

**UNIVERSITY OF NAIROBI.**  
**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES.**

**THE ROLE OF PROVINCIAL ADMINISTRATION IN  
MANAGING CONFLICTS IN KENYA, (1963-2010).**

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**R50/63650/2010.**

**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF  
THE AWARD OF THE MASTER OF ARTS IN INTERNATIONAL  
CONFLICT MANAGEMENT.**

**SEPTEMBER 2013.**

## DECLARATION

This research project is my original work and has not been presented for a degree in any other university.

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Nina Tumaini W. Kinyua.

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Date.

This research report has been submitted for approval as the university supervisor, Prof. Maria Nzomo approves that this report has been brought for approval and is valid.

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Prof. Maria Nzomo.

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Date.

## **DEDICATION**

I dedicate my project to my late father who passed on the 21<sup>st</sup> of September 2009. Dear papa you may not be here with me physically but you are alive in my heart and I especially dedicated this project in commemoration of you, you loving daughter who is yet to be a master's holder and will hopefully move on to make you proud. You are dearly missed.

## **ACKNOWLEDGEMENT**

My sincere gratitude goes to God for giving me the strength, guidance, health, wisdom and above all patience and perseverance to finish my project.

I express my indented gratitude to the following people:

My mother for being my pillar and reality check in constantly reminding me to finish my project,

My elder brother and younger sister for their moral support,

My supervisor Prof Maria Nzomo for her guidance and words of wisdom in correcting my mistakes as well as enlightening me on the way forward into successfully finishing my project,

Finally to all my classmates of M.A ICM class of 2010 for their moral support and togetherness in finishing my project.

## ABSTRACT

The purpose of the research project was to investigate on the role of the provincial administration in managing conflicts in Kenya. The study was selected because of the maladaptive behavior commonly portrayed by the provincial administration where there has been a lack of an institutionalized framework and a co-ordinated approach to managing conflicts that can best be followed by the security forces. As a result, most actors engage on adhoc basis and with interventions that are reactionary in nature. The study looked at the following aspects:

- What role has the provincial administration played in Kenya? This was in terms of the district commissioners if they knew on what conflict is and how well they were involved in managing the conflicts.
- How have government policies and legislation affected conflict management in Kenya? This was meant to look at have these policies and regulations escalated or deescalated conflict interventions strategies by the provincial administration.
- On clearly formulated polices and legislative laws that best address conflict management in Kenya.
- What were the possible solutions given to the factors that were contributing to inefficiency into reactionary nature of conflict interventions by the security forces in Kenya?

The methods employed in this study are based on both primary and secondary data analysis. Interviews were conducted on five district commissioners who served in both president Moi's

regime and Kenyatta's regime to give a comparative analysis in chapter four. The study subjects consisted of 5 respondents. The researcher administered the questions personally.

After a critical examination of the findings from the interview it was discovered that the provincial administration as a department within the office of the president, has on many occasions been used to enforce executive decisions without question even when those orders were detrimental to the public interest. This upward accountability mechanism was exploited by the executive to suppress those opposed to its policies and programmes. Consequently in the eye of an ordinary Kenyan the history of the provincial administrators personifies repression, dictatorship, impunity and authoritarianism.

It was concluded that The future role of the PA can be deduced from clause 3 of Article 186, of the 2010 constitution which states that "a function or power not assigned by this 2010 Constitution or national legislation to a county is a function or power of the national government" (Republic of Kenya – Constitution, 2010: Article 119). Given that the central government administrators (CGAs) at the district level will continue to supervise central government employees, they will need to learn how to manage a "picket-fence" intergovernmental relationship.

"Picket-fence" intergovernmental relationships refer to an administrative arrangement between employees from different levels of government working on a similar policy issue, for example education specialists, who find it necessary to work together to solve a common problem. Although Article 186 may be prone to future contestation for its lack of specificity, it ideally strengthens the administrative arm of the central government on matters not assigned to county governments, however local those issues may be and unless the national assembly legislates

otherwise. In the absence of such national legislation, the PAs will be vital in undertaking such matters on behalf of the central government.

For the latter to succeed, the PA must be structured as the nerve-centre for the coordination of issues between the central and county governments. The critical role played by PA officials cannot simply be wished away. Perhaps to the surprise of many, the role of a PA under the 2010 Constitution has been enhanced, made complex and indeed become more necessary than before.

With regard to its enhancement, the PA must serve as the nexus between the national government and the county governments' political class and their bureaucracies. PA officials will not only need to enforce national legislations, but they will also be required to understand, interpret and inform the central government of the implications of county legislations on national development goals and vice versa.

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## **ACRONYMS**

AU – African Union.

BP – Besieged Populations.

CEWARN- Conflict Early Warning and Response Mechanism.

CDF- Constituencies Development Fund.

CIPEV – Commission of Inquiry into Post Election Violence.

CGA – Central Government Administrators.

CSOs – Civil Society Organizations.

COPA – coalition for peace in Africa.

DC – District Commissioner.

DFID – Department for International Development.

DO – Divisional Officer.

DPC – District Peace Committee.

EAC – East African Community.

ECK – Electoral Commission of Kenya.

ERS – Economic Recovery Strategy for Wealth and Employment.

FORD – Forum for the Restoration of Democracy.

GEMA – Kikuyu –Embu-Meru Association.

GOK – Government of Kenya.

GSU – General Service Unit.

IBAR – Inter African Bureau for Animal Resources.

IBEACo – Imperial British Company.

IDPs – Internally Displaced Persons.

IPPG – Inter Party Parliamentary Group.

KADU – Kenya African Democratic Union.

KANU – Kenya National African Union.

KPU – Kenya’s People Union.

KNFP – Kenya National Focal Point on Small Arms and Light Weapons.

LNCs – Local Native Council.

MP – Member of Parliament.

NACADA – National Agency for the Campaign against Drug Abuse.

NARC – National Rainbow Coalition.

NARA – National Accord and Reconciliation act.

NCCCK – National Council of Churches of Kenya.

NSC – National Steering Committee.

NPPBCM – National Policy on Peace Building and Conflict Management.

NGO – Non-Governmental Organizational.

PA - Provincial Administration.

PC – Provincial Commissioner.

PEV – Post Election Violence.

RFF – Rapid Response Initiatives.

SALW – Small Arms and Light Weapons.

SUPKEM – Supreme Council of Kenya Muslims.

UNDP – United Nations Development Programme.

USAID – United States Agency for International Development

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

The search to find new and more effective ways of resolving conflicts is a major preoccupation in today's world, Kenya included. Conflict resolution and transformation have enjoyed increasing attention in research and policy discourse dealing with the dynamics of contemporary conflict. The nexus between political, security, economic, social, legal, and environmental factors in conflict have played a defining role in the country's conflict transformation process during the 1990s and early 2000. <sup>1</sup>An understanding of the dynamics of conflict in Kenya is necessary if we are to determine the most appropriate means of mobilizing early responses to violent conflicts in the country.

This requires knowledge of conflict issues and their causes, durations of conflict (short-lived, sporadic or protracted) and attentiveness to the identities, interests and concerns of actors among other factors. Most broadly, violent conflicts in Kenya can be said to be directly linked to factors that contribute to the escalation of conflict which can be categorized as structural factors, accelerators, and triggers. Theories on how and why violent conflicts occur distinguish between structural factors on the one hand, and accelerating or triggering factors on the other. Conflict analysis is the systematic study of the profile, causes, actors, and dynamics of conflict. It helps

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<sup>1</sup> Follett, M. P. (1940). Constructive conflict. In H. C. Metcalf & L. Urwick (Eds.), *Dynamic administration: The collected papers of Mary Parker Follett* (pp. 30-49). New York: Harper & Row. (originally published 1926)

development, humanitarian and peace building <sup>2</sup>organizations to gain a better understanding of the context in which they work and their role in that context.

Structural factors, which must be viewed on a long-term horizon, are those which create a potential climate for violent conflict without, however, making its eruption inevitable. They include such interrelated political, social and economic factors as population density, the level and distribution of wealth and opportunity, the state of the resource base, the structure and ethnic make-up of society, and the history of inter-group relations. Certain patterns of socio-economic organization can result in a high degree of vulnerability to conflict<sup>3</sup>. For instance, a politically-dominant group controls the state and access to wealth, education and status, often suffer from a high-degree of vulnerability to conflict.

Accelerating or triggering factors are the events, actions and decisions which result in the escalation of disputes into violent conflict. Since triggering factors depend heavily upon the specific context, it is not possible to list them systematically. Some examples include: economic decline, changes in the degree of internal state cohesion; shifts in internal control of the central authority, including the military; change in the internal distribution of power, including access to

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<sup>2</sup> Jehn, K. A. (1995). A multimethod examination of the benefits and determinants of intergroup conflict. *Administrative Science Quarterly*, 40, 256-282.

<sup>3</sup> Behfar, K. J., Peterson, R. S., Mannis, E. A., & Trochim, W. M. K. (2008). *The critical role of conflict resolution in teams: A close look at the links between conflict type, conflict management strategies, and team outcomes*. *Journal of Applied Psychology*, 93, 170-188.

government power and privilege; shipments of (small) arms; interventions of neighboring states, regional powers and organizations; and large movements of people and capital. <sup>4</sup>

The Phases and Dynamics of Conflict is not a static, unchanging state of affairs but rather a dynamic process.

While distinct phases can be distinguished, they do not necessarily follow a sequential pattern. A combination of factors will generally determine whether a conflict escalates or recedes. Hence, the passage from one phase to another is not necessarily the result of a single event or factor at the exact moment of transition. Notwithstanding the diversity of the causes and escalators of conflict, almost all crises can usefully be subdivided into four main, difficult to separate phases, as follows: i. Situations of submerged tensions; ii. Situations of rising tensions; iii. Eruption phases of open confrontation and violent conflict; iv. Fragile transitional and post-conflict situations<sup>5</sup>

## **1.2 Statement of the Problem**

When responding to conflicts a fundamental problem in Kenya has been lack of an institutionalized framework and a co-ordinated approach to managing conflicts that can best be followed by the security forces. As a result, most actors engage on ad hoc basis and with interventions that are reactionary in nature. Lack of norms, values and principles to guide interventions methods which are reactionary in nature, have in certain situations exacerbated conflicts. This has led to bad governance, where the government security systems have failed to

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<sup>4</sup> Bodtker, A. M., & Jameson, J. K. (2001) *Emotion in conflict formation and its transformation: Application to organizational conflict management*. The International Journal of Conflict Management, 3, 259-275.

<sup>5</sup> Wall, V. D., Jr., & Nolan, L. L. (1986). *Perceptions of inequity, satisfaction, and conflict in task in task-oriented groups*. *Human Relations*, 39, 1033-1052.



come up with well trained officers and a clear guideline on how best to intervene in conflicts before the situation is too bad.<sup>6</sup>

In Kenya the security forces always intervene when it's too late and this has seen the people lose faith in the security system of Kenya and found arms for themselves i.e. guns, crude weapons to defend themselves hence the conflict escalates and the rule of law is not followed. There is selective justice all over the country of Kenya and the government has commercialized security for their own interests, whether financial or political.

This is evident where even reported cases are not followed up and criminals are reportedly set free. Politically-dominant groups which control the state and access to wealth, education, justice and status, often suffer from a high-degree of vulnerability to conflict occurs in the country.

This study therefore seeks to examine peaceful, participatory and equitable ways to intervene in conflict situations with the view to allow for more secure access to better use of natural resources and conservation of the environment. This can be enhanced by developing and implementing effective approaches, methods and tools to manage and resolve conflicts by the PA; by way of example training and educating the security personnel on effective approaches to intervene in conflict situations.

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<sup>6</sup> Huo, Y. J., Molina, L. E., Sawahata, R., & Deang, J. M. (2005). *Leadership and the management of conflicts in diverse groups: Why acknowledging versus neglecting subgroup identity matters*. *European Journal Of Social Psychology*, 35(2), 237-254. doi:10.100

### **1.3 Objectives of the Study**

- To evaluate the role of the provincial administration in Kenya.
- To analyze how the government policies and legislation affect conflict management in Kenya.
- To analyze the lack of proper institutionalized and coordinated management frameworks for conflict management by institutions.
- To suggest possible solutions.

### **1.4 Literature Review.**

Literature review will contain four sections namely: 1.the concept of conflict and its management which explains on what conflict is and its understanding into its management, 2. causes of conflict, 3. Conflict factors this explains on the issues that cause conflict, 4 theoretical frameworks.

#### **1.4.1 The concept of conflict and conflict management.**

Conflict may be defined as a struggle or contest between people with opposing needs, ideas, beliefs, values, or goals.

Conflict on teams is inevitable; however, the results of conflict are not predetermined. Conflict might escalate and lead to nonproductive results, or conflict can be beneficially resolved and lead to quality final products. Therefore, learning to manage conflict is integral to a high-performance

team. Although very few people go looking for conflict, more often than not, conflict results because of miscommunication between people with regard to their needs, ideas, beliefs, goals, or values.

Conflict management is the principle that all conflicts cannot necessarily be resolved, but learning how to manage conflicts can decrease the odds of nonproductive escalation. Conflict management involves acquiring skills related to conflict resolution, self-awareness about conflict modes, conflict communication skills, and establishing a structure for management of conflict in your environment. Smith, K.A. (2000).<sup>7</sup>

Conflict management involves implementing strategies to limit the negative aspects of conflict and to increase the positive aspects of conflict at a level equal to or higher than where the conflict is taking place. Furthermore, the aim of conflict management is to enhance learning and group outcomes that is effectiveness or performance in organizational setting. (Rahim, 2002, p. 208).<sup>8</sup>It is not concerned with eliminating all conflict or avoiding conflict. Conflict can be valuable to groups and organizations. It has been shown to increase group outcomes when managed properly (e.g. Alper, Tjosvold, & Law, 2000; Bodtker & Jameson, 2001; Rahim & Bonoma, 1979; Khun & Poole, 2000; DeChurch & Marks, 2001).<sup>9</sup>

#### **1.4.2 Conflict Resolution vs. Conflict Management.**

As the name would suggest, conflict resolution involves the reduction, elimination, or termination of all forms and types of conflict.

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<sup>7</sup> Ibid pp. 67

<sup>8</sup> Rahim, M. A. *Toward a theory of managing organizational conflict*. The International Journal of Conflict Management (2002), 13, 206-235.

<sup>9</sup> DeChurch, L. A, & Marks, M. A. maximizing the benefits of task conflict: The role of conflict management. The International Journal of Conflict Management, (2001) 12, 4-22.

In practice, when people talk about conflict resolution they tend to use terms like negotiation, bargaining, mediation, or arbitration. In line with the recommendations in the "how to" section, businesses can benefit from appropriate types and levels of conflict. That is the aim of conflict management, and not the aim of conflict resolution. Conflict management does not necessarily imply conflict resolution.

“Conflict management involves designing effective macro-level strategies to minimize the dysfunctions of conflict and enhancing the constructive functions of conflict in order to enhance learning and effectiveness in an organization” (Rahim, 2002, p. 208)<sup>10</sup>. Learning is essential for the longevity of any group. This is especially true for organizations; Organizational learning is essential for any company to remain in the market. Properly managed conflict increases learning through increasing the degree to which groups ask questions and challenge the status quo (Luthans, Rubach, & Marsnik, 1995).

### **1.4.3 Early Conflict Management Models.**

Blake and Mouton (1964) were among the first to present a conceptual scheme for classifying the modes for handling interpersonal conflicts into five types: forcing, withdrawing, smoothing, compromising, and problem solving.

In the 1970's and 1980's, researchers began using the intentions of the parties involved to classify the styles of conflict management that they would include in their models.

Both Thomas (1976) and Pruitt (1983) put forth a model based on the concerns of the parties involved in the conflict. <sup>11</sup>The combination of the parties concern for their own interests and their

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<sup>10</sup> Ibid pp. 208

<sup>11</sup> Thomas, K. W. *Conflict and conflict management*. In M. D. Dunnette (Ed.), *Handbook in industrial and organizational psychology* (Chicago: Rand McNally.1976). pp. 889-935.

concern for the interests of those across the table would yield a particular conflict management style. Pruitt called these styles yielding, inaction, and contending. Pruitt argues that problem-solving is the preferred method when seeking mutually beneficial options.

#### **1.4.4 Khun and Poole's Model.**

Khun and Poole (2000) established a similar system of group conflict management. In their system, they split Kozan's confrontational model into two sub models: distributive and integrative.<sup>12</sup>

Distributive - Here conflict is approached as a distribution of a fixed amount of positive outcomes or resources, where one side will end up winning and the other losing, even if they do win some concessions.

Integrative - Groups utilizing the integrative model see conflict as a chance to integrate the needs and concerns of both groups and make the best outcome possible. This model has a heavier emphasis on compromise than the distributive model. Khun and Poole found that the integrative model resulted in consistently better task related outcomes than those using the distributive model.

#### **1.4.5 DeChurch and Marks's Meta-Taxonomy.**

DeChurch and Marks (2001) examined the literature available on conflict management at the time and established what they claimed was a "meta-taxonomy" that encompasses all other models.

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<sup>12</sup> Kuhn, T., & Poole, M. S. (2000). Do conflict management styles affect group decision making? *Human Communication Research*, 26, 558-590.

They argued that all other styles have inherent in them into two dimensions - activeness and agreeableness. High activeness is characterized by openly discussing differences of opinion while fully going after their own interest. High agreeableness is characterized by attempting to satisfy all parties involved<sup>13</sup>

In the study they conducted to validate this division, activeness did not have a significant effect on the effectiveness of conflict resolution, but the agreeableness of the conflict management style, whatever it was, did in fact have a positive impact on how groups felt about the way the conflict was managed, regardless of the outcome.<sup>14</sup>

#### **1.4.6 Rahim's Meta Model.**

Rahim (2002) noted that there is agreement among management scholars that there is no one best approach to how to make decisions, lead or manage conflict. In a similar vein, rather than creating a very specific model of conflict management, Rahim created a meta-model for conflict styles based on two dimensions, concern for self and concern for others

Within this framework are five management approaches: integrating, obliging, dominating, avoiding, and compromising. Integration involves openness; exchanging information, looking for alternatives, and examining differences so solve the problem in a manner that is acceptable to both parties. Obliging is associated with attempting to minimize the differences and highlight the commonalities to satisfy the concern of the other party.<sup>15</sup>

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<sup>13</sup> Ibid pp. 43

<sup>14</sup> Kozan, M. K. (1997) Culture and conflict management: A theoretical framework. *The International Journal of Conflict Management*, 8, 338-360.

<sup>15</sup> Ibid pp.220

When using the dominating style one party goes all out to win his or her objective and, as a result, often ignores the needs and expectations of the other party. When avoiding a party fails to satisfy his or her own concern as well as the concern of the other party.

Lastly, compromising involves give-and-take whereby both parties give up something to make a mutually acceptable decision. (Rahim, 2002).<sup>16</sup>

#### **1.4.7 Causes of conflict.**

Five situations lead to conflict in Kenya. They can be generalized into 1. Ethnicity and politics, 2. Socio-cultural factors, 3. The legal causes, 4. Structural drivers of conflict and 5. Economic causes of conflict.

##### **1. Ethnicity and politics.**

The centrality of ethnicity and its politicization in conflict is believed by Kenyans that Kenyan politics is influenced by ethnicity which is a strong cause of conflict in Kenya. Politics is the fulcrum around which all the other forms of conflicts are anchored, although there is great interplay among politics, legal, security, economic and environmental factors.<sup>17</sup>

Ethnicity has been politicized by elites who are accused of sowing divisions. Formations of ethnic alliances, politicizing the formation of electoral and administrative units, and electoral violence have been major aspects of ethnic dimensions of political conflicts. Majimbo rhetoric during elections has been known to feed conflict, while creation of counties is bound to create new fronts for conflict. For instance, in Transmara, there is a persisting concern that the battle for political dominance between the Masai and Kipsigis groups might fester into worse conflict.

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<sup>16</sup> Ibid pp.230

<sup>17</sup> Jehn, K. A. (1997). A qualitative analysis of conflict types and dimensions of organizational groups. *Administrative Science Quarterly*, 42, 530-557.

Further, marginalization of communities has fed apathy, particularly in the predominantly pastoralist Northern Kenya.<sup>18</sup>

In this way, the state has been an instrument of balkanization through the personalization of political power. Worse still, there is the weakness of the political party system, characterized by poor internal party democracy, defections and wrangles further foment conflict.

Parties' alliance-seeking habits, often informed by ethnic calculations, cement a divisive and conflict-generating political dispensation. Incitement and propaganda be it in political or localized intergroup dynamics, is also viewed to be contributing to conflict.

## **2. Socio-cultural factors.**

Socio-cultural factors contributing to conflict include the predominant view that ethnic and clan differences contribute to conflict. This is reinforced by the fact that ethnicity has dictated most facets of Kenyan life, such as resource allocation and politics. Another cause of conflict with strong sociocultural linkages is the practice of livestock raiding or cattle rustling Cattle rustling is another significant conflict trigger, especially among pastoralist groups.<sup>19</sup>

## **3. The legal causes.**

In legal terms, law can act as both a cause and trigger of conflict. As a cause, law and the application of the law engender conflict by commission as well as by omission. There may exist deficient legal provisions that are manifestly unjust and perpetuate conflicts.

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<sup>18</sup> Rahim, M. A., & Bonoma, T. V. (1979). Managing organizational conflict: A model for diagnosis and intervention. *Psychological Reports*, 44, 1323-1344

<sup>19</sup> Lang, M. (2009). Conflict management: A gap in business education curricula. *Journal of Education for Business*, 84(4), 240-245.



More often, however, legal provisions indirectly contribute to conflict by omission, by a failure to apply legal provisions, the limited scope of legal provisions, or their absence all together.

A history of impunity makes it difficult to differentiate between the failings of the legal system and the bureaucratic authoritarianism characterized by corruption and patrimonialism. For example, the government decided to establish a settlement scheme in the Nakuru/Engurone/Kiptagich extension forest area to resettle the Ogiek people who had previously been evicted from their customary landholding, which had been gazetted as forest.<sup>20</sup> However, in establishing the settlement scheme, the provisions of the Forest Act were not adhered to. It illustrates how the law can be manipulated to enhance certain interests, the result of which is the production or perpetuation of conflict.

#### **4. Structural drivers of conflict.**

Structural factors, which must be viewed on a long-term horizon, are those which create a potential climate for violent conflict without, however, making its eruption inevitable. They include such interrelated political, social and economic factors as population density, the level and distribution of wealth and opportunity, the state of the resource base, the structure and ethnic make-up of society, and the history of inter-group relations. Certain patterns of socio-economic organization can result in a high degree of vulnerability to conflict.<sup>21</sup> For instance, a politically-dominant group controls the state and access to wealth, education and status, often suffer from a high-degree of vulnerability to conflict.

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<sup>20</sup> De Dreu, C. K. W. & Weingart, L. R. (2003) Task versus relationship conflict, team performance, and team member satisfaction: A meta-analysis. *Journal of Applied Psychology*, 4, 741-749.

<sup>21</sup> Bodtker, A. M., & Jameson, J. K. (2001) Emotion in conflict formation and its transformation: Application to organizational conflict management. *The International Journal of Conflict Management*, 3, 259-275.

## **5. Economic causes of conflict.**

Economic drivers of conflicts include poverty and inequality, unemployment, land and competition for scarce resources. However poverty is viewed to be a major cause of conflict.

### **1.4.8 Factors driving conflict**

Conflicts occur due to economic, environmental, legal, political and social factors are either micro (case-specific) or macro (national) level. These conditions influence how conflicts are formed and manifested, and whether they can be sustainably managed.

In the framework of managing natural resources and their use, conditions at the micro and macro levels promote community-based NRM (Castro and Nielsen 2003).<sup>22</sup>

The various elements of these principal conditions are interrelated in several ways. However, it is important to look at each of the conditions separately. The economic causes of natural resource conflicts include the economic status of the parties in conflict, the value associated with access to or use of the natural resource, and the monetary value associated with its products and services. As markets expand into rural and remote areas, resource-dependent communities in this area are feeling the impact of economic policies. For example, the market value for wildlife tourism services often generates new interest in the resource base.

These changes are however not always beneficial and can cause previously harmonious practices in resource management and use to become incompatible and conflicting (Castro and Nielsen 2003).

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<sup>22</sup> Rahim, M., Antonioni, D., & Psenicka, C. (2001). A structural equations model of leader power, subordinates' styles of handling conflict, and job performance. *International Journal of Conflict Management*, 12(3), 191.

<sup>23</sup>The social setting is important in conflict management since the approach is based on building relationships and promoting dialogue and information exchange between parties in conflict. The social setting is even more important when considering conflicts in forestry and wildlife management since local communities and groups involved in activities to manage these resources are often given scant social recognition.

In conflict management, the social setting reveals the existing and possible alliances, power distribution, potential social repercussions and the impact of the selected process on existing social equilibrium (Kameri-Mbote and Oduor 2007).<sup>24</sup>

Socio-cultural factors contributing to conflict include the predominant view that ethnic and clan differences contribute to conflict. This is reinforced by the fact that ethnicity has dictated most facets of Kenyan life, such as resource allocation and politics.

### **1.5 Theoretical framework**

The theory of realism is the centre of this study. The theory states that in the international system is in a constant state of anarchy. There is no actor above states capable of regulating their interactions; states must arrive at relations with other states on their own, rather than it being dictated to them by some higher controlling entity. In pursuit of national security, states strive to attain as many resources as possible.

The overriding 'national interest' of each state is its national security and survival. Relations between states are determined by their levels of power derived primarily from their military and economic capabilities.<sup>25</sup>

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<sup>23</sup> Schaller-Demers, D. (2008). Conflict: A Catalyst for Institutional Change. *Journal of Research Administration*, 39(2), 81-90.

<sup>24</sup> Baumeister, R.F., & Vohs, K.D. (2007). "Realistic Group Conflict Theory". *Encyclopedia of Social Psychology* 2: 725-726.

The interjection of morality and values into international relations causes reckless commitments, diplomatic rigidity, and the escalation of conflict. Sovereign states are the principal actors in the international system and special attention is afforded to large powers as they have the most influence on the international stage. International institutions, non-governmental organizations, multinational corporations, individuals and other sub-state or trans-state actors are viewed as having little independent influence. This study utilizes Warner (2004b) and Zeitoun's (2007) clarification of conflict intensity.<sup>26</sup>

Their work is based on that of Copenhagen School (Buzan et al. 1998) and Neumann (1998)<sup>27</sup> regarding security. To be more specific, as issues become more of a threat to the state, they are prioritized in the national agenda, thus receiving more attention and attracting allocations of various state resources. Issues that do not concern the state, or issues that are not in the public domain, are '*non-politicized*' issues. Once it gains a place on the political agenda, the issue is '*politicized*'. The issue is then "part of public policy, requiring government decision and resource allocation" (Buzan et al. 1998:23).<sup>28</sup>

From the realism theory there is the development of the Realistic conflict theory (RCT), or realistic group conflict theory (RGCT) is a social-psychological model of conflict. The theory explains that intergroup (Sedanius&Pratto1999) hostility arises as a result of conflicting goals and competition over limited resources (W.1993.Sedanius& Pretto1999).

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<sup>25</sup> Jackson, Jay W (1993). "Realistic group conflict theory: A review and evaluation of the theoretical and empirical literature". *Psychological Record* 43 (3): 395-415.

<sup>26</sup> Ibid pp. 310

<sup>27</sup> Ibid pp. 23

<sup>28</sup> Ibid pp. 78

Groups may be in competition for a real or perceived scarcity of resources such as money, political power, military protection, or social status (W. Jay 1993).

Feelings of resentment arise because groups see the competition over resources as having a zero-sums fate, in which only one group is the winner and the other, loses (Vohs 2007). The length and severity of the conflict is determined by the perceived value and shortage of a given resource.

According to realistic conflict theory, positive relations can be restored only if super ordinate goals, or goals that can only be achieved through the combined efforts of both groups, are in place. (W.JAY 1993) <sup>29</sup>

## **1.6 Justification of the Study**

Conflicts are a challenge to achieving participatory resource management and sustainable livelihoods. Rising tensions and disputes undermine formal and informal institutions and rules that govern resource use, resulting in environmental degradation and economic decline.

Poor households are especially vulnerable to these shocks, and the entire society's way of life is disrupted if conflicts escalate and violence erupts. The merging of resource conflicts into wider, destructive social conflicts results in collapsed production systems, uprooted communities and chronic insecurity. Managing and resolving conflicts in a peaceful, participatory and equitable way allows for more secure access to and better use of natural resources<sup>30</sup>. The capacity of communities, resource managers and policymakers to address resource conflicts can be enhanced

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<sup>29</sup> Ibid pp. 45

<sup>30</sup> Ibid pp. 87

by developing and implementing effective approaches, methods and tools to manage and resolve them. This study may also be justified on both academic grounds and policy.

On academic grounds, the study represents a modest attempt to understand the role of Provincial Administration in the conflict management process in Kenya. Scholars have written a lot on the provincial administration in Kenya.

For instance, Oyugi (1986) addressed the administration of development by the provincial administration from the perspective of attempted decentralization. He had earlier discussed the administration of development from the perspective of popular participation in planning for rural development, in Leonard (1974).

Other scholars include: Gertzel, (1970), with a focus on the inherited institutional role of Provincial Administration, Anangwe (1994) from the perspective of civil service, Barkan (1984 and 1994) from the public policy versus politics perspective, and Uma Lele (1979) from the perspective of nationally planned rural development strategies<sup>31</sup>.

However, these scholars have not addressed the role of Provincial Administration in the conflict management process in the new context that has emerged recently and also a growing trend of similar roles being performed by other actors.

### **1.7 Hypothesis of the study**

- If a well formed institutionalized framework can be adopted in conflict management then adhoc and reactionary approaches of conflict management are likely to decrease.

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<sup>31</sup> Ibid pp. 45

- If clear policies and legislative laws are formulated then conflict management in Kenya by the PA would be peaceful and participatory in nature will increase.
- If the security personnel are properly trained to intervene in conflict situation then reactionary nature interventions methods will decrease.

## **1.8 Study Methodology**

The methods employed in this study are based on both primary and secondary data analysis. There will be interviews conducted on five district commissioners who have served in both president Moi's regime and Kenyatta's regime to give a comparative analysis for chapter four.

The principal sources of data are documents and academic literature. These include books, articles, media publications, and different reports. In order to strengthen aspects of the data provided by these writings, Materials for literature review will be drawn from libraries and archives in Kenya, academic and other resources available on the Internet, and local publications purchased and borrowed in the course of the study.

The study will also borrow a lot from the report findings of field assignment of actual work done by the provincial administration personnel while on duty in designated areas of the country. There will also be the use of journals, publications written on the provincial administration from non-governmental organizations and commissions like the Kenya national human rights commission.

## **Chapter Outline.**

### **Chapter One.**

**Introduction:** gives a background into the research.

### **Chapter Two.**

**Provincial Administration in Kenya:** explains on the evolution of the provincial administration in Kenya from the pre-historical time all down to the present times.

### **Chapter Three.**

**The Constitution, Laws and Policies in Conflict Management in Kenya. :** explains on the laws implemented in conflict management their weakness and strengths and their role in conflict management. To also see the mechanisms used by the provincial administration in conflict management. Explains on the constitution and how it has been involved in conflict management.

### **Chapter Four.**

**Comparative Analysis:** Looks into the provincial administration in the three presidential regimes that Kenya has had and explain why it acted the way it did. Interviews from some old public servants will best explain the findings of this chapter.

### **Chapter Five.**

**Conclusions:** Give recommendations on the way forward.



## **CHAPTER TWO.**

### **PROVINCIAL ADMINISTRATION IN KENYA.**

#### **2.0 Introduction.**

The ministry of state for provincial administration and internal security is a ministry within the office of the president with five departments: Provincial administration, Kenya Police, Administration Police, Government Press, and National Agency for the Campaign against Drug Abuse (NACADA). The structure of the ministry cascades through the provinces, districts, divisions, locations and sub-location. The following are the main functions of the ministry: promotion of statehood and nationhood, maintenance of law and order, co-ordinate functions, disaster emergency response and government programs in the field, mobilization of local resources for development, peace building and conflict resolution within communities: identification of persons for registration, monitoring and evaluation of projects in the field, printing and manufacture of government documents and spearheading the national campaign against drug and substance abuse.<sup>32</sup>

#### **2.1 Historical Background of Kenya.**

The first people to settle in Kenya were indigenous African communities who migrated from various parts of the continent. Other visitors included traders, explorers and tourists who came in from various parts of the world such as Portugal, Arabia, Roman empire, India and Greece. They visited mainly the East African Coast from as early as the first century A.D.

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<sup>32</sup> Permanent Secretary, Ministry of State for Provincial Administration and Internal Security. Harambee house Nairobi, 1990, government press document v1o2: pp23.

While the majority of the visitors went back to their countries, some settled, and intermarried with the local populations giving rise to a new Swahili culture along the Coast.

The civilization base of craft industries, farming, fishing and international trade gave rise to both Coastal city states such as Siu, Pate, Lamu, Malindi, Gede, Mombasa and Vanga. Islam and Kiswahili language were also introduced. The traders from overseas brought such items as clothes, beads, wines, iron weapons, porcelain and handicrafts.<sup>33</sup> These were exchanged for ivory, timber, gold, copper, rhinoceros horns, animal skins and slaves.

The first major European presence in East Africa started with the arrival of the Portuguese in the East African waters in 1498 when Vasco Da Gama's fleet made its initial forays on its way to the East Indies. On the first voyage his only negotiations were with the ruler of Malindi and, indeed, for the next hundred years this alliance was the foundation of the Portuguese network in the region. Their quest to control and dominate the lucrative Indian Ocean trade, the conquest of several city-states along the coast, and the establishment of their dominance, lasted 200 years.

But their presence was hated and resisted and there were many insurrections against them. For example, on the 16th August 1631, the Arab Sultan of Mombasa called Dom Jeronimo Chingulia entered the Portuguese Citadel of Fort Jesus with a band of followers through the passage of the Arches. He killed the Portuguese Captain, Pedro Leitao de Gamboa, and then gave the signal to his followers outside the Fort to set fire to the Portuguese houses in the town.<sup>34</sup> There was no marked resistance and in the course of the next two weeks all the Portuguese were killed.

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<sup>33</sup> Ake, C. (1981), *A Political Economy of Africa*, London: Heinemann: pp725-726.

<sup>34</sup> Akurang-Parry, K. O. In *Memoriam: An Appreciation of Professor A. Adu Boahen (1932-2006) Kenya's history: historical arrival and colonization*. Hutchinson Business Books, London. pp 87-101.

The Portuguese were finally kicked out of the Coastal towns through a combination of local nationalisms, aided by the Omani Arabs. To ensure the Portuguese did not return, Sultan Seyyid Said of Oman moved his capital to Zanzibar and ruled the entire East African Coastline until the establishment of British rule.

### **2.1.1 British Colonization**

In 1886 and 1890 Britain reached agreements with Germany that delineated a boundary between British territory in Kenya and German territory in Tanganyika (part of present-day Tanzania) to the south. The Imperial British East Africa Company was chartered in 1888 to administer Kenya, but the company soon found itself losing large amounts of money through its vain attempts to extend control over the interior. In 1895 the British government formally took over the territory, which was renamed the East Africa Protectorate.<sup>35</sup> Its western neighbor was Britain's Uganda Protectorate, and the border between the two lay just west of the site that would become, in the late 1890s, the new city of Nairobi.

Although the boundaries of the British protectorate were set, the British actually controlled little more than the Kenyan coast at the beginning of the 20th century. The British conquest of the Kenyan interior was gradual and incremental, taking second place to Britain's construction of a railway connecting Mombasa with Lake Victoria. The railway was completed in 1901. In 1902 Britain decided to merge Uganda's Eastern Province with the East Africa Protectorate; thus the

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<sup>35</sup> Chiriyankandath, J. (2007) Colonialism and Post-Colonial Development. .p 55

Lake Victoria basin and the western highlands became part of Kenya. By 1908 the British administration had brought the southern<sup>36</sup> half of present-day Kenya under its control.

Northern Kenya, then inhabited largely by nomadic peoples, did not come under British authority until well after World War I (1914-1918).

In their colonial conquest, the British followed a policy of divide and conquer, allying with some African groups against others. The Maasai, who had suffered a series of 19th-century civil wars over water and grazing rights and had lost much of their livestock to disease and drought, were one group with whom the British allied in order to impose their rule. To aid colonial administration, the British divided Kenya's Bantu-, Nilotic-, and Cushitic-speaking peoples into ethnic classifications based on linguistic variations and locality.<sup>37</sup> Thus, specific ethnic subgroups, called "tribes," were created in a form that had not existed previously. The ethnic groups were assigned to live in separate areas of the colony. Within each subgroup, colonial administrators designated one "chief," who became responsible for collecting taxes levied by the colonial state.

To help make the new railway profitable, the colonial government encouraged the settlement of European farmers in Kenya. After 1902 white Europeans (mostly from Britain and South Africa) took up residence in the highlands. Land for European settlement meant the loss of land for some of Kenya's peoples, most notably the highland-dwelling Kikuyu.

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<sup>36</sup>David Anderson (2005), *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire*, Weidenfeld & Nicolson: London .p. 65

<sup>37</sup> David Anderson (2005), *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire*, Weidenfeld & Nicolson: London .p. 75

Many of the Kikuyu who lost land were forced to move onto European farms and estates as squatters and laborers,<sup>38</sup> or to seek employment in urban areas such as Nairobi.

By the time World War I ended in 1918, European settlers, desiring inexpensive farm labor, had convinced the colonial government to adopt measures that essentially forced Africans to work the farms. These included new, higher taxes on Africans, who, lacking money, were obligated to work the settlers' farms in order to pay them.

By this time, the settlers had achieved considerable political influence in the territory, which was changed to a colony and renamed Kenya in 1920.<sup>39</sup> The colony of Kenya was administered by a British governor, who was advised by an elected Legislative Council. Black Africans were not allowed to vote and were denied representation in the council until the mid-1940s, when a small number of blacks were nominated to the council. The colony's small Asian and Arab populations were given several seats in the council in the 1920s.

### **2.1.2 Colonial administration and authoritarianism.**

Colonial military expeditions led to genocide and forced migrations of people among the Agikuyu, Abagusii, the Nandi, Abakusu, Giriama and all the others who met colonial force with force. Colonial conquest led to loss of sovereignty as colonial rulers replaced indigenous leaders. This was one of the ironies of British indirect rule often led to recruitment of British collaborative agents and porters into leadership positions.

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<sup>38</sup> Kitching, G. (1980) *Class and Economic Change in Kenya. The Making of an African Petit-Bourgeoisie*, London: Heinemann. P92.

<sup>39</sup> Hazzlewood, A. (1979). *The Economy of Kenya: The Kenyatta Era*. Oxford: Oxford University Press. P75

Colonial military expeditions lead to genocide and forced migrations of people. Moreover British colonial administration reflected orders from Britain rather than the consensus of community leaders.

Colonial governance through chief, councils, native tribunals and local native councils was a mockery of democracy.<sup>40</sup> Chaired colonial district officers these institutions acted as legal administrative devices that were intended to keep Africans in their subordinate place.

The purpose they served included political expedience and imposition of administrative costs on Africans. Law and order therefore maintained in the interest of the British capitalist accumulation (Mamdani, 1996) on a broader scale colonial plans developed in London.

Europeans dominated executive and legislative councils, formulated policies and made budgets in Nairobi with the approval from London. Africans were excluded from these councils, which were chaired by the governor until the Second World War.<sup>41</sup> Indeed even European settlers complained that the councils were dominated by government officials. British indirect rule kept governance at a distance from the people. The colonial state centralized, racialized and ethnized power. This administrative setup, save its racial trappings was wholly inherited by the post-independence regime.

In a fundamental sense post-colonial governance became more autocratic. Unlike the governor who was made accountable to the House of Commons, Kenya post colonial presidents have

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<sup>40</sup> Chinsinga, B. (2004) 'The Market as an Instrument of Political Control and Exploitation: Some Insights from Kenya', *African Sociological Review*, Volume 8, Number 2 (pp.77-89)

<sup>41</sup> Carol Polsgrove, *Ending British Rule in Africa: Writers in a Common Cause" (2009), p. 6.*

hardly been accountable to parliament.<sup>42</sup> Constitutional reforms since independence have transformed Kenya into a patrimonial and autocratic presidential system. Thus independent Kenya has inherited and worsened the colonial crisis of governance with dire human rights and economic consequence.

The seventy years of colonial rule in Kenya were characterized by punitive economic, social and political policies. Most outstanding among these policies was racial discrimination. Huge fertile land was alienated for white settlement, and harsh labour laws were enacted to force the Africans to work at low wages on settler farms and public works. In addition, African political participation was confined to local government.

It was against this scenario that African protest movements began in earnest from the early 1920s. Several political associations, including the Young Kikuyu Association, East African Association, Young Kavirondo Association, North Kavirondo Central Association and Taita Hills Association, were formed to articulate African grievances against forced labour, low wages, heavy taxation, continuing land alienation, and racial discrimination.

Between 1944 and 1960 African political activity and pressure were intensified. In 1944, the first countrywide nationalist party, Kenya African Union (KAU) was formed. And in the same year the first African, Eliud Mathu, was nominated to the settler dominated Legislative Council. Unhappiness with the slow political and economic change led to the breakdown of law and order in the early 1950s, and in 1952 Governor, Sir Evelyn Baring declared a state of emergency

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<sup>42</sup> Miller, Norman and Rodger Yeager. *Kenya: The Quest for Prosperity* (second edition). P. 172–173.

following the outbreak of the Mau Mau rebellion,<sup>43</sup> whose major grievances included land alienations, racial discrimination and lack of political progress.

The state of emergency, however, intensified political resolve for independence, forcing the colonial government to come up with constitutional proposals. Under the Lyttleton constitution of 1954 Africans were allowed to directly elect their representatives to the Legislative Council.

The elections were held in 1957, and eight African leaders – Ronald Ngala, Tom Mboya, Daniel arap Moi, Mate, Muimi, Oginga Odinga, Oguda and Muliro, were elected. They stepped up agitation for widened representation and independence.

After considerable discussion, it was decided to form a mass organization to mobilize the people for the final assault on colonialism, hence the birth of Kenya African National Union, (KANU). KANU was formed in March 1960, at Kiambu town, and on 11 June 1960, it was registered as a mass political society. But as the objective of freedom became evident, many of the smaller communities feared domination by the larger ethnic groups,<sup>44</sup> and on June 25, 1960 they formed the Kenya African Democratic Union (KADU). The first election on a broad electoral register was held in 1961, and was won by KANU.

In another election in May 1963, KANU captured 83 of the 124 seats in the House of Representatives and formed the Madaraka Administration on 1st June 1963, and the independence Government on 12th December 1963, under Mzee Jomo Kenyatta.

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<sup>43</sup> John Lonsdale (1990) "Mau Mau of the Mind: Making Mau Mau and Remaking Kenya", *The Journal of African History* 31 (3): 393–421

<sup>44</sup> Joseph Karimi, Philip Ochieng, (1980). *The Kenyatta Succession*. Hutchinson Business books, London. P.80



## **2.2 Post-independent Kenya (1964-1978).**

The first Government of independent Kenya immediately had to deal with some pressing economic and political problems. The priorities were acceleration of growth, Kenyanisation of the economy and redistribution of incomes. None of this, however, could be achieved without political stability, and it was first felt necessary to neutralize those elements in the country who supported extreme policies and who was undermining, rather than building confidence in the new nation. Thus, Kenya embarked on the road to peace and stability, which has made it possible for the country to realize great strides in development.

Kenyatta retained the role of prime minister after independence was declared and jubilantly celebrated on 12 December 1963.<sup>45</sup> On 1 June 1964, Kenyatta became President when he successfully had Parliament amend the Constitution to make Kenya a republic with his office becoming executive President: the head of State, head of Government, and Commander-in-Chief of the armed forces.

His policy was that of continuity and gradual Africanization of the government, keeping many colonial civil servants in their old jobs as they were gradually replaced by Kenyans. He asked for British troops' help against Somali rebels, *Shiftas*, in the northeast and in ending an army mutiny in Nairobi in January 1964.

On 10 November 1964, KADU officially dissolved and its representatives joined KANU, forming a single party. Kenyatta was re-elected un-opposed in 1966, and the next year had the Constitution amended to expand his powers. This term featured border conflicts with Somalia, and more political opposition.

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<sup>45</sup> "1963 Constitution of Kenya". Kenyadoce.com. Retrieved 1 August 2010.

He made the Kikuyu-led KANU practically the only political party of Kenya. He consolidated his power greatly, and placed several of his Kikuyu tribesmen in most of the powerful state and security offices and posts.

State security forces harassed dissidents and were suspected of complicity in several murders of prominent personalities deemed as threats to his regime, including Pio Gama Pinto, Tom Mboya and J.M. Kariuki.<sup>46</sup> MP and Lawyer C.M.G. Argwings-Kodhek and former Kadu Leader and Minister Ronald Ngala, also died in suspicious car accidents. In the 1969 elections, Kenyatta banned the only other party, KPU (formed and led by his former vice president, Jaramogi Oginga Odinga who had been forced to quit KANU along with his left leaning allies), detained its leaders, and called elections in which only KANU was allowed to participate.

On 29 January 1970 he was sworn in as President for a further term. For the remainder of his presidency, Kenya was effectively a one-party state, and Kenyatta made use of detention, appeals to ethnic loyalties, and careful appointment of government jobs to maintain his commanding position in Kenya's political system.<sup>47</sup> However, his advancing age kept him from the day-to-day management of government affairs. He intervened only when necessary to settle disputed issues. His relative isolation resulted in increasing domination of Kenya's affairs by well-connected Kikuyu who acquired great wealth as a result.<sup>48</sup>

### **2.2.1 Criticisms of Kenyatta's regime (1964-1978)**

However, Kenyatta was not without major flaws, and did also bequeath Kenya some major problems which continue to bedevil the country to date, hindering her development, and

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<sup>46</sup> George Delf (1961), *Jomo Kenyatta: Towards Truth about "The Light of Kenya"* New York: Doubleday. ISBN 0-8371-8307-3

<sup>47</sup> Guy Arnold (1974), *Kenyatta and the politics of Kenya*, London: Dent ISBN 0-460-07878-X

<sup>48</sup> Veena Malhotra (1990), *Kenya under Kenyatta* Kalinga. ISBN 81-85163-16-2

threatening her existence as a peaceful unitary multi-ethnic state.<sup>49</sup> He failed to mould Kenya, being its founding father, into a homogeneous multi-ethnic state. Instead, the country became and remains a de-facto confederation of competing tribes. Also, his resettlement of many Kikuyu tribesmen in the country's Rift Valley province is widely considered to have been done unfairly.

His authoritarian style, with elements of patronage, favouritism, tribalism and/or nepotism drew criticism and dissent, and set a bad example followed by his successors. He had the Constitution radically amended to expand his powers, consolidating executive power.<sup>50</sup>

He has also been criticized for ruling through a post colonial clique consisting largely of his relatives, other Kikuyu's, mostly from his native Kiambu district, and African Kikuyu colonial collaborators and their offspring, while giving scant reward to those whom most consider the real fighters for Kenya's independence.

This clique became and remains the wealthiest, most powerful and most influential class in Kenya to date, and has held the country back, blocking reform and change, and the emergence of fresh progressive leadership, in its maneuvers to maintain its power and wealth.<sup>51</sup> Kenyatta has further been criticized for encouraging the culture of wealth accumulation by public officials using the power and influence of their offices, thereby deeply entrenching corruption in Kenya.

His policies are also criticized for leading to a large income and development inequality gap in the country.

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<sup>49</sup> Meredith, Martin. *The Fate of Africa*. Page 266

<sup>50</sup> Guy Arnold (1974), *Kenyatta and the politics of Kenya*, London: Dent ISBN 0-460-07878-X

<sup>51</sup> Rawson Macharia (1991). *The Truth about the Trial of Jomo Kenyatta*, Nairobi: Longman. ISBN 9966-49-823-0

Development and resource allocation in the country during his reign was seen to have favored some regions of the country, mainly Nairobi and the Country's Central Highlands, over others.<sup>52</sup>

### **2.3 Kenya under President Moi (1978-2002).**

Daniel Toroitich arap Moi (born 2 September 1924) is a Kenyan politician who was the President of Kenya from 1978 to 2002. Previously, under President Jomo Kenyatta, he was Vice-President from 1967 to 1978; he succeeded Kenyatta as President upon the latter's death. Daniel arap Moi is popularly known to Kenyans as "Nyayo", a Swahili word for "footsteps", as he was said to be following the footsteps of the first Kenyan President, Jomo Kenyatta.

#### **2.3.1 Argued for One-Party Rule**

There are at least three strong arguments that Moi put forth in defense of his one-party rule. Historically, Kenya showed an unprecedented political stability for an African nation, and the country was blessed with a high level of economic, intellectual, and political development.

A proliferation of political parties, Moi argued, would only encourage tribalism over nationalism. Kenya is an ethnically diverse nation of more than 40 tribes, and Kenyan politics have been intertwined with tribal interests even before independence was achieved in December of 1963. Throughout Africa, tribalism was a major deterrent to economic and political development. Wars in Africa nearly always take place between tribes rather than nations.

One-party rule in Kenya actually began less than a year after independence, when the KADU voluntarily dissolved itself, its members joining KANU. Except for a three-year period in the late

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<sup>52</sup> Montagu Slater (1955). *The trial of Jomo Kenyatta* London: Secker and Warburg. ISBN 0-436-47200-7

1960s, one-party rule continued uninterrupted in Kenya until 1991. That three-year exception is notable for the formation in 1966 of the KPU, Kenya People's Union, by Oginga Odinga, Kenyatta's vice-president at the time.<sup>53</sup> "Mr. Double O," as he was known informally, split with Kenyatta's capitalist-oriented policy and formed the KPU as a left wing, ideologically-based party.

In addition to concerns over tribalism, Kenya's one-party system was defended as appropriate for an African nation. It was argued that multiparty systems were being forced on African nations by colonial powers, and they were not consistent with African traditions and cultures. It was also argued that most African countries were not sufficiently developed for a pluralist democracy to take hold.

Moi's tolerance of debate on the multiparty issue ended in July of 1990, when the government began rounding up the leaders of the multiparty movement.

Those identified as leaders included former Cabinet ministers Kenneth Matiba and Charles Rubia, noted human rights attorney Gibson Kamau Kuria, and Raila Odinga, son of former Kenyatta Vice-President Oginga Odinga. Kuria received asylum in the U.S.<sup>54</sup> Embassy and was later allowed to leave the country for the United States, where he would teach at the Harvard Law School as a visiting scholar.

The other three were held without charges, and Moi rebuked the United States for interfering in Kenya's internal affairs. The United States countered with a statement that it was "distressed" at Kenya's repression and arrest of dissidents.

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<sup>53</sup> Miller, Norman and Rodger Yeager. *Kenya: The Quest for Prosperity* (second edition). Page 173.

<sup>54</sup> Hon. Wanyiri Kihoro (2007) "Politics and Parliamentarians in Kenya 1944–2007" Center for Multiparty Democracy

As other dissidents fled the country, four days of riots and street violence engulfed Nairobi and surrounding areas. Following these riots, President Moi appointed a KANU committee to begin hearings around the country to determine what political changes the people of Kenya wanted.

### **2.3.2 Survived Coup Attempt**

The first sign of erosion in Moi's popular support came in mid-1982, when rebels from the Embakasi air force base near Nairobi seized the Voice of Kenya radio station, announced the formation of a provisional National Redemption Council, and promised the release of all political prisoners. The coup attempt was launched by junior or enlisted members of Kenya's air force who were quickly joined by students from the University of Nairobi. Although the coup attempt was quickly stamped out, the rebels were joined by slum dwellers in a looting spree aimed primarily at the Asian shopkeepers of Nairobi's tourist district and causing millions of dollars of damage.

The rebels were defeated by loyalists from the Kenyan army and the General Service Unit, a paramilitary police force. Moi, not in Nairobi at the time, returned to the city and quickly launched a crackdown resulting in 3,000 arrests, including four-fifths of the 2,500-person air force.

The 1982 coup attempt revealed dangerous tensions in Kenyan politics. Moi had begun showing his authoritarian bent earlier in the year, when he ordered seven people detained without charges, including four lecturers from the University of Nairobi and their lawyer. In June the constitutional amendment legitimizing KANU as the country's sole political party was passed.

In May of 1983, following the coup attempt, <sup>55</sup>Moi called for parliamentary elections that September, fourteen months before they would have been constitutionally mandated. New party rules enabled Moi to handpick the entire slate of election candidates, since they all had to receive the approval of KANU's executive. During the year, Moi succeeded in purging Charles Njonjo, a former supporter and powerful Kikuyu, and his followers from the government. In the 1983 election, only 48 percent of the electorate turned out.

In 1984 Moi demonstrated a willingness to open a dialogue with student dissenters, even as he introduced measures in parliament that would reduce criticism of his regime. His authority over the cabinet ministers, who accounted for over 40 percent of parliament, was established when they were required to sign a letter from the president stating that they were not at liberty to criticize or differ from the government outside immediate government circles. In effect, senior KANU members were no longer able to express criticism of President Moi.

As Kenya started the last decade of the 1900s, Moi was faced with many difficulties. One of them involved serious declining tourism as violence involving elephant and rhinoceros poaching continued to escalate. Kenya's fabled wildlife and national parks had for years attracted international tourists, making tourism an important contributor to Kenya's economic well being.

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<sup>55</sup> "The looting of Kenya". Guardian. 31 August 2007. Retrieved on 6 September 2011.

### **2.3.3 Administration under Moi's Regime.**

To ensure his grip on power, Moi systematically usurped the functions of the other institutions of governance to the extent that the principle of the separation of powers was rendered ineffectual. A few days after releasing all the political detainees, he rushed a bill through Kenya's parliament which granted the president emergency powers for the first time in Kenya's post-independence history. Moi associated insecurity and instability with open criticisms and challenge to his policies and style of leadership. Patronage and loyalty therefore has remained characteristic of Moi's leadership style which has enabled him to centralize and personalize his rule.<sup>56</sup> For more than two decades as Kenya's head of state, the second longest serving president in Sub-Saharan Africa -- Moi has remained what has been described as a "tribal paramount chief writ large".

<sup>57</sup>In return for patronage, he enjoys praise from civil servants and KANU officials to an embarrassing degree.

For example, in one of the numerous public functions he attended, a senior minister stated while pointing at him: "There, is enshrined in human form the popular will. Even lobsters and fishes of the sea, out to the 200- mile limit and even beyond, pay obeisance to our great president the Honorable Daniel Arap Moi.

The trend began with presidential directives and constitutional amendments. Apart from the Constitution of Kenya, Amendment Act, Number 7 of 1982, which introduced Section 2(A) transforming the country into a de jure one-party state, Kenya's parliament, on Moi's order,

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<sup>56</sup> Widner, J. 1994. "Two Leadership styles and Patterns of Political Liberalization". *African Studies Review*, 37(1) (April):151-174.

<sup>57</sup> Hempstone, Rogue Ambassador, op. cit., pp. 39 and 43.



reinstated the detention laws which had been suspended in 1978. Colonial era laws, like the Chief's Authority Act, the Public Order Act, the Preservation of Public Security Act, the Public Order Act, and the Penal Codes, gave the president the right to suspend individual rights guaranteed by the constitution.<sup>58</sup> The parliamentary privilege, which gave representatives the right to obtain information from the Office of the President, was also revoked. This meant that members of parliament, and by extension their constituents, surrendered their constitutional rights to the presidency. Parliamentary supremacy became subordinated to the presidency and the ruling KANU party.<sup>59</sup>

For the first time in Kenya's post independence history, the provincial administrators (Provincial Commissioners [PCs], the District Commissioners [DCs], and District Officers [DOs] who are civil servants were directed by the Office of the President to get involved in the internal affairs of KANU.

They were to review and clear party meetings throughout the country and to isolate dissenters. KANU officials and members of parliament henceforth were subjected to these administrative procedures, undermining the meaning and legitimacy of representation in Kenya's legislature. These reorganizations and restructurings had a number of implications. First, the structures of representation both within KANU and parliament were obscured.

The provincial administration now had the power to prevent an elected member of parliament from addressing his or her own constituents. Second, patronage and loyalty to the President became mandatory for one's political survival. In the 1988 general elections most members of

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<sup>58</sup> Kimondo, G. K. "The Bill of Rights", in *The Citizen and the Constitution*. K. Kibwana, G. K. Kimondo and J. T. Gathii, Editors. 1996, Nairobi: Claripress, pp. 54-56.

<sup>59</sup> . *Weekly Review*, Nairobi, 8 May 1987. See also, Ogot, B. A., "Politics of Populism", pp. 187-213, in Ogot and Ochieng, *op. cit.*, 187-213.

parliament were not elected but selected by the party.<sup>60</sup> One of the first victims to fail the loyalty test was the man behind Moi's smooth ascendancy to the Presidency, Charles Njonjo, then attorney general and minister for constitutional affairs, who was accused of plotting to overthrow Moi's government.<sup>61</sup> Third, those perceived to be against the president and KANU policies were denied the right to contest electoral seats. Under Moi, security forces regularly subjected opposition leaders and pro-democracy activists to arbitrary arrest, detention without trial, abuse in custody, and deadly force.

### **2.3.4 Final Term Marked by Economic Crisis**

President Moi's priorities in the last years of his office were apparently to feed as much graft to his coffers and those of his followers as possible and to ensure that he has a successor who will let him remain safe in his retirement. His government is cited as spending over \$9 million illegally. The economy continued in a crisis. Roads across the country were in massive disrepair. Tourism continued to decline. The IMF held out loans and funds because of the continued corruption. In 1999 Moi appointed Richard Leakey, an old opponent, to his cabinet as head of the civil service. Leakey has a reputation for integrity and worked hard to remove some of the corruption. He managed to remove 25,000 dead-wood public servants and get the IMF to promise loans of \$250 million, before Moi removed him from office in 2001.

As 2002 neared its end, so did the 24-year reign of Daniel arap Moi? In April Moi was re-elected chairman of the Kenyan African National Union Party (KANU), which absorbed the National

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<sup>60</sup> Adar, K. G. "Ethnicity and Ethnic Kings: The Enduring Dual Constraint in Kenya's Multiethnic Democratic Electoral Experiment". *Journal of the Third World Spectrum*, 5 (2)( Fall 1998): 71-96.

<sup>61</sup> Kenya, Report of Judicial Commission Appointed to Inquire into Allegations Involving Charles Mugane Njonjo. Nairobi: Government Printer, November 1984.

Development Party (NDP), giving it around 30 percent of the vote and ensuring his continued political prominence. In the remaining months of his term, most expected Moi to continue to work for his political comfort and a successor that will continue his interests--while Kenya continues to decay and die around him.

#### **2.4 Kenya under President Mwai Kibaki. (2002-2010)**

Emilio Mwai Kibaki, C.G.H. (born 15 November 1931) is a Kenyan politician who has been the third President of Kenya since December 2002. Kibaki was previously Vice-President of Kenya for ten years from 1978 to 1988 and also held cabinet ministerial positions, including a widely acclaimed stint as Minister for Finance (1969–1981), Minister for Home Affairs (1982–1988) and Minister for Health (1988–1991).<sup>62</sup> After resigning as a cabinet minister in 1991, Kibaki served as an opposition Member of Parliament from 1991 up to his election as Kenya's third president in 2002 after two unsuccessful bids for the Kenyan presidency in 1992 and 1997. He was sworn in on the night of 30 December 2007 for his second term as president after controversially emerging as the winner of a bitterly contested election.

The election was marked by accusations of fraud and widespread irregularities that led to the post-election violence of 2007–2008. In Kibaki's regime democracy is being nurtured since 2002 to institute good governance. Though there is a high formation of a patronage system, reports of human rights violations have drastically diminished, nonetheless leaving behind "small pockets" of human rights abuses mainly at the hands of security forces, particularly the police. The police force is widely viewed as the most corrupt organ in the country,<sup>63</sup> involved in extorting bribes,

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<sup>62</sup> Beresford, David (31 December 2007). "Record". *The Guardian* (London). Retrieved 7 June 2009.

<sup>63</sup> Timo Kivimaki, (2001). Promoting Democracy and Human rights in Kenya: CTS-Conflict service Human Rights in UNDP: practice note (April 2005) Human Rights report Kenya: www.stategovdocumentsorganization16012.

complicity in criminal activity, and using excessive force against both criminal suspects and crowds. Most police who commit abuses still do so with impunity.

Immediately after the 2007 disputed general election which led to more than 1,300 lives and internally displacement of more than 300,000 Kenyans, the police force is widely accused of being used by the government to quell riots in areas seen as anti-Kibaki's regime arbitrarily. A lot of innocent Kenyans died from bullet wounds in what reports acclaim to as "shoot to kill" orders.<sup>64</sup>

The Government acknowledged that out of the reported 1,220 people killed during the post-election Violence, 123 were killed by the police. Credible evidence suggests that there was a consistent pattern of police using firearms to respond to demonstrations and related violence in Kibera, Eldoret and Kisumu and that the police failed to abide by the principle of proportionality and of necessity. On 5 March 2009, two of the human rights investigators involved in the investigations documented in human rights investigation, Oscar Kamau Kingara and John Paul Oulu, were assassinated.

Their assassinations were attributed by non-governmental organizations to State security forces. On March 11 20, seven administration police executed seven taxi drivers in the Kawangware slums west of Nairobi. The seven men were arrested, appeared in court on March 31 2009, and were charged on December 11 2009.

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<sup>64</sup> The Kenya National Commission on Human Rights Act, (2002). No 9 of 2002 OHCHR fact-finding mission to Kenya report, 6-28 February, 2008.

### 2.4.1 Shortcomings of Kibaki's Government

The shortcomings of the Kibaki presidency include the president's not so stellar performance in the areas of political reform; constitutional reform; containment of Kenya; addressing the fundamental problem of the country's wealth, income and development inequalities;<sup>65</sup> eliminating tribalism, and fostering national unity and cohesion; reduction of youth unemployment and crime; and facilitating generational change- as elaborated below.

Tribalism and corruption still remain major tools of acquiring and maintaining political power in Kenya.<sup>66</sup> As a result, all the good work the president has done remains at risk of being all undone, as it was to a significant extent by the post- 2007 election violence, and Kenya remains at risk of becoming a failed state.<sup>67</sup>

The President has been criticized for poor political management of the country, and apparent failure to unite, and amply manage the competing interests of, Kenya's various tribes. As a result, the country remains at the risk of tearing apart, and the President and his allies need to do more to prevent the country's balkanization into ethnic enclaves especially after benefiting from tribalism during elections.<sup>68</sup>

He has also been accused of ruling with a small group of his elderly peers, mainly from the educated side of the Kikuyu elite that emerged in the Kenyatta years, usually referred to as the

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<sup>65</sup>"The Kenya Government – Achievements of the 2002–2007 Government of Kenya". Kenya-information-guide.com. Retrieved 1 June 2010.

<sup>66</sup>"IPS: POLITICS: Kenya's Problem Goes Beyond Ethnicity and Elections". Ipsnews.net. 28 January 2008. Retrieved 1 June 2010.

<sup>67</sup>"Kenya edging closer to becoming a failed State". EA Standard. 2009-03-15

<sup>68</sup>Elkins, Caroline (6 January 2008). "What's Tearing Kenya Apart? History, for One Thing". *Washington Post*. Retrieved 1 June 2010.

"Kitchen Cabinet" or the "Mount Kenya Mafia"<sup>69</sup>. There is therefore the perception that this is a Kikuyu presidency.

This perception was reinforced when the President was seen to have trashed the pre- 2002 election Memorandum of Understanding with the Raila Odinga led Liberal Democratic Party, and was further reinforced by his disputed 2007 election victory over the Raila Odinga led ODM Party being achieved nearly exclusively with the votes of the populous Mt. Kenya Kikuyu, Meru and Embu communities.

The Commission of Inquiry into Post Election Violence [CIPEV] put it thus:-

The post election violence [in early 2008]therefore is, in part, a consequence of the failure of President Kibaki and his first Government to exert political control over the country or to maintain sufficient legitimacy as would have allowed a civilized contest with him at the polls to be possible. Kibaki's regime failed to unite the country, and allowed feelings of marginalization to fester into what became the post election violence. He and his then Government were complacent in the support they considered they would receive in any election from the majority Kikuyu community and failed to heed the views of the legitimate leaders of other communities.<sup>70</sup>

The President, who was elected in 2002 on a reform platform, is also yet to deliver long clamored for fundamental reforms and a new constitution,<sup>71</sup> instead maintaining the status quo ante which he helped to establish and was a major part of, and thus keeping the overwhelming presidential powers granted by Kenya's current constitution.

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<sup>69</sup>"Office of Public Communications – Office of Government Spokesperson". Communication.go.ke. Retrieved 1 June 2010.

<sup>70</sup> Report of the justice Philip Waki chaired commission of Inquiry into post elections violence [CIPEV] formed to probe into the 2007 Kenya General Elections Violence: pp29-30.

<sup>71</sup> Report of the justice Philip Waki chaired commission of Inquiry into post elections violence [CIPEV] formed to probe into the 2007 Kenya General Elections Violence: pp29-30.

It does also seem that his template is the presidency of Kenya's first president, Jomo Kenyatta, and that a major aim of his presidency is the preservation of the elite that emerged during the Kenyatta years, which he is part of, along with the system that made that elite and so much preserves and favors' it.<sup>72</sup>

## **2.5 Conclusion.**

There existed and continues to exist within Kenya's post-colonial, social formation an uncomfortable mixture of pre-colonial, colonial and global economic structures. The imposition of colonial boundaries, administrative system, economic and social policies only partially destroyed and restructured Kenya's pre-colonial communities. As a consequence, Kenya people's ethnic identities were politically enforced. The colonial state remained alien and government though authoritarianism.

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<sup>72</sup> Kenya's proposed government faces challenges in overhauling constitution. Voice of America. (2000-03-13).

## CHAPTER THREE.

### THE CONSTITUTION, LAWS AND POLICIES IN CONFLICT MANAGEMENT IN KENYA

#### 3.0 Introduction

The independent Republic of Kenya was formed in 1964. It was ruled as a de-facto single-party state by the Kenya African National Union (KANU), a Kikuyu-Luo alliance led by Jomo Kenyatta during 1963 to 1978. Kenyatta was succeeded by Daniel arap Moi, who ruled until 2002. Moi attempted to transform the de-facto single-party<sup>73</sup> status of Kenya into a de-jure status during the 1980s, but with the end of the Cold War, the practices of political repression and torture which had been "overlooked" by the Western powers as necessary evils in the effort to contain communism were no longer tolerated.

Moi came under pressure, notably by US ambassador Smith Hempstone, to restore a multi-party system, which he did by 1991. Moi won elections in 1992 and 1997, which were overshadowed by political killings on both sides. During the 1990s, evidence of Moi's involvement in human rights abuses and corruption (Goldenberg scandal) was uncovered. He was constitutionally barred from running in the 2002 election, which was won by Mwai Kibaki. Widely reported electoral fraud on Kibaki's side in the 2007 elections resulted in the 2007–2008 Kenyan crisis.

#### 3.1 Constitutional Debates

After the suppression of the Mau Mau rising, the British provided for the election of the six African members to the Legislative Council under a weighted franchise based on education.

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<sup>73</sup> Anderson, David. *Histories of the Hanged: The Dirty War in Kenya and the End of Empire*. (W. W. Norton, 2005). PP 406.



The new colonial constitution of 1958 increased African representation, but African nationalists began to demand a democratic franchise on the principle of "one man, one vote."

However, Europeans and Asians, because of their minority position, feared the effects of universal suffrage. At a conference held in 1960 in London, agreement was reached between the African members and the English settlers of the New Kenya Group, led by Michael Blundell. However many whites rejected the New Kenya Group and condemned the London agreement, because it moved away from racial quotas and toward independence. Following the agreement a new African party, the Kenya African National Union (KANU), with the slogan "Uhuru," or "Freedom," was formed under the leadership of Kikuyu leader James S. Gichuru and labor leader Tom Mboya. Mboya was a major figure from 1951 until his death in 1969.

He was praised as no ethnic or intertribal, and attacked as an instrument of Western capitalism. Mboya as General Secretary of the Kenya Federation of Labor and a leader in the Kenya African National Union before and after independence skillfully managed the tribal factor in Kenyan economic and political life to succeed as a Luo in a predominantly Kikuyu movement.<sup>74</sup> A split in KANU produced the breakaway rival party, the Kenya African Democratic Union (KADU), led by R. Ngala and M. Muliro. In the elections of February 1961, KANU won 19 of the 33 African seats while KADU won 11 (twenty seats were reserved by quota for Europeans, Asians, and Arabs). Kenyatta was finally released in August and became president of KANU in October.

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<sup>74</sup> David Goldsworthy, "Ethnicity and Leadership in Africa: the 'Untypical' Case of Tom Mboya." *Journal of Modern African Studies* 1982 20(1): 107-126.

In 1959, nationalist leader Tom Mboya began a program, funded by Americans, of sending talented youth to the United States for higher education. There was no university in Kenya at the time, but colonial officials opposed the program anyway.

The next year Senator John F. Kennedy helped fund the program, which trained some seventy percent of the top leaders of the new nation, including the first African woman to win the Nobel Peace Prize, environmentalist Wangari Maathai.<sup>75</sup>

### **3.2 Kenyatta Regime (1963-1978)**

Kenyatta swerved from radical nationalism to conservative bourgeois politics. The plantations formerly owned by white settlers were broken up and given to farmers, with the Kikuyu the favored recipients, along with their allies the Embu and the Meru. By 1978 most of the country's wealth and power was in the hands of the organization which grouped these three tribes: the Gikuyu-Embu-Meru Association (GEMA), together comprising thirty percent of the population. At the same time the Kikuyu, with Kenyatta's support, spread beyond their traditional territorial homelands and repossessed lands "stolen by the whites" - even when these had previously belonged to other groups. The other groups, a seventy percent majority, were outraged, setting up long-term ethnic animosities.<sup>76</sup>

The minority party, the Kenya African Democratic Union (KADU), representing a coalition of small tribes that had feared dominance by larger ones, dissolved it voluntarily in 1964 and former members joined KANU. KANU was the only party 1964-1966 when a faction broke away as the Kenya People's Union (KPU). It was led by Jaramogi Oginga Odinga, a former vice

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<sup>75</sup> Maathai, Wangari Muta. *Unbowed: A Memoir*. (Knopf, 2006.) pp. 314

<sup>76</sup> Pinkney, Robert. *The International Politics of East Africa*. (Manchester U. Pr., 2001.) pp. 242

president and Luo elder. KPU advocated<sup>77</sup> a more "scientific" route to socialism—criticizing the slow progress in land redistribution and employment opportunities—as well as a realignment of foreign policy in favour of the Soviet Union.

In June 1969 Tom Mboya, a Luo member of the government considered a potential successor to Kenyatta, was assassinated. Hostility between Kikuyu and Luo was heightened, and after riots broke out in Luo country KPU was banned. The government used a variety of political and economic measures to harass the KPU and its prospective and actual members. KPU branches were unable to register, KPU meetings were prevented, and civil servants and politicians suffered severe economic and political consequences for joining the KPU. Kenya thereby became a one-party state under KANU.<sup>78</sup>

Ignoring his suppression of the opposition and continued factionalism within KANU the imposition of one-party rule allowed Kenyatta, who had led the country since independence, claimed he achieved political stability. Underlying social tensions were evident, however. Kenya's very rapid population growth rate and considerable rural to urban migration were in large part responsible for high unemployment and disorder in the cities. There also was much resentment by blacks at the privileged economic position in the country of Asians and Europeans.

At Kenyatta's death (August 22, 1978), Vice President Daniel arap Moi became interim President. On October 14, Moi became President formally after he was elected head of KANU

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<sup>77</sup> Harper, James C., II. *Western Educated Elites in Kenya, 1900-1963*. (Routledge, 2006.) pp. 193

<sup>78</sup> Suzanne D. Mueller, "Government and Opposition in Kenya, 1966-9," *Journal of Modern African Studies* ( 1984 )22(3): 399-427. Issn: 0022-278x

and designated its sole nominee. In June 1982, the National Assembly amended the constitution, making Kenya officially a one-party state.

On August 1 members of the Kenyan Air Force launched an attempted coup, which was quickly suppressed by Loyalist forces led by the Army, the General Service Unit (GSU) — paramilitary wing of the police — and later the regular police, but not without civilian casualties.<sup>79</sup>

### **3.2.1 Foreign Policies**

Independent Kenya, although officially non-aligned, adopted a pro-Western stance.<sup>[32]</sup> Kenya worked unsuccessfully for East African union; the proposal to unite Kenya, Tanzania, and Uganda did not win approval. However, the three nations did form a loose East African Community (EAC) in 1967, which maintained the customs union and some common services that they had shared under British rule. The EAC collapsed in 1977 and it was officially dissolved in 1984. Kenya's relations with Somalia deteriorated over the problem of Somalis in the North Eastern Province who tried to secede and were supported by Somalia. In 1968, however, Kenya and Somalia agreed to restore normal relations, and the Somali rebellion effectively ended.<sup>80</sup>

### **3.3 Moi's Regime (1978-2002)**

Kenyatta died in 1978 and was succeeded by Daniel Arap Moi (B. 1924) who ruled as President 1978-2002. Moi, a member of the Kalenjin ethnic group, quickly consolidated his position and governed in an authoritarian and corrupt manner. By 1986, Moi had concentrated all the power -

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<sup>79</sup> Maxon, Robert M. and Ofcansky, Thomas P. *Historical Dictionary of Kenya*. (2<sup>nd</sup> ed. Scarecrow,200)pp447

<sup>80</sup> Maxon, Robert M. and Ofcansky, Thomas P. *Historical Dictionary of Kenya*. (2nd ed. Scarecrow, 2000). 449 pp.

and most of its attendant economic benefits - into the hands of his Kalenjin tribe and of a handful of allies from minority groups.<sup>81</sup>

On August 1, 1982 lower-level air force personnel, led by Senior Private Grade-I Hezekiah Ochuka and backed by university students, attempted a coup d'état to oust Moi.

It failed and was followed by looting of Asian-owned stores by Nairobi's poor blacks and by attacks on Asian population. Robert Ouko, the senior Luo in Moi's cabinet, was appointed to expose corruption at high levels but was murdered a few months later. Moi's closest associate was implicated in Ouko's murder; Moi dismissed him but not before his remaining Luo support had evaporated. Germany recalled its ambassador to protest the "increasing brutality" of the regime, and foreign donors pressed Moi to allow other parties, which was done in December 1991 through a constitutional amendment.<sup>82</sup>

### **3.3.1 Multi-Party Politics**

After local and foreign pressure, in December 1991, parliament repealed the one-party section of the constitution. The Forum for the Restoration of Democracy (FORD) emerged as the leading opposition to KANU, and dozens of leading KANU figures switched parties. But FORD, led by Oginga Odinga (1911–1994), a Luo, and Kenneth Matiba, a Kikuyu, split into two ethnically based factions. In the first open presidential elections in a quarter century, in December 1992, Moi won with thirty seven percent of the vote, Matiba received twenty six percent Mwai Kibaki (of the mostly Kikuyu Democratic Party) nineteen percent, and Odinga eighteen percent. In the Assembly, KANU won ninety-seven of the one hundred and eighty eight seats at stake.

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<sup>81</sup> Ibid. pp.,450

<sup>82</sup> Percox, David A. *Britain, Kenya and the Cold War: Imperial Defense, Colonial Security and Decolonization.* (Taurus, 2004.) pp. 252

Moi's government in 1993 agreed to economic reforms long urged by the World Bank and the International Monetary Fund, which restored enough aid for Kenya to service its \$7.5 billion foreign debt.<sup>83</sup> Obstructing the press both before and after the 1992 elections, Moi continually maintained that multiparty politics would only promote tribal conflict.

His own regime depended upon exploitation of inter-group hatreds. Under Moi, the apparatus of clientage and control was underpinned by the system of powerful provincial commissioners, each with a bureaucratic hierarchy based on chiefs and their police that was more powerful than the elected members of parliament.

Elected local council's list most of their power, and the provincial bosses were answerable only to the central government, which in turn was dominated by the president. The emergence of mass opposition in 1990-91 and demands for constitutional reform were met by rallies against pluralism. The regime leaned on the support of the Kalenjin and incited the Maasai against the Kikuyu. Government politicians denounced the Kikuyus' as traitors, obstructed their registration as voters, and threatened them with dispossession. In 1993 and after, mass evictions of Kikuyu took place, often with the direct involvement of army, police, and game rangers. Armed clashes and many casualties, including deaths, resulted.<sup>84</sup>

Moi ruled using a strategic mixture of ethnic favoritism, state repression, and marginalization of opposition forces. He utilized detention and torture, looted public finances, and appropriated land and other property.

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<sup>83</sup> Maxon, Robert M. and Ofcansky, Thomas P. *Historical Dictionary of Kenya*. (2nd ed. Scarecrow, 2000) pp. 449

<sup>84</sup> Jacqueline M. Klopp, "'Ethnic Clashes' and Winning Elections: the Case of Kenya's Electoral Despotism." *Canadian Journal of African Studies* 2001 35(3): 473-517. Issn: 0008-396

Moi sponsored irregular army units that attacked the Luo, Luhya, and Kikuyu communities, and he disclaimed responsibility by assigning the violence to ethnic clashes arising from a land dispute.<sup>85</sup> Beginning in 1998, Moi engaged in a carefully calculated strategy to manage the presidential succession in his and his party's favor. Faced with the challenge of a new, multiethnic political coalition, Moi shifted the axis of the 2002 electoral contest from ethnicity to the politics of generational conflict. The strategy backfired, ripping his party wide open and resulting in its humiliating defeat of his candidate, Kenyatta's son, in the December 2002 general elections.<sup>86</sup>

### **3.4 Kibaki's Regime. (2002-2010)**

Emilio Mwai Kibaki, (born 15 November 1931) is a Kenyan politician who has been the third President of Kenya since December 2002. He was sworn in on the night of 30<sup>th</sup> December 2007 for his second term as president after controversially emerging as the winner of a bitterly contested election. The election was marked by accusations of fraud and widespread irregularities that led to the post-election violence of 2007–2008.<sup>87</sup>

Kibaki's regime was faced with the 2005 Kenyan constitutional referendum was held on 21<sup>st</sup> November 2005. The main issue of contention in the Constitution review process was how much power should be vested in the Kenyan Presidency.

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<sup>85</sup> Philip G. Roessler, "Donor-induced Democratization and the Privatization of State Violence in Kenya and Rwanda." *Comparative Politics* 2005 37(2): 207-227. Issn: 0010-4159

<sup>86</sup> Jeffrey Steeves, "Presidential Succession in Kenya: the Transition from Moi to Kibaki." *Commonwealth & Comparative Politics* 2006 44(2): 211-233. Issn: 1466-2043

<sup>87</sup> Kanyinga, Karuti. "The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya," *Journal of Contemporary African Studies*, July 2009, Vol. 27 Issue 3, pp 325–344

In previous drafts, those who feared a concentration of power in the president added provisions for European-style power-sharing between a ceremonial President elected via universal suffrage and an executive Prime Minister elected by Parliament. The draft presented by the Attorney General Amos Wako for the referendum retained sweeping powers for the Presidency.<sup>88</sup>

A constitution that granted the president broad powers, allowed for a lack of transparency, cultivated a corrupt civil service, and failed to grant the parliament and the judiciary also struggling with corruption, the powers to effectively review the executive was a significant obstacle to a stable democracy. Because the presidency has been seen as a conduit to self-enrichment and privilege, these flaws of the political system have laid the ground for political violence.

This violence has been exacerbated by the fact that large segments of the Kenyan population suffer from unemployment, lack of access to education and health care, and general poverty, rendering these groups dissatisfied with the political system and more sympathetic to suggestions that their problems are caused by particular politicians belonging to other ethnic groups. Kenya remains a highly unequal country and political leaders leverage this inequality using populist rhetoric to incite their followers into violence against their opponents.<sup>89</sup>

Since the effect of Kibaki's government there has been a lot of change in the provincial administration and their involvement in conflict has been very commendable.

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<sup>88</sup> Godwin R. Murunga, and Shadrack W. Nasong'o, "Bent on Self-destruction: the Kibaki Regime in Kenya." *Journal of Contemporary African Studies* 2006 24(1): 1-28. Issn: 0258-9001

<sup>89</sup> Kanyinga, Karuti. "The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya," *Journal of Contemporary African Studies*, July 2009, Vol. 27 Issue 3, pp 325–344



### **3.4.1 National Steering Committee on Peace building and Conflict Management**

The National Steering Committee on Peace building and Conflict Management has been instrumental in addressing issues related to peace work in Kenya. The Committee comprises government departments, Civil Society Organizations (CSOs), Non-Governmental Organizations and development partners.

It was established after a realization that effective management of conflict can only be realized through joint efforts. Through this establishment, there is better co-ordination of peace initiatives across the country. In particular, the peace committee model has been strengthened. The National Steering Committee (NSC) in consultation with a number of conflict resolution and peace building stakeholders in Kenya among them Office of the President, Ministry of Foreign Affairs, USAID, UNDP, Safer World Kenya, DFID, Practical Action, Oxfam, AU IBAR, Africa Peace Forum, Peace net, COPA, NCKK, SUPKEM have come up with a draft national policy on peace building and conflict management <sup>90</sup>(NPPBCM). The draft NPPBCM is the latest development in conflict in Kenya.

Recently submitted to the NSC, it seeks to develop a comprehensive national policy on conflict transformation and peace-building that will enhance the capacity of Kenya to manage conflict without violence by building human security, a concept that includes democratic governance, human rights, rule of law, sustainable development, equitable access to resources and environmental.

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<sup>90</sup> GoK, *Draft National Policy on Peace Building and Conflict Management*, National Steering Committee (NSC , government printers 2005), Nairobi.pp50

The National Steering Committee has and continues to play a critical role in Peace building and conflict management. Although its main role has been understood to be coordination of peace building activities, it has played critical role in facilitating peace work by liaising closely with government officials to support the work of Civil Society Organizations and District Peace Committees. National Steering Committee is spearheading the process for developing National peace in the country.

### **3.5 Conflict Management and Peace Building Policy Document.**

This policy document has defined, coordinate and secure peace building efforts in the country and across the borders where appropriate. It's actually District Peace Committees' association with National Steering Committee that has given it the little legitimacy they enjoy. Even the work of the assessment team was made easy by the fact that the team had been send by National Steering Committee.

The Peace building and Conflict Management process in Kenya has grown from originally ad hoc initiatives designed to respond to violent conflict in parts of Kenya. Such frameworks were inspired by traditional dispute resolution mechanisms, such as the <sup>91</sup>Alfatah council of elders in Wajir. With the buildup of conflict and the appreciation of the cycle within which conflict occurs, stakeholders at community level have developed semi formal structures to manage conflict.

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<sup>91</sup> Mohamud Adan and Ruto Pkalya *Closed to Progress: An Assessment of Socio-Economic Impacts of Conflict on Pastoral and Semi Pastoral Economies in Kenya and Uganda*, Practical Action, (Nairobi. 2005) PP 65.

The peace committee model for example has grown from its original formation as an elder's council, to the present all inclusive committee.

The Peace Committees are community representative institutions based at the various administrative levels. They bring together traditional dispute resolution mechanisms involving traditional elders,<sup>92</sup> women, and religious leaders on the one hand and formal mechanisms for conflict resolution including those by Government administrative and security agencies and Non Governmental organization initiatives on the other. Their establishment and operations shall be guided by the existing standard guidelines and terms of reference.

The National Policy on Peace building and Conflict Management takes note of existing and complimentary national policies and other relevant international instruments with a view to making essential references and harmonization as is essential. Nonetheless, although the Policy is presented as a distinct national policy, some of its aspects must be integrated into other national development frameworks because all the national development plans will require a peaceful environment to be realized.<sup>93</sup>

In this way, it will encourage the integration of a range of policies and legislations focusing on peaceful coexistence, human security and human rights into a comprehensive national policy framework designed to achieve sustainable peace and development in Kenya. The National Steering Committee has best been effective by working alongside with the District Peace Committees which

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<sup>92</sup> Ruto Pkalya, Mohamud Adan, Isabella Masinde, *Conflict in Northern Kenya. A focus on the internally displaced conflict victims, (ITDG, 2003)* Nairobi. PP50.

<sup>93</sup> GoK, June; 2009, *Draft National Policy on Peace Building and Conflict Management*. National Steering Committee (NSC), Nairobi.

are headed by the District Commissioners, Non-governmental Organizations, and the Civil Society Organization.

### **3.6 Role of District Peace Committees in Kenya**

A large percentage of respondents noted that Peace Committees play a significant role in facilitating consultative peace dialogues; act as alert systems to prevent conflict before they happen; and also raise awareness within and between the warring communities. There are several concerns however which were raised touching on the role, the structure and capacity of these Peace committees.

With regard to their roles, Peace Committees do not have defined roles and as a result their impact at the grassroots level where the actual planning and carrying out of conflict particularly by the local communities.<sup>94</sup> The structure of these Peace committees is also loosely organized, unrepresentative and not all-inclusive. They are also under-resourced both logistically and financially making their capacity and attempts to prevent and mediate conflicts less effective.

### **3.7 Strengthening response and institutional capacities of DPCs.**

Despite of the challenges and shortcomings that faced the DPCs in the three districts, many people still believed that DPCs tried their best to prevent or reduce severity of conflicts.<sup>95</sup> Reconstitution of DPCs in order to conform to NSC guidelines.

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<sup>94</sup> Odhiambo, E. S. Atieno. "Ethnic Cleansing and Civil Society in Kenya 1969-1992." *Journal of Contemporary African Studies* 2004 22(1): 29-42. Issn: 0258-9001

<sup>95</sup> Office of the president: National steering committee on peace building: (District peace meeting report.2009). Pp45.

The way the members of DPCs were selected, elected or nominated left a lot to be desired. For instance an example of the conflict in the Isiolo triangle where DPCs' were effective in managing the conflict and was confirmed by a Chief in Merille location of Laisamis district, people were shocked to realize that one of the most troublesome warrior who was killed during a raiding expedition was a son of a respectable member of DPC in Merille division. NSC should have ensured that all DPCs not only in the three districts but the whole of the country were reconstituted to conform to the guidelines and terms of reference for DPC in the country as developed by NSC.

### **3.7.1 Vetting/gazettement of DPCs.**

In reconstitution this was a critical need of establishing a thorough process and mechanism of vetting the members and functions of DPC members. To make them more legitimate and accountable to the communities and local authorities, officials of DPCs should be gazetted.

The government would have enlisted the support of the Administration Police in helping DPCs enforce resolutions and peace agreements brokered by communities.<sup>96</sup>

### **3.7.2 Training Chiefs and Assistant Chiefs.**

Although these groups of administrators are not necessarily part of DPCs, they do interact greatly with DPCs in their conflict resolution efforts. Some of them are members of DPCs whereas others collaborate with DPCs. Chiefs and their assistants are grassroots government officials that interact on day to day basis with conflicts and peace efforts in their localities. They have enormous potential

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<sup>96</sup> Ibrahim H. Muhamed, 'Traditional Conflict Resolution and Peace building in Isiolo District,' Pastoralist Peace and Development Initiative (PPDI) and Arid Lands Resource Management Project (ALRMP 2005),pp.45-53.

to contribute to peace building. They side with their communities during peace building activities when they are supposed to be neutral and objective.<sup>97</sup>

### **3.7.3 Criticisms**

The Peace Committees also lack enforcement mechanisms. They just have to rely on community goodwill in the process of implementing and enforcing peace agreements. Sometimes they are perceived as illegal outfits established mainly for the purposes of “eating” funding from NGOs.

They have also been accused of taking sides during peace dialogues, exaggerating conflict situation in order to get funding and that some of them might be participating or benefitting from cattle rustling activities.

<sup>98</sup>The list continues to say that some of them have turned out to be point-men of political leaders with others using DPC as a stepping stone to politics. Still, others (members of DPCs) are accused as traitors whenever they try to perform their duties with cumulative effects being loss of morale and energy to perform their duties. These accusations mainly originate from a small section of the community but all in all DPCs work under extreme difficult situations, with threats to their lives increasingly lurking.

### **3.8 Government Led Initiatives**

The local administration through the offices of Chiefs, District Officers and Commissioners frequently intervene in disputes as third party neutrals.

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<sup>97</sup> Office of the President/National Steering Committee on Peace Building and Conflict Management, (2005) p2-8.

<sup>98</sup> District Peace Committee; (1997), Report of the Consultative Peace Meetings: (Government printers; Nairobi, 2009)pp. 56

They have played a pivotal role in addressing disputes that involve land, family matters and in some cases communities. <sup>99</sup>Their advantage lies in the fact that they are situated at community level unlike formal justice institutions and in some instances is the available state assistance available at the community level.

The processes are low cost, can be constituted within a short time and the dispute addressed expeditiously.

The local administration has also set up security communities at both district and provincial levels. These committees bring together government agents such as police and intelligence to address security issues in the area including conflict and crime.

The role of local administration is pivotal at community level as they provide state security, administer humanitarian aid and relief and facilitate the operation of government programmes. <sup>100</sup>

Despite their contribution to conflict management, the local administration faces challenges to its successful delivery of services. In conflicts where the government is key actors either as an instigator of violence or as a partisan bystander, local communities view the local administration with fear, suspicion and hostility.

<sup>101</sup>Further because of government policy that requires administrators to be transferred frequently, there is no consistency in application of strategies that address conflict. Local communities have raised complaints regarding the policy that requires that administrators should not be residents or

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<sup>99</sup> Kamenju, *Mwachofi and Wairagu; Terrorized Citizen: Profiling Small Arms and Insecurity in the North Rift Region of Kenya*, (Security Research and Information Centre, Nairobi. 2003)PP45.

<sup>100</sup> E. Burrow, H Gichohi & M. Infield. *Rhetoric or Reality; a review of Community Conservation Policy and Practice in East Africa*, (Nairobi2003). PP75.

<sup>101</sup> Ochieng, William R., ed. *Themes in Kenyan History*. (Ohio U. Press, 1991)pp261

members of the said communities. The argument offered is that the administrators are unlikely to be sensitive to the needs of the communities.

### **3.8.1 Commissions of Inquiry**

The Government's response to conflict is determined by the intensity of the conflict in question. Often times, the Government sets up Commissions of Inquiry in response to conflicts with a view to gather information from the public.

Findings of such Commissions, though not the best mechanisms for conflict management, have guided policy level decisions in Government. It is increasingly clear that the outcomes of most of<sup>102</sup> the Inquiries revolve around the need for reforms in the following areas: Constitutional reforms; Electoral reforms; Parliamentary reforms; Reform of the Public Service; Police reforms; Finalization of the Land Policy; Legal and judicial reforms; and Other legislative, structural, political and economic reforms and punishing impunity.

### **3.8.2 Disarmament**

The proliferation of illicit firearms, due to the porosity of borders, conflict in neighboring countries, and the attendant demand within the borders, has fuelled conflict in most arid and semi arid areas of Kenya. These illegal firearms are often used in cattle rustling, banditry, highway robbery and other forms of crime in Kenya. To address this issue, the government has often instituted mechanisms for the recovery of illegal firearms.

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<sup>102</sup> Draft National Policy on Peace building and Conflict Management, (June 2009). P34



At the height of violent conflict related to illicit firearms, the operations have often involved the use of force. In other instances however, the Government,<sup>103</sup> has put in place measures for the voluntary surrender of arms, in collaboration with local community representative structures, such as the peace committees.

To deal with the problem of small arms and light weapons, the government has established the Kenya National Focal Point on Small Arms and Light Weapons (KNFP) has also contributed to the strides made in addressing issues of peace work. In particular, the problem of proliferation of illicit small arms and light weapons is being addressed through this inter-agency structure.<sup>104</sup>

### **3.8.3 Conflict Early Warning**

The Government is signatory to the CEWARN Protocol, that seeks to strengthen Kenya's mechanisms for conflict early warning and response.

These mechanisms are mainstreamed within the provincial administration,<sup>105</sup> and are complementary to existing intelligence systems. Elsewhere, peace committees work with the provincial administration to ensure that that early warning and response is an ongoing activity. By way of example in the Isiolo triangle conflict of 2007 CEWARN's RFF as well as other rapid response initiatives like the one managed by NSC in collaboration with APFO were used to support such an initiative that specifically target morans who were the main actors in the conflict to predict on their next attack.

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<sup>103</sup> Green, L. C. *The Contemporary Law of Armed Conflict*, Manchester (University Press, Manchester, UK.1993) P98

<sup>104</sup> Ibid. PP 102-105.

<sup>105</sup> GoK. *Draft National Policy on Peace Building and Conflict Management*, National Steering Committee (NSC 2005), Nairobi. P50.

### 3.8.4 Community-Based Policing

Community-based policing is a strategy designed to promote mutual trust and co-operation between the public and the police. It seeks to demystify the public perception of the police by encouraging information sharing regarding crime;<sup>106</sup> this is best seen in north-eastern Kenya.

The pastoral communities in Kenya are characterized by high levels of poverty rooted in a combination of political, economic, and ecological factors.

Indeed these communities have experienced a long history of drought coupled with economic and political marginalization from the central authorities. As a result the communities suffer from limited investment and lost opportunities for trade and employment. In retrospect, they understand and interpret resources as land, pasture, watering points and hunting grounds mainly in forests.<sup>107</sup>

The efforts by the current government to develop pastoral regions is commendable, concerted rehabilitation and re-orientation of the pastoralists into mainstream society by aiding them with alternative livelihoods such as eco-tourism, small scale business enterprise, and provision of social amenities such as schools, health facilities and water and efforts be redirected to the morans whose socialization process require they raid, kill for social identity and prestige<sup>108</sup>. Religious leaders in North Eastern Province are unanimous that politics has been their main impediment to peaceful resolution of conflict.

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<sup>106</sup> CKRC. *The people's Choice, The Report of the Constitution of Kenya Review Commission*, 'Short Version, (Government Printer, Nairobi 2002) pp. 23

<sup>107</sup> Lewis, I., *A Pastoral Democracy*. Oxford, (Oxford University Press, 1961) pp.45-67.

<sup>108</sup> Office of the President/National Steering Committee on Peace Building and Conflict Management,( 2005) p2-8.

This is the case whenever a conflict takes a political turn normally after politicians play an active role in the conflict or when sub clans of rival politicians are involved. In most cases, religious leaders find it difficult to solve a conflict where politicians are fuelling the conflict behind the scenes. But all in all, religious leaders have taken a lead role in resolving conflict in North Eastern Province and have performed much better than most traditional institutions involved in conflict resolution activities in various parts of the country, combating the problem of Small Arms in Northern Kenya.

### **3.9 Conclusion**

There is no existing comprehensive national policy on conflict management and peace building in Kenya. Rather, what is available are fragmented and uncoordinated policy efforts embedded in various policy documents. Most of these policy measures single out conflict as an inherent factor in whatever the policy document addresses. It does not confront conflict as a priority policy factor in itself.

A glance at some of the sector specific policies and national strategies the government has formulated reveals that there still gaps that need to be addressed in relation to conflict management<sup>109</sup>

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<sup>109</sup> Ochieng, William R., ed. *Themes in Kenyan History*. (Ohio U. Press, 1991.) pp. 261

## CHAPTER FOUR

### COMPARATIVE ANALYSIS

#### 4.0 Introduction

Provincial administration traces its origin to the colonial era. It was introduced in order to ensure that colonial laws and policies were enforced. Its main functions were to collect taxes, maintenance of law and order and pacification of the natives in the colony. It also provided judicial services and participated in legislative matters in local authorities. The Chief, then known as the Village Headman, was the prime instrument of the District Commissioners, then known as Regional Agents, for the disposal of colonial government business. The Local Native Councils (LNCs) were established in 1924 and played an advisory role to the District Commissioners, levied taxes and made by-laws for the agriculture and education sectors. Also put in place were the African Tribunal Courts, whose main function was to adjudicate disputes under customary law. The District Commissioner served as the "Court of Appeal" for the Tribunals.<sup>110</sup>

An administrative division, sub national entity, or country subdivision is a portion of a country or other political division, established for the purpose of government. Administrative divisions are each granted a certain degree of autonomy, and are required to manage themselves through their own local governments.<sup>111</sup> Countries are divided up into these smaller units to make managing their land and the affairs of their people easier.

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<sup>110</sup> D. (1993). Elections and political legitimacy in Kenya. *Africa: Journal of the International African Institute*. 14 (3): 371-396.

<sup>111</sup> Tordoff, W. (1994). Decentralization: Comparative experiences in Commonwealth Africa. *Journal of Modern African Studies*. 32 (4): 555-580.

For example, Kenya is divided into provinces under the provincial commissioner, which in turn are divided into districts under the district commissioner, which are then divided into divisions under the divisional officer, which are then divided into locations under the chief and then we have the sub-location under the sub-chief and finally down to the village which is lead by the village elder.

Kenya is divided into eight provinces they are: Nairobi Province, Central Province, Eastern Province, Rift-valley Province, Coast Province, Western Province, North-Eastern Province and Nyanza Province. The Provincial Administration has since evolved to the current order with the Provincial Commissioner as the head of the Province, the District Commissioner as the head of the District, the District Officer as the head of Division, Chiefs and Assistant chiefs in that order.<sup>112</sup> The mandate has been widened to include development coordination over and above the maintenance of law and order.

#### **4.1 Kenyatta's Regime (1963-1978)**

This phase began with the Independence Constitution of 1963, in which the Prime Minister was the head of government. The office was soon amalgamated with that of the outgoing colonial Governor to create a powerful head of state and government. Between 1966 and 1992, the presidency was beefed up by systematic constitutional amendments and constitutional practice that created what Arthur Schlesinger, Jr. (1973:x) and H.W.O. Okoth-Ogendo (1991)<sup>113</sup> have called the “imperial presidency”, to the emasculation of other arms of government, including Parliament, the judiciary, and other constitutional or public offices.

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<sup>112</sup> Mbai, O. C. (2003). Public service accountability and governance in Kenya since independence. *African Political Science*. 8 (1) 113 - 145.

<sup>113</sup> Okoth-Ogendo, H.W.O. (1988) 'Law and Government,' in Ministry of Information and Broadcasting, Kenya: An Official Handbook, Ministry of Information and Broadcasting, Nairobi, chap. 3, pp. 27–35.

These amendments included the abolition of constitutional safeguards in presidential systems of government such as devolved governments, the bicameral parliament, parliamentary and judicial independence, and tenure of office for judicial officers and constitutional office holders. In addition, President Jomo Kenyatta (in office from 1964 to 1978) and President Daniel Toroitich arap Moi (1978–2002) wielded extra-legal authority constructed from tradition.

Against the backdrop of the repressive colonial legacy, the presidency was also equated with chiefly authority in traditional societies, which authority was often intertwined with religious authority. <sup>114</sup>President Kenyatta is perhaps the best embodiment of traditional authority in post independence Kenya. With the help of constitutional changes, he managed to create a larger-than-life profile, as most African presidents did. In addition, he used certain Gikuyu traditional institutions to posture himself as a political, tribal and even religious leader (of the Gikuyu), especially when his presidency was for a sympathetic review of some of these constitutional amendments

The PA was established by the colonial authorities as an instrument of the state whose activities included general representation of the authority of the executive at the local level, coordination of government activities in the field, and chairing a number of committees at the local level. During the colonial period, the PA was used to suppress any form of political opposition and thus maintenance of law and order became its major preoccupation (Oyugi, 1994:180).<sup>115</sup>

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<sup>114</sup> Muigai, G. (2004) 'Jomo Kenyatta and the Rise of the Ethno-Nationalist State in Kenya', in B. Berman, D. Eyoh and W. Kymlicka (eds.), *Ethnicity and Democracy in Africa*, Oxford: James Currey. pp. 341

<sup>115</sup> Oyugi, W. (1994). *The uneasy alliance: Party state relations in Kenya*. In: W. O. Oyugi, (ed.) *Politics and administration in East Africa*. Nairobi (East African Educational Publishers. 1994). pp.180

After independence, President Kenyatta strengthened the provincial administration as a coercive institution, having killed a federal structure in order to gain firm control over any political threat to his government (Orvis, 2006).<sup>116</sup>

The consolidation of powers entrenched by Kenya's post-colonial rulers has been blamed for the deterioration of ethical standards in the public service (Mbai, 2003). The PA was and still is a department within the Office of the President and forms an integral part of the central government bureaucracy. The PA system divided Kenya into eight administrative provinces: Nairobi, Central, Nyanza, Western, Rift Valley, Eastern, North Eastern and Coast. Each province was divided into districts, districts into divisions, and divisions into locations and sub-locations. Provincial commissioners headed provinces while district commissioners head districts. All were and are still presidential appointees (Republic of Kenya: Constitution, 2001).<sup>117</sup>

As a department within the Office of the President, the PA was, and has on many occasions been used to enforce executive decisions. As an enforcement arm of the executive's decisions, the PA has attracted love from those within the system and hatred from those opposed to it. For instance, as early as 1965, under the pretext of public safety and in accordance with the Public Order Act (Cap 56 Laws of Kenya), President Kenyatta issued a presidential directive to the PA to require all members of Parliament (MPs) to obtain permits before addressing any meetings, including those in their own constituencies.

This directive put the PA in conflict with MPs who interpreted it as a move by the executive to control their political activities (Oyugi, 1994).

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<sup>116</sup> Orvis, S. *Bringing institutions back into the study of Kenya and Africa*. Africa Today, (2006) 53 (2): 95-110.

<sup>117</sup> Republic of Kenya. The Constitution of Kenya. Nairobi. (Government Printers.2010).

The Public Order Act (Cap. 56), a colonial inheritance, required that all public meetings be licensed by a district commissioner (Ndegwa, 1998).<sup>118</sup>

At the local level, application of this law was capricious and political. For instance, MPs who opposed the Kenya African National Union (KANU) government's policies had difficulties obtaining licenses. On many occasions, the PA issued licenses to vocal MPs only to embarrass them by holding parallel meetings (barazas) in their location as a ploy to denounce MPs development agenda (Throup, 1993).<sup>119</sup>

Given the strict laws that existed for such barazas under the Chiefs Authority Act (Cap 128 Laws of Kenya) that legally compelled local residents to attend such an event, most local residents attended the barazas thus denying local MPs the audience of their constituents. In the early 1970s, Nellis (1971:390) stated that licenses to hold public meetings were not only hard to obtain, but also could be cancelled by district commissioners (DCs) without prior notice at times.

Until the late 1990s the PA continued to demand that MPs obtain licenses before holding any political rally (Adar and Munyae, 2001)<sup>120</sup>. Indeed, current critics of the PA remember these episodes with anger.

Through other legislative measures, the PA was also empowered to organize and supervise electoral processes.

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<sup>118</sup> Ndegwa, N. S. 'Third time lucky?' *Journal of Democracy* (2003), 14 (3): 145-158.

<sup>119</sup> Throup, D. *Multi-Party Politics in Kenya*, Athens, Ohio. (University of Ohio Press.1993.)pp.98

<sup>120</sup> Adar, G. K. & I. Munyae. *Human rights abuse in Kenya under Daniel Arap Moi* (2001), *African Studies Quarterly*, 5, 1: 1.



These powers allowed the PA to restrict voter registration in some areas and also restrict the political activities of dissident MPs (Orvis, 2006; Throup, 1993).<sup>121</sup>

Ndegwa (1998: 4) asserts that in the days leading to the 1992 elections, “of the twenty one meetings cancelled or denied, all but one were opposition party meetings”. The PA therefore, steadily accumulated resources with a corresponding erosion of powers and responsibilities for the elected officials.

From the 1960s through to the late 1990s, the PA therefore amassed sweeping authoritarian powers and was arguably more powerful than local elected members (MPs). The increasing assertiveness of the PA thus left the MPs with only one venue to vent their frustrations – Parliament. These frustrations Baraza is a Swahili word for village meeting called by the local leaders. Under the Chief’s Act, it was mandatory for the local people in a community to attend such barazas whenever the local chief announced or called them, were expressed as early as 1966 through the Local Government Review Committee, which made a passionate plea for the abolition of the PA.

A majority of MPs considered the PA an antiquated and colonial and contrary to the spirit of self government (Oyugi, 1994: 182).<sup>122</sup> However after the demise of President Kenyatta, President Daniel arap Moi went on to strengthen the PA’s institutional structure. Having constrained local political activities, the KANU regime recognized that coercive means alone would not legitimize its policies. Instead, it re-engineered the Harambee spirit to mobilize resources at the local level.

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<sup>121</sup> Ibid pp.206

<sup>122</sup> Ibid pp. 182

Waiguru (2002) <sup>123</sup> defines Harambee as a self-help movement that entails voluntary contributions in either cash or labour toward a common good. As a bottom-up development strategy, it enables people at the community and grassroots levels to participate in the planning and implementation of local development projects.

Harambee activities helped provide social services such as primary schools, secondary schools, health facilities, water projects, cattle dips, and churches, all of which would subsequently be “taken over by the government for operation and maintenance and as a means of providing basic needs to large segments of the rural population” (Chieni, 2008)<sup>124</sup>. Politically, the Harambee movement served two goals.

First, the Kenyatta regime popularized it as a development process through which local MPs provided resources to their constituents from their own pockets and contributions from rich patrons within the system (Orvis, 2006).<sup>125</sup> Secondly, Harambees were used to check and constrain independent political activities and the influence of regional power brokers from mobilizing resources and political support, independently from the current regime.

#### **4.2 Moi’s Regime (1978-2002)**

Despite the immense constitutional and statutory powers embodied in those offices, the Constitution did not construct a presidency within the inherent or residual power theories.

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<sup>123</sup> Waiguru, A. *Corruption and patronage politics: The case of Harambee in Kenya*. In: *Workshop on measuring corruption*. Nairobi. (Government printers. Nairobi 2002).pp 87

<sup>124</sup> Chieni, S. N. *The Harambee movement in Kenya. The role played by Kenyans and the government in the provision of education and other social services*. Available from <http://boleswa97.tripod.com/chieni.html> (Accessed on 15th November, 2008).

<sup>125</sup> Ibid pp. 107

This was largely a result of the extension of traditional and charismatic authority embodied by the occupants of the offices (Ghai, 1986: 1979–208).<sup>126</sup> The impact on the exercise of public authority was profound. First, the rationale for the exercise of public authority by state officers was neither managerial nor political nor legal; it became patrimonial and patriarchal. The public service became an appendage of the executive through which presidents, their families, handlers and close political associates amassed wealth through rent-seeking, including illegitimate and primitive accumulation of the resources of the state.

The result of the patrimonial exercise of public authority by both the presidency and the public service was deep ethnic, racial, gender, regional and other geographical inequities, inequalities and marginalization. In addition, public authority was used by the President and other public officials to disenfranchise citizens of their constitutionally guaranteed rights. This fomented dissent in the form of political party opposition, emergence of a civil society and an increasingly insistent international community, all of which pushed for political and legal reforms.

This set the stage for the emergence of the second presidency. Such para-judicial powers are partly attributed to the President's claim to a historical role in the struggle for independence, his charisma, or his role in the sole or dominant political party. There are echoes of the classical Weberian legitimate sources of power in this schema.

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<sup>126</sup> Ghai, Yash P. (1986) 'The Rule of Law, Legitimacy and Governance', *International Journal of the Sociology of Law*, 14: 179–208.

It is in this respect that the Public Collections Act (Cap. 106, Laws of Kenya)<sup>127</sup> was also selectively invoked by the PA to regulate Harambee activities and to check dissident MPs' from creating independent sources of power.

The provisions of this Act created a requirement that a license be issued by the PA before harambees could be conducted or before any funds could be collected from the public. The PA arbitrarily and politically issued such licenses. For instance, MPs opposed to the KANU government's policies were frequently denied licenses to raise funds for development projects in their constituencies.

Instead, the government often supported and groomed political rivals against elected MPs perceived to be vocal, by initiating and conducting Harambee drives in such recalcitrant MPs' constituencies (Ndegwa, 1998; 2003).<sup>128</sup> And, despite the selective application of the Public Collections Act (Cap. 106) by PA officials, in the general public's imagination, Harambees served as benchmarks for measuring the MP's performance at the constituency level.

As constituency representatives, MPs were, and have always been seen as better placed to bring the "bacon home" in the form of securing funding for development projects such as health clinics, water projects or building schools (Osendo and Gachucha, 2003)<sup>129</sup>.

To be re-elected, poor MPs had to unquestioningly approve KANU's policies, to avoid denials or cancellations of Harambee permits, and in the hopes of attracting contributions from rich barons within the system (Throup, 1993).

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<sup>127</sup> Republic of Kenya. Laws of Kenya. (government printers Nairobi 2007) cap.106

<sup>128</sup> *Ibid* pp.203

<sup>129</sup> Osendo, C. and W. Gachucha. *Harambee: Patronage, politics and disregard of Law* Adili Newsletter. (Nairobi. 2003).Issue 50.

<sup>130</sup>Poor MPs and those perceived as ‘anti-establishment’ often failed to be re-elected. Even rich MPs were vulnerable given the government’s leverage over licenses for holding these events.

Therefore, whereas the Harambee movement is credited for building schools, health facilities, cattle dips, boreholes amongst other things, it soon became corrupted. For instance, after the introduction of multiparty politics in 1992, harambee contributions were used as a vehicle for bribing voters. Mwangi (2008: 272-3)<sup>131</sup> documents how in the two elections held in the 1980s, Harambees accounted for only 7 per cent of the decade’s total funding for local development projects, whereas in the multiparty era of the 1990s, during the two elections held these funds accounted for over 60 per cent of total funding for local development projects.

In the period between October and December of 2002 before the December 2002 general election, a total of 140 Harambees were held, led by President Moi as the highest contributor. Other personalities in the top 50 list included MPs closely aligned to the head of state and a number of provincial and district commissioners, that is, the PA officials. In other words, Harambees had evolved from being a national rural self-help development strategy to being one that deployed the ethos of self-help for specific ruling party political ends.

The success of the latter could not have been achieved without the active participation of the PA. The other malady of the Harambee movement was that areas with influential politicians and leaders were able to conduct grand Harambees and raise more resources to put up many local development projects. Resource mobilization and allocation was therefore skewed.

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<sup>130</sup> Ibid pp.93

<sup>131</sup> Mwangi, O. G. (2008). *Political Democracy*. Journal of Modern African Studies, 46 (2): 267-285. corruption, party financing and

Areas with more resources, including organizational resources, and more economic and political elites, became more successful than areas less endowed with these resource advantages (Makhanu, 2008).<sup>132</sup> Memories of the PA's role during the Harambee era are still fresh in its critics' minds and they fear that its retention may perpetuate past injustices.

Memories are still fresh when even a visit by in-laws or the slaughter of a goat needed a permit from the chief, who was also required to ensure no criticism of the government or the president took place at any such gatherings. The Provincial Administration was relied upon by the imperial Presidency to rig elections so as to weed out government critics. The 1988 mlolongo elections where in many cases the shorter queues won is a memorable reminder. The history and role of the Provincial Administration is thus far from positive.

#### **4.3 Kibaki's Regime (2002- August 2010)**

Kibaki come into power in 2002 with the introduction of the party National Rainbow Coalition (NARC). During this phase, the checks and balances on the presidency were within the framework of traditional constitutional principles like separation of powers. The coalition arrangements were politically significant to the extent that major government programmes demanded consultation and concurrence between the two coalition members, with the threat of public disapproval or sabotage in case there was no concurrence (for example, debates on major economic policy blueprints like the Economic Recovery Strategy for Wealth and Employment Creation 2003–2007 [ERS]).<sup>133</sup>

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<sup>132</sup> Makhanu, S. K. (2008). Resource mobilization for reconstruction and development projects in developing countries. Available from: <http://www.wust.ac.ke> (Accessed on 7<sup>th</sup> November, 2008).

<sup>133</sup> Republic of Kenya (2003). Public Order Act. Nairobi: Government Printers.

It is evident from the foregoing that the role of the PA in enforcing the executive's preferences greatly reduced elected officials' influence on policy decisions and resource distribution at the local level. The executive's dominance was punctured in 2002 with the triumph of the opposition party National Rainbow Coalition (NARC) over KANU in the December 2002 general election. And calls for the abolition of the PA did not die off, as local elected officials sought to minimize the policymaking role of the PA in local issues. With the creation of the Constituencies Development Fund (CDF) in 2003, the first round in the post-KANU era appeared to have gone to elected officials.

The establishment of the CDF specifically addressed the issue of unbalanced resource allocations that had been exacerbated through the Harambee movement, whose routine political manipulation had continued to privilege the previous regime's sympathizers (GOK – CDF Act, 2003; and 2007).<sup>134</sup> Thus, it can be argued that the asymmetrical power relations between the PA and elected officials over the years is the primary motivation of those opposed to the PA's retention at the local level. While the PA's operational history deserves condemnation, to judge fairly its performance, we must not ignore the historical context of its origin, and the nature of the regimes it sought to protect.

The renewed sense of rule of law in Kenya re-established the specific grant theory of executive power as the operational doctrine of the exercise of executive authority. In addition, the NARC Government, in its formative years, sought to introduce a three-pronged approach to the exercise of public authority: First, the new public management was characterized by the initiation of performance contracting, institutional service charters and strategic plans.

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<sup>134</sup> Republic of Kenya (2003). Constituencies Development Fund Act. Nairobi: Government Printers.

Second, there was emphasis on broader political representation in governance, characterized by inclusion of civil society, academia and other non-state actors in the governance process, e.g., in the initiation of the ERS. Elements of Kenya Vision 2030 (GOK, 2007),<sup>135</sup> the newer blueprint on social, economic and political policy, were initiated in this period.

Third, the juridical or adjudicatory approach ushered in increased recognition of fundamental rights and fidelity to the law in the governance process. During this phase there was a renewed neo-liberal sense of the character of executive and public authority in the affairs of the state. However, the failed constitutional review process left intact the extensive powers of the President, as well as the constitutional, legislative and sociocultural structures of society that propped up patrimonialism in the exercise of public authority.

For example, in the period that preceded the 2007 general election, the President unilaterally appointed ECK commissioners in contravention of the 1997 Inter Party Parliamentary Group (IPPG) compromise providing that political parties would nominate members to the ECK according to political The Presidency and Public Authority in Kenya's new Constitutional Order.<sup>136</sup>

### **(2008–2010).**

This phase of the presidency was ushered in by the passing of the 2008 National Accord and Reconciliation Act (NARA) as part of the constitutional text. NARA created the office of the Prime Minister in the context of a power-sharing agreement on the basis of portfolio balance. It thus created or contextualized the contested idea of a dual or semi-presidency.

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<sup>135</sup> GOK (2007) Kenya Vision 2030: A globally competitive and prosperous Kenya, Government of Kenya, Ministry of Planning and National Development and the National Economic and Social Council (NESC), Nairobi, Kenya. Issue 91

<sup>136</sup> Lessig, Lawrence and Cass Sunstein (1994) 'The President and the Administration', Columbia Law Review 94(January): 1–123.



While it had been there at independence, such sharing of power had not materialized until after the post-election violence.<sup>137</sup>

#### **4.4 Role of Provincial Administration in Modern Kenya.**

The ongoing debate on the move by President Mwai Kibaki to decline to give assent to County Governments' Bill 2012 indicates that Kenya like any other country with a devolved system of government is being confronted with a constitutional crisis. The legislators amended the bill putting the provincial administration under the armpit of the governor a move that the executive termed as unconstitutional and infringement on the provisions of the constitution.<sup>138</sup>

According to the president, the amendment transferred the security functions of the national government to the county government in contravention to the express provisions of the constitution. On the other hand the legislators argue that there was no question to the legality of their amendment adding that it was possible that the president was misadvised.

The ongoing debate puts into perspective the question; hoe should competing claims of central and county governments are resolved? According to a constitution working paper "Restructuring the provincial administration: An Insider view" by Obuya Bagaka from a constitutional perspective, the organization and implementation of policy are administrative issues.<sup>139</sup>

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<sup>137</sup> Mutunga, Willy (1999) *Constitution-Making from the Middle: Civil society and transition politics in Kenya, 1992–1997*, Nairobi: SAREAT, and Harare, Zimbabwe: MWENGO

<sup>138</sup> Report on Reconstruction of the provincial administration in Kenya, (2002). Insider view pp34-40.

<sup>139</sup> Obuya Bagaka. *Restructuring the provincial administration: 'An Insider view from a constitutional perspective,' (Nairobi publishers, 2007). pp. 45.*

“For latter to succeed the provincial Administration must be structured as the nerve-c entre for the coordination of issues between the central and county governments,” Bagaka adds. He argues that the critical role played by the provincial administration officials cannot be wished away arguing that their role has been enhanced and made complex under the new constitution.

In regard to its enhancement, the provincial administration must serve as the nexus between the national and county governments. Provincial administration officials will not only need to enforce national legislations, but they will also be required to understand, interpret and inform the central government of the implications of county legislations on national development goals and vice versa. Additionally the provincial administration officials will be critical in creating intergovernmental relations where policy decisions are effectively coordinated and implemented.

The provincial administration system of management may become the nexus between the central and county governments and the coordinator of programmes that cut across county boundaries. In conclusion the provincial administration is castigated as a colonial evil, under the new constitution the provincial administrator will be the necessary evil to ensure smooth running of the central government at the local level.<sup>140</sup>

#### **4.5 Interview Findings**

Salim Ndemo, one of the country's foremost administrators, in an interview said the following: In his analysis of the Provincial Administration in the country and whether it facilitated

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<sup>140</sup> Interview with Samuel Ndemo. former DC (1985-1997). September 2012.

development, he revealed the mysteries of the system and why it was eventually weakened at the behest of political power, making it less effective.

The Provincial Administration inherited a "mystifying legacy" from the colonial pioneers that gave the administrators extra magical powers which the officers cherished, among them to regulate political utterances, security and representing the President.<sup>141</sup>

The system, he regrets, was dominated at the top by officials from the politically dominant regions. This trend also dictated the promotion of the officers. The officers have become the epitome of state power, as it became more politically influential. According to him, the power vacuum created by the lack of proper political parties (following the banning of multiparty politics in 1966 by then President Kenyatta regime) facilitated the creation of a stronger provincial administration.<sup>142</sup> The provincial administration in essence replaced political parties as government agents and became politically dominant.

The system of provincial administration circumvented direct participation of the citizens in the day-to-day governance and left administration, security and economic development in the hands of the Provincial Commissioners (PCs) and the District Commissioners (DCs). The administrators avoided all forms of political scrutiny because they were directly answerable to the President. Their mistakes could only be questioned by none other than the President. The mandate of the provincial administration was therefore not appropriate for rural development because it was dominated at the top.

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<sup>141</sup> Interview with Samuel Ndemo. Former DC (1985-1997). September 2012.

<sup>142</sup> Interview with Samuel Ndemo. Former DC (1985-1997). September 2012.

The colonial government spearheaded defeat of the 1961 majimbo constitution and introduced security of tenure for commissioners to avoid misuse or abuse of the institutions "out of sheer malice."The structural changes included protection or re-enforcement of the work of the administration. The majimbo - regionalist constitution led the conversion of PC title to a "lucklustre" title of Civil Secretary.<sup>143</sup> It however got a lifeline when it was restored in 1964.

Kenya's strong Presidential system of governance has seen the political leadership using the provincial administration. The political system has never asserted itself directly with the people owing to its reliance on the provincial administration. Parliament's attempts to question this were met with silence from the president in 1966.

The authority bearing function of the provincial administration was not conducive for development, on the role designed for the provincial administration as the direct representatives of the president at the provincial and district levels. The Provincial Administration was introduced to backstop the introduction of colonial rule in Kenya.

<sup>144</sup>The intent of the Provincial Administration was to protect the natives and the colonial settlers and safeguard the economic interests of the British. Colonialists valued paternalism and used the existing local administration as agents who played junior roles to White appointees of the colonial masters.

Recruits were ex-military service personnel who served as porters in the British army and were mostly corrupt administrators who had experience working with the colonialists in other

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<sup>143</sup> *Interview with Samuel Ndemo. Former DC (1985-1997). September 2012*

<sup>144</sup> *Interview with Samuel Ndemo. Former DC (1985-1997). September 2012*

protectorates. The officers were brutal, corrupt and inefficient and were most brutal against Africans. The system was introduced by the Imperial British East Africa Company (IBEACo).

The IBEACo officials were forced to hand over power when it failed to raise enough funds to sustain itself in Kenya. In short,<sup>145</sup> Kenya's first colonial government, buttressed by the provincial administration, was a major failure. Through the provincial administration, the government was able to introduce taxes and reform its revenue collection system from the white settlers and the Africans.

This was the turning point in the development of the provincial administration. This initial system was later displaced by the appointment of the first Governor in 1906 and later, the Commander-In-Chief. The post-independent governments introduced a more rigid administration. The chain of command became more rigid from the President, downwards, leaving administrators with very limited discretionary authority, unlike the colonial system which allowed a little more autonomy. The provincial administration system was meant to conform to local norms and traditions.<sup>146</sup>

The initial administration was a hybrid of both African European systems. Ndemo argued that the system had dual but contradictory role of developing the Africans, spiritually, socially and economically, but it ended up exploiting the natives. The colonialists suppressed local activism through district councils, created in 1924.<sup>147</sup> The provincial administration also enjoyed immense judicial powers until 1954 when most of their specialist duties were taken over by the

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<sup>145</sup> Interview with Samuel Ndemo. Former DC (1985-1997). September 2012

<sup>146</sup> Interview with Samuel Ndemo. Former DC (1985-1997). September 2012

<sup>147</sup> Interview with Samuel Ndemo. Former DC (1985-1997). September 2012

professional ministries. Before then, the system ensured trade, agriculture and law enforcement issues were effectively run.

The dawn of independence ushered in a new era in the provincial administration, the only thing that changed at independence was the change of personnel from the white administrators to the black African administrators. The colonialist-trained administrators retained the traditions studied from the whites.

At independence, the system became the 'magic button' the independent President pressed whenever he wanted quick diagnosis of any problem and the same he used for trouble-shooting. He also used the same system for feedback. The post-independence government embraced the provincial administration and developed it into a political machine. The basis for creating provincial administration was to set up a central, unitary system of governance for Kenya. It ensured continuity of governance, the smooth transition from the colonial to the post-independence system. They maintained law and order and added the control of political parties, including the ruling party in all regions. It also promoted the sanctity of government, making sure the government was unassailable.<sup>148</sup>

#### **4.6 Conclusion**

Previously under the old constitution, coordination of central government policies and development programmes at the local level was done by the provincial administration (PA). As a department within the Office of the President, the PA not only supervised other central

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<sup>148</sup> Interview with Samuel Ndemo. Former DC (1985-1997). September 2012

government ministries at the province and district levels but also coordinated their programmes and policies.<sup>149</sup>

Thus, provincial administrators followed orders from the Head of state without question even when those orders were detrimental to the public interest. This Upward accountability mechanism was exploited by the executive to suppress those opposed to its policies and programmes. In the eye of an ordinary Kenyan, the history of the provincial administrators personifies repression, dictatorship, impunity and authoritarianism.

Political institutions, whether they exist in laws, norms, traditions, or practices that advance some societal values, are creatures of the very society that they seek to shape, influence, protect or control (Pearson, 2004). Although the PA has rightly been accused of being the face of repression, corruption and dictatorship,<sup>150</sup> it must not be lost that it was a creature of the old Constitution that created an imperial presidency whose preoccupation was control and survival.

As Akech (2010:18) noted, “members of the provincial administration and the police...understood that it was sometimes in the interest of their personal survival to follow what they understood to be the direction or inclinations of... the president ...in their areas rather than to uphold the law”. That such modus operandi negated public accountability in the exercise of power and bred human rights violations, corruption and impunity is no surprise.<sup>151</sup>

The Provincial Administration has also been reformed to remove the colonial mentality and made to conform to the needs of the current society. This has been possible through trainings and seminars on altitude change and good governance. The Provincial Administration of today is

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<sup>149</sup> Ibid pp.Cap. 45

<sup>150</sup> Ibid pp. 104

<sup>151</sup> Ibid pp. 18

totally a reformed institution which has continued to discharge its mandate to the expectations of the Kenyan people. Hence the institution of Provincial Administration has fully embraced the principle of good governance and the rule of law.



## **CHAPTER FIVE**

### **CONCLUSION**

#### **5.0 Introduction**

In this chapter, the major findings of the study were summarized, discussed, concluded and recommendations were given as regards the role of the provincial administration in managing conflicts in Kenya.

#### **5.1 Summary**

The study has shown that in the past, Kenya has faced numerous threats to its national security and stability. These challenges have become increasingly sophisticated and complex with time. The resulting conflicts range from internal disputes between and within different groups, to cross-border confrontations with groups from neighboring countries. These conflicts are either violent or nonviolent and are exacerbated by a number of things. The spill-over effects from the wider conflict in the Great Lakes Region and the Horn of Africa has, for instance, adversely affected neighboring communities.

Similarly, complex and interrelated factors that include poor governance, poverty, competition for scarce resources and identity-based rivalries have been recorded as push factors for conflict. The violent conflicts are further complicated by easy access to small arms and light weapons (SALW). The proliferation of illicit SALW is felt in gun-related crimes, particularly in urban centers' and in pastoral conflicts. Following the December 2007 elections, Kenya experienced a spate of violent conflicts. This caused extensive damage to life and property, and led to the displacement of populations either as refugees, internally displaced persons (IDPs) or besieged populations (BP).

Beyond the material impact, the Postelection Violence (PEV) had psychological, physical and emotional repercussions mainly on women, children, youth and the elderly. For a stable country like Kenya, this demonstrated that peace and security cannot be taken for granted. Human security is the foundation of good governance, individual and societal welfare and economic development.

The concern to promote peace and stability in Kenya has been with policymakers and stakeholders for decades. This is reflected in active and continuous engagements with local and national peace initiatives over the years. To fully realize the country's peace building potential, there is a consensus on the need for a comprehensive and viable strategy on peace building and conflict resolution. The need for a policy framework that articulates the country's vision and strategy in this regard is, therefore, urgent.

## **5.2 Discussion**

Security is the foundation of good governance, individual social welfare and economic development. The pre-requisites of security are peace and elimination of conflict. However, the 2007 post-election crisis demonstrated to Kenyans that peace and security cannot be taken for granted. There is empirical evidence to demonstrate that insecurity increases the cost of doing business in Kenya. Consequently, in order to effectively implement the first phase of *Vision 2030*, it will be necessary for Kenya to build a strong and sustainable framework for peace and security, and to ensure that all internal conflicts and differences are resolved within the boundaries of the law.

Vision 2030 aims at providing "security of all persons and property throughout the Republic". The overall ambition for the security sector under "Vision 2030" is "a society free from danger

and fear”. The Government is determined to improve security in order to attract investment, lower the cost of doing business and to provide Kenyans with a more secure living and working environment.

Policymaking is a complex and highly political process. An effective policy advocacy strategy involves policy analysis that assesses the policy environment, the formulation process and the actors involved including a review of other ongoing policy initiatives and strategies. Based on the policy analysis and review, key issues that the policy must address can be identified, advocacy objectives set, target audiences for the advocacy campaign identified, advocacy activities implemented and evaluated.

This is a critical hour in the formulation of policy on conflict management and peace building. The political will is apparent if not certain, conflict issues are in the limelight and there has been remarkable progress in achieving the goal of a policy culminating in the draft NPPBCM. The NSC is a manifestation of the collaboration and partnership between the government and other actors to work towards achieving sustainable peace.

Without an effective policy advocacy strategy, the above gains will be lost and key issues impacting on the policy may be excluded. To guard against these risks, the full participation of all actors is necessary. The participation must however be part of a strategic advocacy intervention that will promote the successful formulation of a NPPBCM that is politically viable and sustainable.

This study provides the framework for an advocacy strategy. It is intended to increase understanding amongst actors of the challenges that lie ahead and how to address them through

advocacy. The emphasis is on participation of all actors, both state and non-state and on realistic assessment of available resources. It is hoped that it will generate debate at community, national and regional level and particularly amongst the civil society that will enrich the process of developing an effective advocacy strategy. Advocacy objectives and activities need to be identified and implemented as soon as possible through participatory processes if advocacy is to have any significant impact on the policy formulation process currently going on. Activities such as public education, media campaigns and training need to be underway. Ongoing civil society activities should be incorporated into the advocacy strategy.

### **5.3 Recommendations**

The future role of the PA can be deduced from clause 3 of Article 186, which states that “a function or power not assigned by this 2010 Constitution or national legislation to a county is a function or power of the national government” (Republic of Kenya – Constitution, 2010: Article 119). Given that the central government administrators (CGAs) at the district level will continue to supervise central government employees, they will need to learn how to manage a “picket-fence” intergovernmental relationship.

Picket-fence intergovernmental relationships refer to an administrative arrangement between employees from different levels of government working on a similar policy issue, for example education specialists, who find it necessary to work together to solve a common problem. Although Article 186 may be prone to future contestation for its lack of specificity, it ideally strengthens the administrative arm of the central government on matters not assigned to county governments, however local those issues may be and unless the national assembly legislates

otherwise. In the absence of such national legislation, the PAs will be vital in undertaking such matters on behalf of the central government.

For the latter to succeed, the PA must be structured as the nerve-centre for the coordination of issues between the central and county governments. Whether we call them district officers or county commissioners, the critical role played by these officials cannot simply be wished away. Perhaps to the surprise of many, the role of a PA under the 2010 Constitution has been enhanced, made complex and indeed become more necessary than before.

With regard to its enhancement, the PA must serve as the nexus between the national government and the county governments' political class and their bureaucracies. PA officials will not only need to enforce national legislations, but they will also be required to understand, interpret and inform the central government of the implications of county legislations on national development goals and vice versa.

Given the relative size of a county, district commissioners or district officers may continue to function as central government bureaucrats under the supervision of the CA, where their role could be to execute the central government's mandate at the local level. In accordance with Articles 175 and 189 of the 2010 Constitution on separation of powers and respect for institutional integrity of each level of government respectively, PA officials such as sub-chiefs and chiefs may either be absorbed by the county governments or relieved of their duties given that most of what they do largely falls within county jurisdictions.

Despite the often polarizing debates and criticism of the PA, the new Constitutional order provides the provincial administrator a deserved but not necessarily desirable level of visibility.

The PA system of administration may become the nexus between the central and county governments and the coordinator of programmes that cut across county boundaries. As much as critics may castigate the PA as a colonial evil, under the 2010 Constitution the provincial administrator (by any other name) will be the necessary evil needed to ensure smooth running of central government policies and programmes at the local level.

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## **APPENDIX A**

### **Interview questions for EX- Civil Servants.**

This interview seeks information on the role of the provincial administration in managing conflicts in Kenya.

Please respond to all questions. The information will be treated with all confidentiality.

1. Tell me a brief introduction of who you are?
2. What is your highest educational level; primary, O-Level, A-Level, Diploma, Degree, Masters and Above?
3. How many years have you been working in the civil service?
4. How did the provincial administration in Kenya come into existence?
5. How has the PA in Kenya been instrumental in facilitating development?
6. What were the exact roles of the provincial administration in Kenya?
7. Describe the approach used in effecting orders by the PA? Was it the top- down approach or was it purely dominated by the Head of state?
8. How were government policies and legislation laws formulated and implemented?
9. During the reign of President Kenyatta and Moi how well did the PA work during those times?
10. How often did an officer get prompted in the PA?
11. PA as we all know was dominated by the state power; how did this affect the work performance of the officers in the various departments?



12. Would you say that the dominations of the PA by state power made it work so ineffectively or effectively?

13. On the issue of conflict management how was this introduced into the PA?

14. Most of the recruits into the PA in the early years of (1966-1980) were ex-military officials and recruits who lacked n form of formal training; would you say that this is what contributed to brutal, corrupt and inefficient approaches to interventions on matters of the country's security?

15. What is your take on the new constitution the new changes it has brought on the PA?

16. Please suggest possible solutions which can be introduced to change the image of the PA in Kenya?

## **APPENDIX B**

### **Names of the people interviewed**

MRS. Clere Amollo. Current PC (2001 – to date)

MR. Samuel Ndemo. Former DC (1985 - 1997).

MR. Shadrack Madame former DC ( 1992-2010)

MR. Omar Beja. Current DC (2002 – to date)

MR. Peter Rabul. Former PC (1995-2010)