired in the past invoking discourses in history, democracy and

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[77] Ibid

development, on the other hand, Radio Mahabura seemed to foreshadow a frightening future right after Hibyarimana's death.

Further to this argument, Charles Mironko (Thompson (Ed) 2007: 125) confirms without the assistance of the radio, particularly radio RTLM, the Rwandese genocidaires would have succeeded the extent that they did. Indeed the radio as a medium of communication with the widest reach had lethal effect.

On the contrary, the effect of radio, specifically RTLM 's role in the genocide has been contested by scholars such as Richard Carver (Carver:2000:190) arguing that most commentary on hate radio has in the past been based on the assumption that since RTLM broadcast propaganda for genocide and genocide did occur; there must be a causal relationship between the two. He argues that the notion that people could be incited to acts of extreme violence is only tenable if it is accepted that RTLM propaganda unlocked profound and even primordial hatred. He further asserts that RTLM may have produced propaganda but did not incite it.

Mary Kimani in 'RTLM; The Medium that Became a Tool for Mass Murders' (Thompson (ed) 2007: 110) also observes that RTLM broadcasts were not responsible for introducing language and the ideology of hatred into the Rwandan Community. She argues that such language and ideology of the ethnic conflict and polarization already existed in Rwanda in the form of a powerful social construct involving ethnic identity.

Indeed, radio did more than articulate the ideological world view of the Rwandese genocide, as there were dozens of Hutu newspapers that did so as well.[78] Darry Li (Thompson 2007: 103) on the other hand, draws attention to the use of radio's

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specific properties as a medium of broadcast performance, where oral texts were perfectly reproduced but uniquely received in thousands of different locales as specific events in time.

Summary of the Literature Review

The literature review explicitly elaborates on the meaning of the various concepts and the variables under study, including hate speech, ethnicity and ethnic animosity, showing the relationship between the concepts.

The review has shown clearly that most utterances made during the referendum campaigns amounted to hate speech and unsavoury language; and affirms the politicians role in engaging in hate speech to increase their capital amongst 'their people'.

The review points out that impunity with which hate speech is propagated should be a concern to the Government and to all. It points out that broadcast of hate speech in the media remains unchecked while Kenya's ethnic diversity has been a source of conflict in the past; and makes recommendations to the Government to see merit in addressing the issue conclusively. It further, emphasises that while the right to express one freely is one of the most important pillars of a rights based society, right must be exercised with restraint in the light of other rights and responsibilities.

The review explores the origins of ethnicity and provides a historical background of how the concept of ethnicity has evolved overtime. It explores how the concept of ethnicity has been misused to .emphasize ethnic differences and foment ethnic animosity, tribalism and ethnic conflict. It also explores the origins of ethnic conflicts and ethnicity within the Africa Context right from the colonial period to date, the extent to which the West has contributed to ethnic labelling and hence ethnic

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conflicts in Africa; and shows how ethnic groups have been used or manipulated by the leadership in Africa as a tool for the perpetuation of the status quo.

The review also points out the gaps in the Constitution of Kenya and the subversion laws in the Penal Code in defining and addressing hate speech as a crime. It moves further to analyze the provisions in the Prohibition of Hate Speech Bill, 2007, and the extent to which the bill when passed into law will address this gaps.

The literature review has shown causal-effects relationship between the variables under study. The review addresses the potential of hate speech in fuelling ethnic animosity when broadcasted on radio station by using uses examples such as the role of 'Radio-Television Libres des Milles Collines, RTLM, broadcasts in exploiting the history of Tutsi privilege and Hutu disadvantage, and the fear of armed insurrection, to mobilize the population, whipping them into a frenzy of hatred and violence that was directed against the Tutsi ethnic groups.

The review also analyzed the question of perspective of sociolinguistics in extensively cataloguing and analyzing the broadcasts of RTLM, to highlight the station's role in disseminating the racist's stereotypes and inciting specific killings. It however points out that whereas there is little disagreement that RTLM propagated hate speech; most scholarly articles on this topic say little about the effects of the messages received on the people, the perspective of the listener and their contexts.

The review observes that RTLM broadcasts were not responsible for introducing language and the ideology of hatred into the Rwandan Community-that such language and ideology of the ethnic conflict and polarization already existed in Rwanda in the form of a powerful social construct involving ethnic identity, just as it exists in Kenya today, radio broadcast only fuelled this.

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Chapter Three

3.0 Theoretical Framework

The literature review points out that inflammatory rhetoric and extremist views broadcasted on radio stations have been one of the causes of genocides and/or civil strife especially in the case of the Genocide in Rwanda. Different scholars of the most comprehensive analysis of the role of the media in Rwandese genocide to date give central importance to the role played by radio. The review further confirms that the predominant use of subtle but inciting hate speech and unsavoury during the referendum campaigns in Kenya in 2005, are very similar to the sort of utterances that provoked ethnic animosity that culminated into genocide in countries such as Rwanda.

Following this analysis, theories of the effects of mass communication, particularly the cultivation theory is useful in examining the role of hate propaganda and unsavoury language in inciting ethnic animosity during the Referendum on the Constitutional Review Process in Kenya. Cultivation theory however does not sufficiently address the role of radio broadcasts on ethnic communities because its main focus is on television effects. We thus supplement this theory by using the conflict theory to analyze radio as medium used by the socio-political elite to take advantage of the masses in preservation of their dominance and their own interests, and the effects, thereof.

In one of the recent and poignant comments on the influence of mass media in society, Littlejohn (1983) reminded the world that we are living in an environment of constant mass communication, which we experience hourly and daily. He warned that because we take because we often take this environment for granted,

we may have lost touch of its effect. [79] On the same note, this study also reminds us not to loss touch with the effect of hate speech and unsavoury language broadcasted in our FM radio stations.

3.1 Cultivation Theory

The study is based on cultivation theory of communication developed by Professor George Gerbner. The theory looks at the mass media as a socializing agent and investigates whether television viewers come to believe the television version of reality the more they watch it. Cultivation research is in the 'effects' tradition. Cultivation theorists argue that television has long-term effects which are small, gradual, indirect but cumulative and significant.

3.2 Core Assumptions and Statements

Cultivation theory is premised in the belief that mass media do exert powerful influences on the way people perceive, think about and act in their world. The theory postulates that mass media has a powerful influence on the consciousness and world view of their audiences. Gerbner's theory in its most basic form, suggests that media, and particularly television is responsible for shaping, or 'cultivating' viewers' conceptions of social reality. It postulates that the combined effect of massive television exposure by viewers over time subtly shapes the perception of social reality for individuals and, ultimately, for our culture as a whole. Gerbner argues that the mass media cultivates attitudes and values which are already present in a culture: the media maintains and propagate these values amongst members of a culture, thus binding it together.

3.3 Conceptual Model

Source: Hawkins and Pingree (1983)

3.4 Application of Cultivation theory in this research

Whereas this research does not focus specifically on the television per se, it uses the 'effects' tradition to hypothesize that the media, (particularly radio broadcasts) in this case will influence the listener's perception, values, their attitudes and actions. When listeners are repeatedly exposed hate speech and unsavory language made by politicians and broadcasted on radio, they are likely to be emotionally charged and may develop feeling of hatred and animosity against communities portrayed negatively in the radio clips.

According to Gerbner's theory it can be argued therefore that radio as a medium of communication cultivates attitudes and values which are already present in a culture-for example we can argue that radio broadcasts are not responsible for introducing language and the ideology of hatred into communities-that such language and ideology of the ethnic conflict and polarization already exist, in the form of a powerful social construct involving ethnic identity, radio broadcast only fuelled this. Radio maintains and propagate these values amongst members of a culture, thus binding it together, while creating animosity with people that we perceive as enemies. When hate speech and unsavoury language is broadcasts live and repeatedly on radio, the

information has the potential to reinforces cultural stereotypes that dehumanize, demean and degrade ethnic communities, thereby fuelling further mistrust and animosity. The study looks at radio clips from KNCHR's monitoring project as a socializing agent and proceeds to investigate whether and the extent to which this utterances would evoke feelings of anger, animosity, hatred animosity likely to erupt in to ethnic conflicts in Kenya. Based 'effects' tradition, it can also be argued that listening to radio broadcasts has long-term effects which are small, gradual, indirect but cumulative and significant inciting animosity between communities.

He has argued that television tends to cultivate middle-of-the- road political perspectives. Gerbner called this effect 'mainstreaming'. Cultivation theorists distinguish between 'first order' effects (general beliefs about the everyday world, such as about the prevalence of violence) and 'second order' effects (specific attitudes, such as to law and order or to personal safety). There is also a distinction between two groups of television viewers: the heavy viewers and the light viewers. The focus is on 'heavy viewers'. People who watch a lot of television are likely to be more influenced by the ways in which the world is framed by television programs than are individuals who watch less, especially regarding topics of which the viewer has little first-hand experience. Light viewers may have more sources of information than heavy viewers. 'Resonance' describes the intensified effect on the audience when what people see on television is what they have experienced in life. This double dose of the televised message tends to amplify the cultivation effect. On the same vein, frequent listeners are likely to be affected more than the less frequent ones and thus would internalize the negative messages they receive more, so their level of animosity is likely to be higher.

3.5 Conflict Theory

The emerging concern with the power of the media to affect our beliefs systems and behavior also derives from Conflict Theory and Social Criticism. Conflict theory is based on the belief that technology, especially mass media requires propaganda akin to the hate messages that were broadcasted on radio during the 2005 Referendum or messages on RTLM to keep people in line and a source of security. The theory is premised on the belief that, individuals use mass media not principally as channels of communication but as a means to ensure a climate of general conformity or uniformity throughout the society. The conflict theory thus sees that public as a big don't' care, 'don't know' and 'don't bother me' receptacle for the use of communicators, who have become very adroit at finding the vulnerability in human need and in the human psyche. [80]As Barmash (1974) noted:

…. To push the public into a variety, to ideological corners, to accept political and social realities that are only fantasies when compared with social realities going on… to act and behave wrongly because of all this false signals, it is hard to escape the conclusions that the public malleable as a handful of clay.

Indeed the socio-political elite use the mass media to take advantage of the masses. Conflicts theorists argue that, the primary power structure of those in power is the preservation of their dominance, and the preservations of their own interests, independent of active public input. Public involvement consists primarily of passive acceptance of the power of the elite's domination, due to mostly indoctrinating influence of the mass media.

Conflict theory helps us to understand factors behind identity politics, ethnicity, ethnic animosity and ethnic conflicts as they relate to dissemination of hate speech and unsavoury language in the media. The theory explains the intention of our politicians is convey hate speech in public rallies. It explains to us that our politicians make inflammatory utterances to preserve their dominance, their own interests and further helps us to understand the public's willingness to accept and believe in the utterances made by politicians thereby developing feeling hatred and animosity towards other communities.

Chapter Four

4.0 Methodology

4.1 Introduction

This section provides information on the research design indicating the type of study, the sampling design, the data gathering procedures and data analysis.

4. 2 Study Design

The study methodology was qualitative in nature and used an experimental methodology. The methodology involved the manipulation of the independent variables to determine their effect on the dependent variables. Focus Group Discussions (FGDs) technique was used as the most appropriate way to solicit for information from the participants. These semi-structured discussions on specific questions were conducted by a trained moderator with a group of approximately eight to 10-12 participants for each of the three communities, the Luo, Kikuyu and the Kalenjin communities. These three groups were exposed to utterances made by politicians and broadcasted on radio and data was collected.

A fourth group, the control group composed of members from the three communities was only exposed a set of questions designed to gauge their perceptions without exposure to the radio clips. The control group was also made up of on 10-12 participants. The discussions generally lasted around two hours. The average for this research was closer to three hours. The participants were recruited for certain characteristics. These characteristics considered demographic factors such as age, sex and occupation. The control group was made of participants both from the rural ad urban areas. The variables to be measured in the study included the following:

Ethnic Animosity

Indicators for measuring ethnic animosity include the following

- Feelings of anger and hostility

- Feelings that provoke verbal abuse

- Feelings that excites negative passion; make one want make utterances meant to dehumanize, degrade, demean, and offend/make one begin thinking that other communities are enemies, lesser beings, or not human

- Threats, intimidation and discrimination

- Feelings that provoke one to burning of effigies, destruction of property, physical violence and tribal clashes and genocides

Hate speech

Indicators of measuring hate speech include any written./spoken material, any image or any other representation of ideas or theories, which:

- Insult, reinforces demeaning, dehumanizing or degrading cultural stereotypes (depicts a community as animals, devils, lesser beings, outcasts etc),

- Advocates, promotes or incites hatred, discrimination or active violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion (if used as pretext for any of these factors)

Unsavoury language:

- Distasteful, abusive, and unpleasant language and intended to insult. E.g. Pumbavu (stupid). It may not necessarily target a community but may ostracise an individual or prompt violence, it may demean or dehumanize or degrade.

4.3 The Study Area and Target Groups

The Focus Groups Discussions were constructed to reflect a cross-section of three main ethnic tribes in Kenya namely: Kikuyu, Luo, and the Kalenjins whose leaders are have been reported to have used inflammatory statements in the past. The Kikuyu are Kenya's most populous ethnic group. They total about 5,347,000 (1994 I. Larsen BTL), equal to about 22% of Kenya's total population. They cultivate the fertile central highlands; they are entrepreneurs and are also the most economically active ethnic group in Kenya.[81] The Luo are the third largest ethnic group (12%) in Kenya, after the Luhya (17%). Luos majorly indulge in fishing but due to the small parcels of land. Many years of poor economic management of Kenya, especially during the administration of the KANU party resulted in the Luo and a majority of Kenyans being systematically neglected.[82] The Kalenjin on the other hand is an ethnic group of Nilotic origin living in the Great Rift Valley in western Kenya. The Kalenjin population is estimated at roughly 3 million making up about 12% of Kenya's population nowadays. The former president, Daniel Arap Moi, hailed for this community. As a result many Kalenjin formed part of the previous government.[83]

The three groups had a total of 36 participants and were conducted in areas presumed to be tribal strongholds of the fore mentioned tribes. The participants were invited to a central point where the discussions were held. The three groups took 2-3 hours each. The recruitment procedure tried as much as possible to mix people of different demographics taking into consideration age, level of education and sex.

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[81] http://en.wikipedia.org/wiki/Kikuyu#Origins

[82] See http://en.wikipedia.org/wiki/Luo

[83] See http://en.wikipedia.org/wiki/Kalenjin_people

Kenya's population is a youthful population, and an attempt was made to reflect this fact when choosing people to take part in the focus groups.

4.4 Sample Size:

A sample of 8-12 per FGD was preferred in this research. A big FGD sample was preferred as opposed to a smaller one. This is because the hypothesized differences between the variables under study were very small in real life.[84]

4.5 Sampling Techniques:

The study used purposeful sampling to select participants for the different Focused Groups Discussions. The participants were recruited because of certain characteristics. These characteristics considered demographic factors such as age, sex, urban/rural and occupation, including urban and rural residence for the control group.

4.6 Study Instruments

In order to assist the facilitators, the student developed a discussion guide of issues to be discussed to be used in leading discussions. The questions were deliberately designed to test generally the knowledge, attitudes and impact of unsavoury language and hatred propaganda used by leaders in Kenya's political scene. The study also ventured to test specific speeches made by our political leaders in the past and evaluate the impact of such to the Kenyan populace. Transcripts of utterances made by politicians and broadcasted on radio were read out to the participants as lack of power and poor sound quality did not make it possible for the facilitators to play the actual audio clips as had been broadcasted in radio.

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[84] Mugenda and Mugenda, Research Methods, Quantitative and Qualitative Approaches, 2003 Pg 42-43

First, the facilitators read out the statements to the participants verbatim without disclosing the names of the names of the politicians probed for participant's feelings and impact of the statements before revealing the identity of the politician. If the statement was not clear, it was rephrased it into local language for better understanding. It was often interesting to observe how different groups reacted to the same questions.

For example: I am going to read out this statement to you, please tell me what your feelings are about it.

"Wale hawajatahili peleka jandoni" Those who are not circumcised should be taken for circumcision."

After this line of questioning, the facilitator revealed the identity of the political leader who made the statement e.g. "The statement was made by **Simeon Nyachae, energy minister and MP for Nyaribari Chache".** After this the facilitator further interrogated the participant's attitude towards the political figure.

In keeping with standard Focused Group Discussion procedure, the moderators were instructed to ask questions in an open-ended manner. The facilitators tried to encourage participants to share their opinions rather than to provide political analysis of the situation. It was sometimes difficult to simulate the kind of voice tones that actual politicians used and the context. Participants were told their views would be not be made public, albeit because they were very sensitive. They were told this report would help educate our political leaders on the implications of unsavoury language and hatred speech.

The experience with the three FGDs indicates that participants welcomed the fact that the country's leadership has not been taking the use of unsavoury language and hatred propaganda seriously; and were elated that someone at last was looking into this issue seriously.

4.7 Classification of Sample of Utterances Made

The utterances discussed during the FGDs were classified as follows:

i.   *Utterances on Incitement Contrary to Section 96 of the Penal Code and as defined in the Prohibition of Hate Speech Bill*

Incitement against the Luo Community
Incitement against Kamba Community

ii.   *Utterances Constituting Hate Speech Contrary to Section 77 of The Penal Code*
Incitement against the Luo Community
Incitement against the Kikuyu Community
Incitement targeting Kalenjins Community
Incitement against the Luo /Kamba

iii.   *Use of Unsavoury Language*
Utterances on Issues of Circumcision

Incitement against the Luo Community
Incitement against the Kikuyu Community
Incitement targeting Kalenjins Community
Incitement against the Luo /Kamba

4.8 Data Processing and Analysis

Once the discussions were audio taped, the transcriptions were done and analysis made from the verbatim transcripts. The greatest value of this report is that it captures the voices of the participants as it were during the discussion.

Chapter Five

5.0 Research Findings and Data Presentation

5.1 Introduction:

This section presents the findings of Focused Group Discussions carried to establish the extent to which hate speech by politicians, broadcasted on radio, is likely to incite feelings of animosity amongst the ordinary *Wananchi*. The section provides different views points by participants on issues of ethnicity, unsavoury language, hate speech, violence, ethnic animosity and conflicts after listening to utterances by politicians. It primarily analyzes the effects of hate speech on individuals and attempts to assess the how they would react or behave afterwards.

5.2: General Findings

5.2.1 National Mood

Section 96 of the Penal Code Cap 63 Laws of Kenya provides,

Any person who without lawful excuse… utter, prints or publishes any word or does any act or thing, indicating or implying that it might be desirable to do, or omit to do, any act the doing or omission of which is calculated

a) *to bring death or physical injury to any person or do to any class, community or body of persons;*

b) *or to lead to the damage or destruction of any property; or*

c) *to prevent or defeat by violence or by other unlawful means the execution or enforcement of any such law or lead to defiance or disobedience of any such lawful authority, is guilty of any offence and is liable to imprisonment for a term not exceeding three years.*

Prohibition of Hate Speech Bill: Section 4 (1) states that:

(1) It shall be an offence for a person—

> *(a) to publish or distribute written material;*

> *(b) to use words, behave or display written material—*

>> *(i) in any place other than inside a dwelling house, or*

>> *(ii) inside a dwelling house, so that the words, behaviour or material are heard or seen, as the case may be, by persons outside the dwelling; or*

> *(c) to distribute, show or play a recording of visual images or sounds*

if the written material, words, behaviour, visual images or sounds, as the case may be, are intended or, having regard to all the circumstances are such that the foreseeable consequence would be to stir up hatred.[85]

When asked to describe the character of the person who made a particular utterance read out to the FGD participants, the Focus Group Discussions revealed responses from the three communities in one way or another responded that the Kenyan leadership is arrogant, irresponsible and uncaring of its constituents. The participants generally described their leaders as a hungry selfish lot that uses the electorate to achieve their own political gains. When asked to differentiate whether the utterances were made by politicians or the *mwananchi* participants in all the three communities where unanimous that such utterances would be only be made by politicians in their quest for communal support to acquire power. The participants in the three FGDs were also unanimous that it makes a big difference when hate speech and unsavoury language is made by politicians as opposed to the *Mwananchi* because politicians are opinion shapers and the public believes their word as the gospel truth. When asked what sort of reactions they would expect from communities if such utterances were broadcasted on radio, the participants were unanimous that such utterances would breed suspicion, ethnic animosity and hatred. They said that that

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[85] Prohibition of Hate Speech Bill: KNCHR, 2007, Section 4 (1)

this would eventually lead to widespread tribal clashes if unaddressed. The groups were also unanimous that the Government has not done much to rein in perpetrators of hate speech and unsavoury language hence the continued impunity with which hate speech is propagated. The three groups were unanimous that Government should come up with laws or mechanisms to deal with hate speech and unsavoury language once and for all.

It was clear that the people of Kenya however, clearly want to steer away from any confrontation instigated either by their leaders and or the average Kenyan based on the use of hate speech and unsavoury language.

"People who utter such words should be cancelled, barred from the media and making public speeches," said a participant.

The leaders who use this kind of language were described as arrogant, insulting, abusive and uncaring. Most the participants felt such kinds of utterances are made by people who lack better judgment with the intention to drag the gains made against ethnic differences behind. They contended that such utterances stir feelings of hate and animosity between individuals and the ethnic communities insinuated in the speeches.

"These utterances make me feel a lesser person, I feel like they don't need my vote either," said one participant.

Participants expect and desire some change in the current crop of leadership, especially when they reflect on development issues, but at the same time feel hopelessly incapable of electing the kind of leaders they would want owing to poverty

and the use of bribes by the political class during elections to woo voters in their favour.

"You can't get elected if you don't have money even if you perform miracles! What people do is that they give us money then disappear and reappear after five years," Kikuyu Focus Group.

When asked to comment on the statement *"Those who are not circumcised should be taken for a circumcision"* made by one prominent politician and Minister for Roads and Public Works, Simeon Nyachae, most of the participants were categorical that such statements are wrong and are meant to stir up tribal hatred among one tribe specifically the Luos for political gain.

"I can say that the kind of a person who uses such language are the people who take people behind the ages because even in Kikuyu land, there are some who have not been circumcised but the person is doing more in development than those who are circumcised" Kikuyu Focus Group.

The use of hate propaganda and unsavoury language is viewed as an inappropriate method used by key politicians to stir up hostilities among the different tribes in Kenya. However some feel it is a justified retaliatory mechanism used by our leaders to reach out to their opponents in defence.

"Maybe he was provoked into saying so and I can only say that he is retaliating," Kikuyu Focus Group.

Kenyans feel helpless and at the mercy of these leaders who use unsavouryl language and hate speech, while the government is deemed to be doing nothing to curb the spread of such utterances.

"There is nothing the government can do because sometimes the people who are using these statements are pro-government and they hope that they will get promotions when they attack their opponents in the opposition."

Kenyans feel such statements are slowly drawing them to be hostile towards each other.

"I am telling you if someone makes such a statement like that near me, believe me there will be a fight." Participant, Luo Group

The impact of unsavoury language and hatred speech by our leaders is perceived to be far reaching coming from the political leaders than from an ordinary Kenyan.

"It is worse when such statements come from a leader because the media will cover it and it will reach more people than if an ordinary person made that kind of a statement." Participant, Kalenjin Group.

The media is highly criticized for fanning tribal sentiments and perceived to be practicing biased reporting. Kenyans implore the media to be more sensitive to the public and desist from spreading such propaganda.

5.2.2 Why Unsavoury and Hate Propaganda Is Used In Kenya

The participants spoke with a lot of discontent for leaders who use hate propaganda and unsavoury language in the country. They highly associate this with the need to make political gains. The underlying ethnic undertones are clearly visible during the group discussions. It was clearly evident during the discussions that Kenyans want to identify with their leaders and will try to justify their actions when identified as a culprit of hate and unsavoury speech. For instance when Luos in the FGDs discovered the statement[86] was made by honourable Raila Odinga, a Presidential aspirant in the 2007 General Elections and member of their community, they were quick to point out that he must have had a reason for making the statement. While the identities of the leaders had not been revealed to the participants, there was a lot of castigation of the hate and unsavoury speech but when the identity of the leader was revealed it most of the participants were quick to justify the reasons behind such language.

"He must have had a reason for saying that, if he feels Tuju was wrong, he should call him and sort it out privately instead of public," one participant added.

5.2.3 Impact of Hate Speech and Unsavoury Statements

Most participants in the three Focus Group Discussions reacted strongly against the hate propaganda and unsavoury speeches used by leaders in public to attack each other. It is clear that such speeches stir up feelings of animosity and hatred among different ethnic communities.

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[86] Don't mention Tuju to me, he is rubbish and I don't talk to trash when we are talking about National issues, we should avoid talking about busy bodies. These people took the beautiful girl that we had natured at Bomas to Kilifi where an old man and raped her"

"The person who said that[87] said so because he hates Luos."

The implications of this however go beyond individual politicians to reach out to the core of Kenyans ethnicity. The use of intimidating statements and unsavoury language was unacceptable to most participants from different ethnic tribes.

"You know, when someone says bad things about my Member of Parliament…it is like someone abusing my father and in that case war can easily break out," said a participant from the Luo FGD.

While most participants in the focus groups do not come out strongly to support violence, it was noticeable that they are deeply hurt by some of the statements uttered by the politicians.

"When someone says we are not circumcised, I feel really bad because I am discriminated over something I cannot change, it means that they do not want us so this will make us stick together as a tribe and not vote for them" one Luo participant lamented.

The participants felt unsavoury language and hatred speech made by our political leaders go beyond mere speech and define the leaders and projects the kind of treatment Kenyans would expect from leaders of this nature.

"You know when someone speaks like that it means that even if you go to his office to look for a job, and you belong to the tribe that was described in his speech, then

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[87] Luo's just go fishing and fish is free and thereafter they ask the government for relief maize to make ugali.

he will not even consider you because of your ethnicity or animosity against your leaders".

The participants are wary of leaders who make such speeches saying such discriminative statements are easily transformed into denied opportunities in the future.

All the participants agree that the use of hate speech and unsavoury language is a sure recipe for war and ethnic animosity among different ethnic tribes. The fear of violence caused by such speeches remained one of the most prevalent concerns during the discussions in all the three groups. The pain, suffering and consequence of such conflicts is reminiscence of the past and participants regularly stressed the need for other Kenyans to ignore such statements as well as leaders associated with such statements.

"The government should stop such leaders from making such statements, because they are only going to bring war among the tribes" Kalenjin FGD Participant.

5.2.4 Role of the Government in Preventing Hate Speech and Unsavoury Statements

When asked to the extent to which the participants think the Government is committed to addressing hate speech and unsavoury language, the participants responded that whereas the spate of tribal clashes in Kenya's recent past remains fresh in their minds, no action has been taken by the Government so far. Participants regularly stressed the need for government intervention to deter perpetrators of hate propaganda and unsavoury language. In the transition period before single party system to multiparty system, the participants continually hope that political leaders will sit together and hold meaningful discussions about how to build and support the progress of development other than engage their communities in public fights that pit ethnic tribes against each other.

"I think it is better for the political leaders to sort out their differences outside the public domain because when they do that and abuse each other over the media, the public gets involved". Participant Kikuyu Focus Group.

The participants continually stressed the need for government to implement legal actions towards perpetrators of hate propaganda and unsavoury language.

"They should investigate such statements and charge them in court of law".

Although there are calls for self-restraint by political leaders and their supporters, the participants insist that there is need for civic leaders for both the public and political leaders.

5.2.5 Role of Media in Hate Speech and Unsavoury Statements

When asked what the likely consequences of broadcasting hate speech on radio would be and their assessment of the role of the media in fuelling ethnic conflicts, the participants responded that while the role of the media as a public information channel is appreciated; the participants recognize the potential of the media to fan ethnic animosity between ethnic tribes. The participants were of the opinion that the media should not overly emphasize on issues that promote ethnic animosity when and if they happen.

"The media should not concentrate on inflammatory statements as they will create fear, vengeance in the public...Just remember recently when honourable Raila was evicted from a hotel in Nyeri, Raila told the media not to make a great deal out of it as it will increase political temperatures between Raila people and Nyeri" said a participant Kikuyu FGD.

The participants from the three groups were also of the opinion that the media has failed in its role to safe guard the national interests of the citizenry by promoting biased coverage and taking sides in the political arena.

"Some of these media stations support some leaders... so when they make these comments they just air them regardless of impact on the ethnic communities involved." one participant said.

The media is continually accused in the focus groups to lack objectivity in its reporting. The participants claim the media is biased and support certain political leaders regardless of their speech and character.

"They cover certain politicians positively while highlighting only negative speeches of politicians they don't like".

Perhaps, this is in part a reflection of the fact that the media industry in Kenya is mainly dominated by two major houses; the Nation and Standard Groups in addition to host of other FM stations and vernacular stations that have proliferated in the recent past, they said.

The participants recognize that this election year the media is bound to be reckless as it competes for stories during the campaign period, and cautions for more objectivity in reporting and censoring of information if deemed to fan ethnic animosity among different communities.

5.2.6 Summary of findings by utterance, and by community

When the different communities were exposed to the different unsavoury language and hatred speech made by politicians during the referendum, their responses were captured as below;

Statement	Kikuyu group	Luo Group	Kalenjin Group
"Wale hawajatahili peleka jandoni" Those who are not circumcised should be taken for circumcision" **Simeon Nyachae, energy minister and MP for Nyaribari Chache**	✓ "You will feel anger burning inside you. If I were a Luo I would feel the pain as if it were directed to us as a tribe" ✓ The statement makes me feel bad as they are dividing us along tribal lines, making the country drag down in development ✓ It can make one group to regroup and attack one another as the Sabaots are doing in	✓ They have no respect for my community ✓ He should watch out such a statement can cause tribal war ✓ I feel like giving him a blow!	✓ I feel so bad and I fear for my kids future ✓ Need to make sure the person does not get to the top position ✓ The government should not allow him to run for any civic positions

	MT Elgon.		
" Raila the monster should be hit on the head and killed so as not to destabilize the Kibaki Government" **William Wanbugu, Councillor Mukaru Ward**	✓ He had an idea but used the wrong language ✓ I think the person is not intelligent, these are not the old days when someone would tell us Luos are bad and we go along with it ✓ He saw Raila as a threat to the government and all he wanted was to help. Raila can get very tricky.	✓ It makes me feel insecure. ✓ Such a person is not fighting Raila only but the whole tribe	✓ It will make people band together and cause a very big war between the tribes ✓ The person who made this comments should be excommunicated
There are two arch enemies in Kenya today, Raila and Kalonzo" Then he led a crowd in exorcizing the two) Raila Ashindwe(down with Raila). Kalolzo ashindwe(down with Kalonzo **SM Wambugu, councillor Nyeri**	✓ I think this is a straight forward person, The only thing that he did was wrong was to tell the crowd that Raila Ashindwe' ✓ The statement was directed to ODM and not a particular ethnic group ✓ My reaction will depend on whose side I am on, for instance if I support the government , I will do nothing about it	✓ I will do nothing to him since we Luos like peace ✓ I feel abused and provoked ✓ I feel underrated ✓ The government should stop such people from making public speeches	✓ It threatens the very unity that we have strived for so far ✓ I believe the government will do nothing because he is on the governments side
Wakisimaisha pension ya Moi, then Wakalenjin na wakamba watavamia statehouse (If they stop Moi's pension, then The Kambas and the Kalenjins communities will invade the statehouse" **Daudi Mwanzia, MP for Machakos**	✓ Because the government is led by a Kikuyu, this statement is meant to incite ethnic hatred between the Kalenjins and Kambas on one side and the Kikuyus on the other side ✓ I think he is just a cunning politician trying to appeal to the Kalenjins and Kambas to bind together	✓ It doesn't hurt because it's the truth ✓ I feel content because if the money is returned it will help Kenyans	✓ I feel nothing because the person is not serious ✓ The statement can cause hostility among this tribes ✓ Government should stop such utterances because they are dangerous ✓ Moi should be protected though
"Central province has been allocated the highest	✓ People who don't understand how	✓ I would feel like a thief if I was a Kikuyu	✓ This is a fearless person

amount of money in roads and water, you should see central province" **Matin Shikuku, Former Butere MP**	resources are allocated will hate people from Central Province. ✓ I think this statement is made by a desperate person who has lost in politics ✓ He is tribal prejudices against people in central province	✓ I would not feel bad if I was a Kikuyu since their leaders used the money anyway ✓ He said the truth and I congratulate him ✓	✓ He is a structured person ✓ I would feel privileged if I belonged to the Kikuyu community
They hate Kikuyus because they are hard working. Luos just go fishing and is fish free and thereafter they ask the government for relief to make ugali" **Alfred Nderitu, MP Mwea**	✓ This is a person who hates Luos that is why he is targeting them with such statements ✓ If I was a Luo I would beat him up coz this guy coz he does not provide me with food either ✓ I would definitely feel bad if I was a Luo ✓ If such a statement is taken seriously then the Luos can chase the Kikuyus in Nyanza and the Kikuyus in turn will chase the Luos from central and it will lead to real ethnic animosity ✓ The Luos are difficult community; one has to be careful with them.	✓ I feel belittled by the Kikuyus ✓ It promotes hostility and feat and violence ✓ They are the ones who brought the hyacinth to us to stop out trading now they are saying we are lazy ✓ He should be charged in a court of law ✓ Majimbo should be introduced so that this people are kept quite	✓ This is a primitive person ✓ I would feel bad and provoked if I was a Luo ✓ I would take the person to court
"Kalonzo is lost, Kambas do not walk with uncircumcised men" **Njeru Ndwiga Minister for Cooperative Development**	✓ Isn't it true that Luos are uncircumcised? ✓ What is wrong in admitting that? ✓ In the traditional society, would you expect an uncircumcised man to lead you?	✓ He is trying to separate the two tribes ✓ I feel provoked and disrespected	✓ I would drive sense into his head! ✓ He should be denied all media access ✓ He should be given civic education
"Raila is a murderer because he participated in the 1982 coup where	✓ He is a honest person because Raila admitted to	✓ This will cause us hatred and violence ✓ The person should	✓ It can cause war in Kenya ✓ He should be

people lost their lives" **Kalembe Ndile, Minister for Wildlife and MP for Kibwezi**	participating in the coup ✓ Raila should be killed because people were killed during the coup ✓ It was meant specifically for Raila and not an entire ethnic group ✓ The statement will bring animosity between supporters of Raila and non supporters	be jailed ✓ This is definitely a Kikuyu, they are targeting us again	convicted in a court of law ✓ It can bring hostility in Kenya
"Raila ni shetani"(Raila is a devil" **Norman Nyaga, Government whip and MP for Kamkunji.**	✓ This is cheap politics and should not affect anyone ✓ Ignore the statement	✓ I feel abused ✓ The person should be arrested and charged ✓ I wish I could sort out the person plus his community, he should know what Luos are made of.	✓ The person should be excommunicated ✓ He needs civic education ✓ The statement might cause a very big war among different ethnic tribes
Tuhote nyamu ino iragira tugie na Katiba"(We should defeat this animal called Raila that is preventing us from getting a new constitution) **William Wambugu, Councillor Mukuru Ward**	✓ It targets a group of people that are not supporting the constitution but not a specific tribe ✓ Such statements would not have any impact on any one unless they its stupid ✓ The fellow is trying to pit one group against the other ✓ Raila is definitely fiery, he must be feared ✓ The person spoke the truth		✓ The government should stop him from addressing the public ✓ I don't mind since we won
Kenya inaongozwa na watoto wa shetani " Kenya is being led by children of the devil" Martin shikuku, **Former Butere MP**	✓ He should be denied public address ✓ This is a comment that would not affect ant specific tribe	✓ It will devastate us ✓ The person should not be allowed to lead people ✓ People should not allow him to talk	✓ The person should step down as a leader ✓ The person is hungry for leadership and is just using these

			language to win people politically
Wacha Mambo ya Tuju. Ni takataka sitaki kusema na ghasia mimi. Saa ile tunaonges mambo muhimu ya taifa, hatutaki kusikia mambo ya vinyangarike walienda hule Kilifi halafu yule msichana mrembeo tulitoa kule bomas walimpeleka Kule Kilifi na mzee moja akamchukua na kumbaka kule Kilifi" (Do not mention Tuju in my presence. he is rubbish, and I do not talk about trash. When we are talking about national issues, we should avoid talking about bodies… this people took a beautiful girl we nurtured at Bomas to Kilifi where an old man raped her) **Raila Odinga, MP Langata**	✓ He is selfish and biased ✓ He is targeting the ethnic groups that supported the Kilifi Draft ✓ This statement creates more animosity to the different ethnic tribes on the sides of the divide	✓ He meant to enlighten people ✓ It was a good statement because it enlightened us ✓ He should be advised not to insult anyone ✓ He spoke the truth ✓ He made a mistake as a leader and should apologize	✓ It was made out of disappointment ✓ Someone showed him disrespect ✓ He was provoked into saying that
Sisi hapa katika Orange, Raila, Balala, Nyong'o, na wengine ndio tuliweka Kibaki state house na siku hiyo alikuwa anapelekwa na wheel barrow… sema hii watu wengine ambao wan midomo inakaa namna hii(Kombo Komboa) (It is us here in ODM, Raila, Balala, Nyong'o and others who propelled Kibaki to state house when he was being wheeled around like a wheelbarrow. I say that Kenya is governed through the rule of law but this people with crooked mouths are ruling Kenyans with arrogance). **Hon William Ole Ntimama, MP Narok**.	✓ I would have him arrested for using bad language ✓ This is verbal assault and its against the law	✓ We applause him for talking the truth ✓ The person is talking the truth and I fear the government can finish him	✓ I would feel bad and provoked ✓ Advice the person to respect the president and use a better language ✓ The person should not be allowed to vie for any parliamentary seat

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2. 2. 7 General Conclusions of the Findings

- ✓ Despite the differences in regional representation the three communities almost exhibit the similar emotions when unsavoury language or hatred speech is made by politicians.

- ✓ Ideally all the communities agree that the statements incite feelings of animosity and whips up the need to address the bottled up emotions occasioned by these speeches

- ✓ While it is acceptable among the three communities that such utterances stirs ethnic animosity and most participants would rather avoid direct confrontation within communities, there is evidence of ethnic justification for some of the utterances. This is more evident with the Luo and Kikuyu communities. The Kalenjins however appear to be more reclined than these two dominant tribes. It is evident that whenever a Luo community leader is implicated in the hate speech or unsavoury statement, most of the participants in the group were quick to justify reasons behind the statement. The Kikuyu participants on the other hand, were quick to condemn the leader and vice versa. The Kalenjins participants were mostly non committal and appeared to have a more pacified approach to issues. Interestingly enough the Kalenjins participants come out more strongly to condemn speeches made by the Kikuyu community against the Luo and Kalenjin community than against unsavoury language levelled towards the Kikuyus and by the Luos.

- ✓ The Luo FGD on the other hand seem to get emotional, angered by comments from the Kikuyu community and seem to want to take action, including violent action against the Kikuyu community.

2.2.8 Findings: Control Group

The participants in the control group confirmed that they identify with their ethnic communities and identify members of other ethnic communities by their tribes. When

asked about their feelings towards other ethnic communities that live around them, the participants in the control group said they consider them as fellow Kenyans though under certain instances they may disagree on issues especially in politics. When asked whether the participants may have a problem sharing natural resources, social amenities like schools, health centres with members of other ethnic group, the participants responded that they do not have a problem in sharing these resources with other communities. However, they admitted that in times of scarcity members of different communities may get into conflicts especially with aggressive communities that do not like sharing resources; and also on instigation by politicians.

The participants in the control group said that whereas they do not have a problem having neighbours from other ethnic communities, they feared that in areas where people from different communities live, there are often tribal skirmishes or there is potential for this, especially after incitement by politicians. They however said that to a larger extent, they trust their neighbours except just before general elections when most people tend to be suspicious of members of other communities.

When asked whether they would be influenced to change your attitude or to feel differently if you heard a politician make utterances the are abusive, discriminative or demeaning to other ethnic communities, most participants admitted that there is a possibility they could be influenced, but it depends on what the politicians says and the truth in the matter. When asked to describe how they would feel and what would do if their communities were the target of hate speech and unsavoury language, they ruled out violence but admitted that they would be very angry and probably would be moved to hold demonstrations.

Given a chance participants in the control group said they would chase the person out of their territory. They said that hate speech and unsavoury language would

affect the attitude of the *mwananchi* towards other ethnic communities and breed ethnic animosity. When asked of their opinion of the likely of reactions of different communities when hate speech and unsavoury language is broadcasted on radio, they confirmed that hate speech on radio would definitely spur ethnic animosity and conflict if listened to over a long period of time. They called on the Government to set up accountable mechanism that would hear grievances from different communities about leadership issues, governance and violations of human rights since independence in order to understand the root cause of ethnic conflicts. The participants in the control group were convinced that the Government was not committed to routing out hate speech and unsavoury language, but instead was protecting individual within government who had previously incited hatred among Kenyans.

Summary of the findings from the Control Group

- Communities exhibit rationalized emotions/feeling on issues of ethnicity before exposure to hate speech and unsavoury language; and seem to be more tolerant of other communities, respecting their diversity and are eager to foster unity.

- Whether exposed to hate speech or not, the participants are convinced that hate speech and unsavoury language broadcasted on radio would spur ethnic animosity, hence the radio has a role in fuelling ethnic animosity

- The participants opined that the Government should do much more to reign in hate speech and unsavoury language

Chapter Six

6.0 Discussions on Research Findings

6.1 Introduction

The focus group research findings have significant implications for the numerous institutional and individual actors involved in Kenya's political scene. These implications and observations are summarized below. The implications result from an analysis of focus group transcripts. They are, therefore, not necessarily direct quotes from focus group transcripts.

6.2 Implications for Politicians

- While there has been increasing number of statements and a high level of interest in the hatred propaganda and unsavoury statements, the amount of accurate information available to the public has been very limited. The legislature will need to develop a public information strategy that will educate both the general public and leaders on the impact of hate speech.

- It is true that unsavoury language and use of hatred propaganda trigger feelings of ethnic animosity and hatred amongst different communities in Kenya. The participants clearly concur that such statements made against their leaders clearly touch on them as individuals. Political leaders are the people's representative and any abusive language used against them is clearly translated to ethnic abuse causing further dissent among the ethnic tribes of Kenya.

- There is high expectation from the people that their elected representatives will stop using inflammatory statements as well as using ethnic communities to fight political wars. This means that any future legislative body should allocate sufficient time and resources to elected representatives to hold some form of regular consultations with community members.

6.3 Implications for the Media

- The media has the responsibility to protect the public from inflammatory statements that fuel ethnic animosity in the country and promote peaceful coexistence among the different ethnic communities. However, it is evident from the study that media has not been impartial in its coverage of politics and this is made worse by coverage of ethnic instigated statements that psychologically and to some extent pitch one ethnic community against the other. There is need for a strategy to sensitize the media on the implications of covering and or promoting the use of statements that fan ethnic animosity among the different communities.

6.4 Implications for the Citizens

- While the participants were hesitant to engage in violence, it is clear that they are willing to defend their own through the ballot or through violence if need be. Kenyans are wary that continued used of such statements are bound to plunge the country into war.
- Kenyans have a right to reject leaders who utter inflammatory statements and as such, there is need for civic education to inform Kenyans on the need to disregard and condemn such statements both at the individual and national level. Kenyans need to demand from their leaders and the media that they are responsible both in public and outside, support national unity and deviate from divisive politics that will only plunge the country into mere anarchy.

6.5 Implications for Civic Education

- The Media network and coverage in Kenya is significant, both in urban and rural areas and is considered as one of the major sources of information on political news. Therefore responsible media reporting in the country would stem down the use of inflammatory statements in the country. There is need to mentor the media on the implications of reckless coverage of political statements that promote ethnic animosity amongst the citizenry.

6.6 Implications for Elections

- Participants are optimistic that they will vote, however the voting patterns from will be greatly determined by ethnic orientation of the voters. It is clear that the political class has done a good job from the referendum days to continually split the country along ethnic lines by their divisive campaign strategies. The statements issued by politicians against other leaders have only served to balkanise ethnicity even further. The need to identify with ones tribe has never been greater than now. It is most likely then that the socio economic gains made by the NARC government since 2002 are most likely to be lost in the wind of tribalism. The leaders that will be elected this year are more likely to be voted in along tribal lines other than performance records.

6.7 Implications for Legislation

- It was observed that there is no adequate legislation to address hate speech and unsavoury language as present legislation on the subject – Section 77(3)(e), is inadequate to properly prohibit hate speech, ethnic intolerance and ethnic animosity. The Penal Code section also focuses on controlling "subversive"

activities, in practice largely deemed to comprise activities in opposition to the government.

6.8 Implications for the Establishment of the Truth, Justice and Reconciliation Commission

- From the forgoing discussion on the role of radio in fuelling ethnic animosity, one would conclude that failure by the Government to address past human rights violations, including past ethnic clashes lies at the heart of the hate speech, negative ethnicity and could be the one of the causes of the recurring ethnic clashes in different parts of the country. It is possible to make a conclusion that so long as past violations of human rights have not been addressed, new ones will continue to emerge. Impunity needs to be addressed as a precondition for peaceful coexistence amongst ethnic communities in the county, hence the need for the establishment of the Truth, Justice and Reconciliation Commission.

Chapter Seven

7.0 Summary of the Findings, Conclusions and Recommendations

The key finding of this study are as follows:

- Hate speech and unsavoury language trigger feelings of animosity amongst ethnic communities in Kenya.

- Radio plays a big role in exciting and fuelling feelings of ethnic animosity amongst ethnic communities in broadcasting hate speech and unsavoury language.

- When ethnic animosity goes un-addressed it may lead to wide spread ethnic clashes.

- The media does is not adequately sensitized in its responsibility to protect the public against hate speech and unsavoury language. The media has not been impartial in its coverage of politics and this is made worse by coverage of ethnic instigated statements that psychologically that pitch one ethnic community against the other.

- Members of the public recognize that hate speech and unsavoury language is distasteful and dangerous but are willing to justify why their politicians use them.

- Whereas hate speech has led to loss of lives and destruction of property, the Government has not taken any actions to rein it in.

- The existing laws of subversion in the Penal Code are inadequate to properly prohibit hate speech and unsavoury Language.

7.2 Conclusion

The study makes following conclusions

a. Hate speech and unsavoury language used during the 2005 Referendum on the Constitution of Kenya triggered feelings of animosity amongst ethnic communities.

b. Radio plays a big role in inciting and fuelling feelings of ethnic animosity amongst ethnic communities when hate speech and unsavoury language is broadcasted.

c. When hate speech goes unaddressed for a long period of time, it may result into widespread ethnic conflicts broadly speaking.

d. Whereas hate speech has led to loss of lives and destruction of property, the Government has not taken any actions to rein it in.

7.3 Recommendations

To foster national unity, promote ethnic and cultural diversity, democracy and preserve public order, this study recommends that:

- The Kenyan Parliament should first and foremost pass the 'Prohibition of Hate Speech Bill' recently presented to parliament by the KNCHR and the Kenya Law Reform Commission, amongst other stakeholders. The legislation would foster national unity by promoting responsible exercise of the freedom of expression in political and other public discourse;

- The media should exercise greater social responsibility in the coverage of its reports to protect the public from hate speech and unsavoury language. The media instead should promote peaceful coexistence among the different ethnic communities in the country by exercising its watchdog role with greater objectivity and social responsibility, and adhere to journalistic code of ethics.

- A strategy should be put in place by the KNCHR and civil society groups to sensitize the media on the implications of covering and or promoting the use of statements that fan ethnic animosity among the different communities.

- Politicians should be sensitized to learn that the public, especially their supporters, take cue from them, hence the need for greater social responsibility. With the kind of language used by politicians, it is of little surprise that our country is bedevilled with violence, crime and intolerance- both political and personal.

- Before the bill on the prohibition of hate speech is passed in parliament the Electoral Commission of Kenya (ECK) needs to use the provisions against incitement to violence, in the Penal Code, the Electoral Code of Conduct and provisions against discrimination in the Constitution of Kenya to prosecute and/or bar leaders who use hate speech, unsavoury language in the campaigns against contesting for elections.

- NGOs, the Government, the National Commission on Human Rights and other stakeholders should invest in increased civic education to promote national integration and to sensitize Kenyans on the need to shun tribalism, tribal leaders and condemn hate speech at all costs. Kenyans need to be sensitized to demand greater accountability and from their leaders and the media, support national unity and deviate from divisive politics that will only plunge the country into mere anarchy.

- Civil society and other actors should keep the momentum for public demand for the establishment of the Truth Justice and Reconciliation Commission (TJRC) as had been recommended by the 2003 Makau Task Force for the establishment of the Truth, Justice and Reconciliation Commission (TJRC). This will enhance better accountability in promoting transitional justice and build on the fight against tribalism and negative ethnicity.

Chapter 8

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9.0 Appendices

;ix: A: Tested Statements

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_umcision" **Simeon Nyachae, energy minister and MP for Nyaribari Chache**

' Raila the monster should be hit on the head and killed so as not to destabilize the Kibaki

Government"

William Wanbugu, Councillor Mukaru ward

There are two arch enemies in Kenya today, Raila and Kalonzo" Then he led a crowd in

exorcizing the two) Raila Ashindwe (down with Raila). Kalonzo ashindwe(down with Kalonzo

SM Wambugu, Councillor Nyeri

Wakisimaisha pension ya Moi, then Wakalenjin na wakamba watavamia statehouse(If they

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"Central province has been allocated the highest amount of money in roads and water, you

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"Kalonzo is lost, Kambas do not walk with uncircumcised men"

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Appendix B: Facilitators Guide One

Questions for the FGDs
1. How can you describe the character of the person who said this? 2. Do you think this statement was made by a political leader or an ordinary *mwananchi?* 3. What difference does it make if it was made by a political leader or an ordinary *Malachi?* 4. To what group of people do you think it was made? 5. Assume you belong to the tribe mentioned above.... How would you feel? 6. How do you think people in this feel?

7. State community mentioned above feel about this?

8. How would you feel even if you do not belong to the community mentioned above?

9. If given a chance, what would you do to this particular person?

10. How does this line of thinking affect the attitude of a Kenyan man?

11. What do you think would be the reactions of different communities when such utterances are broadcasted live on radio?

12. What is likely to happen when people of different ethnic communities listen to such hate speech and unsavoury language repeatedly broadcasted on radio for long periods of time?

13. In your opinion, what are the likely consequences if hate speech and unsavoury language goes unaddressed for along periods of time?

14. To what extend in your opinion is the government committed to addressing hate speech and unsavoury language?

15. What should be done to curb the spread of hate speech and unsavoury language?

Appendix Three Facilitators Guide Two

Questions for the Control Group

1. Do you identify people by their communities or identify your self with your community?

2. What are your feelings towards other ethnic communities that live around you?

3. Do you have a problem sharing natural resources, social amenities like schools, health centres with members of other ethnic group?

4. Who are your neighbours? Do you mind having a neighbour who is not from your ethnic community?

5. Do you think you would be influenced to change your attitude or to feel differently if you heard a politician make utterances are abusive, discriminative or demeaning to other ethnic communities?

6. What if your community is the one that was being targeted by the politician, how would you feel? What would you do?

7. If given a chance, what would you do to this politician?

8. How does this line of thinking affect the attitude of a Kenyan man?

9. If given a chance, what would you do to this particular person?

10. How does this line of thinking affect the attitude of a Kenyan man?

11. What do you think would be the reactions of different communities when hate speech and unsavoury language is broadcasted on radio?

12. What is likely to happen when people of different ethnic communities listen to such hate speech and unsavoury language repeatedly broadcasted on radio?

13. In your opinion, what are the likely consequences if hate speech and unsavoury language goes unaddressed for along periods of time?

14. To what extend in your opinion is the government committed to addressing hate speech and unsavoury language?

15. What should be done to curb the spread of hate speech and unsavoury language?