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The Role of Non State Actors in Conflict Management in Africa: Case of 2007-2008 Post Election Violence in Kenya

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DECLARATION

I, **Frida Mwende Muthini** hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed …………………………...…………… Date……………………………….

FRIDA MWENDE MUTHINI

This project has been submitted for examination with my approval as University Supervisor.

Signed…………………………………………. Date…………………………….....

PROF. AMB. MARIA NZOMO

DEDICATION

I dedicate this project to my father, mother, sisters. husband and daughter for giving me tremendous support throughout my studies.

ACKNOWLEDGEMENT

I would want to recognize the efforts of my lecturers for their hard work and input during my studies, my classmates for their encouragement and support during the entire period of my study, My parents for their financial support that made it possible for me to study, and lastly my employer, Acacia Crest Academy that gave me humble time to further my studies.

ABSTRACT

Human security has recently emerged as an innovative approach which has afforded the global village to address, in a holistic manner, the sources of insecurity affecting people worldwide. The security of the individual is no longer defined exclusively within the realm of states or of state security. The origins of today's insecurities are diverse, relating to social, economic, environmental, health and other factors. Non-State actors are particularly well suited to engendering human security in the new world context. When the post-election violence broke out on the 30th December 2007 soon after the announcement of the Presidential election results by the Electoral Commission of Kenya, the Government of Kenya made a furious single handed attempt at containing the situation by the use of armed security personnel without success. The violence resulted in more than 1,000 deaths and approximately 600,000 internally displaced persons (IDPs).It took the involvement of the United Nations and the African Union to broker peace. This study set to: establish the role played by non-State actors in conflict management during 2007/2008 post-election violence in Kenya; analyze challenges faced by Civil Societies in Kenya; and make recommendations on various ways in which the government can incorporate the civil society in key government decisions for faster peaceful conflict resolution in the future. The study has identified key causes of 2007/2008 post-election violence. These include, but not limited to: impunity, weak accountability in governance; corruption; politicized ethnicity; inequitable resource distribution; poverty and marginalisation; imperial presidency. However, the local non-State actors who were involved at the initial stages of dispute resolution were ideologically divided whether to pursue peace as an end in itself or whether to pursue sustainable peace through the search for truth, justice and accountability

ABBREVIATIONS

AU   African Union

UN   United Nations

DFID   Department for International Development

NARC   National Rainbow Coalition Party

NGOs   Non-Governmental Organizations

ODM   Orange Democratic Movement

PNU   Party of National Unity

CSOs   Civil Society Organizations

CIPEV   Commission of Inquiry on Post-election Violence

TJRC   Truth Justice and Reconciliation Commission

ICC   International Criminal Court

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CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND OF THE STUDY

Human security has recently emerged as an innovative approach which has afforded the global village to address, in a holistic manner, the sources of insecurity affecting people worldwide. The security of the individual is no longer defined exclusively within the realm of states or of state security. The origins of today's insecurities are diverse, relating to social, economic, environmental, health and other factors. These insecurities increasingly transcend state borders and have global consequences.

In democracies world over, conflict resolution among various communities, tribes and races is within the province of governments. A democratic government exercises this mandate, among its other functions, in reciprocity for the sovereignty ceded to it by the citizens in the resulting social contract which is the foundation of the democracy. For it is on the basis of this social contract, for instance, that at the preamble of the Constitution of Kenya 2010, the people of Kenya express their binding willingness thereof thus:[1]

"We, the people of Kenya:

EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution:

ADOPT, ENACT and give this Constitution to ourselves and to our future generations."

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[1] The Constitution of Kenya 2010: Preamble

In resolving conflicts among its citizenry, a government demonstrates its capacity to maintain law, order and peace which are crucial for socio-economic growth and development. However, in instances of emergencies occasioned by sudden influxes, other entity non-State actors become handy and often play pivotal roles in conflict resolution processes. The importance of their role has grown significantly over the past couple of decades as the limitations of the post-colonial state in providing for the needs of its people have been made all too clear.[2]

The term non-State is applicable to a large number of very different actors with distinct roles in societies in conflict. These include armed groups, non-governmental organizations (NGOs), corporations, educational institutions, private donors, religious organizations, the scientific community, private individuals, the media and, increasingly, the Internet community. Their few shared characteristics result from their distinctly unofficial nature (compared with State actors), their greater flexibility and, often, their unaccountability under national and international laws.[3]

Non-State actors are particularly well suited to engendering human security in the new world context. Indeed, in failed states, such as Somalia, non-State actors are the only actors who are present to do so. This peculiar role played by non-State actors in building local capacity during internal conflicts is made possible owing to the non-State actors' unique close involvement with local communities than traditional actors.[4]

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[2] Mabogunje, A.L., *Institutional Radicalisation, the state and the development process in Africa,* (Development Policy Centre, Ibadan, Nigeria, 2000)
[3] Claude Bruderlein, "The Role of non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars," (Geneva, May 2000) p. 2
[4] ibid

While engaging in conflict resolutions, non-State actors often play many other roles in the protection of human security. For example, organizations such as the International Committee of Red Cross (ICRC) and Oxfam act as relief agencies even when governments are unable to respond to emergency needs; NGOs such as the Community of San Egidio facilitate negotiations between warring parties; efforts such as Radio Ijambo in Rwanda aim to help re-establish peace while the Internet community actor engages in the reunification of families.[5]

These actors have increased access to areas inaccessible to official actors and function without the narrow foreign policy constraints of state institutions. They can talk to several parties at once without losing credibility. They can deal directly with grassroots populations and operate without political or public scrutiny. In addition, non-State actors can more effectively build networks with civil society representatives to focus on longer-term perspectives. These include, for example, addressing the needs of displaced populations, advocating stronger control of the arms trade and helping governments preserve and restore fragile environments. They are also less subject to complaints about outside interference or breaches of sovereignty. In short, they are often more flexible than state actors, especially in internal conflicts.[6]

There are, however, many problems associated with the increased role of non-State actors in the protection of human security in conflict situations. The multiplicity of unofficial actors can mean that efforts are uncoordinated and accountability is unclear. Non-State actors may also have insufficient political influence or resources to bring about their ends. They may lack information

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[5] The ICRC created a website to help re-establish contact between family members in the former Yugoslavia. To assist persons wishing to locate their relatives, computers were installed in ICRC offices in Albania, Macedonia, the Federal Republic of Yugoslavia and Bosnia-Herzegovina <http://www.familylinks.icrc.org.> accessed 20 July 2015. Moreover, a team assembled by the International Rescue Committee (IRC) provided Internet service to Kosovo barely 100 days after the arrival of UN peacekeepers. The project offered free, reliable and inexpensive communications to local organizations and was instrumental in efforts to reunite families. See the Kosovo Internet Project's website <http://www.ipko.org.> accessed 20 July 2015.
[6] ibid (n 3)

or awareness about important issues, which may then lead to their taking sides in conflict. In addition, it can be argued that their focus on civil society rather than on state institutions draws resources away from a struggling state.[7]

Non-State actors appear in various shades. Some groups intervene at the negotiating table, including women's groups that train local activists to participate in drafting new rights statutes. Away from war zones, human rights groups shape public dialogue and establish laws protecting displaced persons.

The role played by non-State actors in conflict resolutions in not a peculiar scenario to Africa. Over the decades, there has arisen great need of non-State actors in conflict resolution world over. For instance, Amnesty International has been an active non-State actor in negotiating peace in Afghanistan since the 1990s;[8] the United Nations and the Cambodian Institute for Co-operation and Peace were central in restoring order in Cambodia between 1979 and 1998,[9] Kosovo[10] in 1998 and 1999; in Bosnia between 1992 and 1995;[11] and the United Nations High Commission for Refugees (UNHCR) and the Syrian Red Cross have been deeply engaged in conflict resolution in Syria since 2003 to 2012.[12]

In Africa, memories are alive to the involvement of the International Community through the United Nations, the International Organizations such as the Red Cross, the UNHCR, in

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[7] ibid

[8] Annyssa Bellal, Gilles Giacca and Stuart Casey-Maslen, "International Law and Armed Non-State Actors in Afghanistan" International Review of the Red Cross, Vol. 93 No. 881 (March 2011) pp. 50-51

[9] An Sokkhoeurn, Conflict Resolution in Cambodia, Cambodian Institute for Co-operation and Peace No. 35 (Phnom Penh, Cambodia, November 2010) p. 5

[10] <www.unmikonline.org/civiladm/index.html> accessed 28th July 2015

[11] Roy Gutman, *A Witness to Genocide: The "Ethnic Cleansing" of Bosnia,* (MacMillan, 1993)

[12] Muriel Asseburg and Heiko Wimmen, 'Civil War in Syria: External Actors and Interests as Drivers of Conflict," SWP 1962-2012 Vol. 43 (2012) p. 7

resolution of conflicts in Rwanda (1994),[13] Angola (1961-2002),[14] Somalia (1988 to date),[15] Sudan, the Democratic Republic of the Congo[16] among others.

According to Shepherd (1998), non-State actors are effective in conflict resolutions since their approach is more proactive than approaches by government. By engaging the people and communities at the center of the conflicts, non-State actors sensitize them in identifying the inherent problems, formulating plans and implementing decisions over their own lives.

The use of State machinery in conflict resolution, on the other hand, involves the use of authoritarian and intimidating approach which often leads to escalation of the conflicts meant to be contained. As such, the participation of non-State actors in conflict resolution provides more viable and home grown solutions acceptable to the warring parties and the wider society.

The year 2007 was a very critical moment for Kenya in terms of conflict resolution. Kenyans went into elections peacefully but the aftermath was otherwise. When the post-election violence broke out on the 30th December 2007 soon after the announcement of the Presidential election results by the Electoral Commission of Kenya, the Kenya Police moved in to contain the situation. They were, however, outstretched as the conflict escalated to a nationwide scale. Over 1000 people were killed and more than 300,000 people were displaced internally in violence that had a strong ethnicity character.[17]

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[13] Sadara Shine, "The Globalization of Human Rights in Post-Genocide Rwanda," Bridges 8 (New York, Spring 2014) p. 55

[14] Jutta Bakonyi &Kirsti Stuvoy, "Violence & Social Order Beyond the State: Somalia & Angola," Review of African Political Economy Nos.104/5:359-382 (ROAPE Publications Ltd., 2005) p. 360

[15] ibid

[16] Sagaren Naidoo, "The Role of Track Two Diplomacy in the Democratic Republic of Congo Conflict," (Institute of Global Dialogue, Cape Town RSA) p. 86

[17] International Crisis Group, "Kenya in Crisis" Africa Report No. 137 (21st February 2008) p. i

Owing to the stubborn positions taken by the two protagonist sides in the conflict[18] and failure by the political and security groups to resolve the conflict, violence found a fertile ground to escalate prompting the international community to move in. The first was the African Union (AU) leadership's involvement. President John Kuffor of Ghana, then Chairman of the AU jetted into the country in a bid to found peace and conciliation between Kibaki and Raila.

The 2007/2008 post-election violence was not the first life taking and life threatening occurrence of internal strife in post independent Kenya. In 1982 there was a gruesome attempted coup d'état by a section of the Kenyan Air Force against retired President Moi in which lives were lost, scores injured and property of unknown value looted and or destroyed. At the height of the clamour for multi-party democracy in 1991/1992, Kenya once again experienced inter-tribal conflicts in what was previously the Rift Valley Province pitting the Kalenjin tribe against 'immigrant' communities (Kaimenyi and Ndung'u, 2005). In all these instances, non-State actors played a key role in aiding the governments of the day to resolve the conflicts.

This state of affairs replayed itself at the worst level ever witnessed in post independent Kenya during the 2007/2008 post-election violence. Whereas it is clear that the international community moved in, especially the African Union through its Panel of Eminent Persons, it is not quite clear the extent of the role that was played by non-State actors in quelling the violence. This study therefore identified outlining the role played by non-State actors during 2007-2008 post-election violence and to make recommendations on how best the government ought to incorporate these institutions in future conflict management and resolution.

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[18] The violence started as a result of power struggle between Mwai Kibaki who was mainly backed by the Kikuyu and Raila Odinga who was backed by a majority of tribes in Kenya. Raila, who was contesting on ODM ticket, claimed that elections had been rigged and failed to concede defeat, on the other hand Kibaki was declared the President and neither would listen to the other

1.1 PROBLEM STATEMENT

In 2007-2008 post-election violence the Government of Kenya made a furious single handed attempt at containing the situation by the use of armed security personnel without success. It took the involvement of the UN and the AU led by the former United Nations Secretary General, Dr. Kofi Anan, to broker peace. The peace accord brokered by Dr. Anan's team saw the formation of two tribunals[19] to address the root cause of the violence (Keck, 2011).

The major issue is that during the initial stages of the conflict non-State actors were never given a chance to participate in managing the crisis but were instrumental when the government could not handle the challenge on its own.

1.2 OBJECTIVES OF THE STUDY

1) To establish role played by non-State actors in conflict management in Africa with specific reference to the 2007/2008 post-election violence in Kenya.

2) To analyze challenges faced by Civil Societies in Conflict Management.

3) Make recommendations on various ways in which governments can incorporate the civil society in key decisions for faster peaceful conflict resolution.

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[19] Kriegler Commission and Waki Commission: Whereas the Kriegler Commission speeded the promulgation of the Constitution of Kenya 2010, the Waki Commission led to the formation of a special chamber at International Criminal Court (ICC) to deal with persons bearing the greatest responsibility for the violence. The ICC adopted the Waki report which was majorly containing findings of Kenya National Human Rights Commission.

1.3 RESEARCH QUESTIONS

1) Have non-State actors played a significant role in conflict management in Africa and specifically during 2007/2008 post-election violence in Kenya?

2) What are the challenges facing non-State actors in Conflict Management?

3) How can the Governments incorporate non-State actors in Key decision making involving security and conflict resolutions?

1.4 HYPOYHESES

1) Non-State actors have played a significant role in conflict management in Africa and specifically during 2007/2008 post-election violence in Kenya

2) Non-State actors face challenges in their operations beyond and within Africa.

3) Governments can develop a frame work to incorporate no-State actors in key decision making involving security and conflict resolution.

1.5 SIGNIFICANCE OF THE STUDY

The study is aimed at informing the government with regard to designing changes to streamline security and political systems to enhance more participation from non-state actors. The study also has the potential of enabling the government in engaging in sound policy formulation for political stability of the country. The policy so formulated by the Government may be cascaded to the community level to help inform them of ways to solve disputes amicably instead of engaging each other in destructive conflicts.

The civil societies and non-governmental organizations who engage in conflict resolution processes will find this study useful with regard to importance and involvement of the community or stake holders to ensure there is peaceful elections. Lastly, this study fills a knowledge gap in the academic field since no researcher has ever dealt with the topic herein to highlight the role of non-Sate actors in managing conflict in Africa and specifically the 2007/2008 post-election violence in Kenya.

1.6 THEORETICAL FRAMEWORK

This study was premised on the conflict theory. Conflict theory is most commonly associated with Karl Marx.[20] Based on a dialectical materialist account of history, Marxism posited that capitalism, like previous socio economic systems of the time, would inevitably produce internal tensions leading to its own destruction. Three underlying assumptions are typical of the conflict theory. First, between individuals or in a group, conflict emerges from having opposing interests or competing for limited resources. Second, the ensuing struggle and conflict typically lead to some groups and individuals controlling and dominating others, and that patterns of subordination and domination are self-perpetuating. Lastly, dominant groups disproportionately influence resource allocation and societal structure.[21]

In regard to this study, the view taken is that social stratification in Kenya along tribal lines has led to the perception that some communities block others from opportunities commonly referred to as the national cake. The stratification has been viewed as a scheme which underpins the

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[20] Karl Marx, who lived between 1818 and 1883, was one of the classical founders of social science.
[21] <http://www.ukessays.com/essays/sociology/the-three-assumptions-of-conflict-theory-sociology-essay.php#ixzz3iOEnFmhj> accessed 10th August 2015

dominance of ruling a tribe and subordination of non-ruling tribes. The ruling tribe is perceived to be the elites while the other tribe perceive themselves as getting exploited and controlled against their will. Consequently, the Presidency becomes a coveted price worth paying for with blood in a bid to have a fellow tribe's man ascend to the reigns.

In the scheme of things, Eitzen and Baca Zinn[22] opine that because the Presidency rewards citizens unequally with a heavily skewed bias towards members of his ethnic community, the interests of members of the President's ethnic community are often reflected in national policies as the interest of the nation. Thus, the nation develops at the behest of a few thereby deepening the conflict in the minds of the citizenry. The unfortunate result is the prevention of the discovery and realization of the full potential of the majority which wastes their creativity and productivity.

In the Kenyan context, the general thread which runs across all the three assumptions of conflict theory is that tribes form the major sub-groups harbouring different sets of beliefs, values, and norms.As a result of social definitions, individuals belonging to a particular tribe being bound by stable social interactions share the feeling of oneness. Thus, tribes constitute constructed realities which are distinct and peculiar to a given tribe. The resulting social construct is the inevitability of inter-tribal conflicts. The failure by the Kenyan State to harmonize these constructed realities over the years provided a fertile ground for the 2007/2008 post-election violence as tribes competed for the scares resource, the Presidency.

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[22] D. Stanley Eitzen, Kelly Eitzen Smith and Maxine Baca Zinn, *In Conflict and Order: Understanding Society*, 13th edn (Pearson, edition (July 19, 2012)

1.7 CONCEPTUAL FRAMEWORK

A conceptual framework is a basic structure that consists of certain abstract blocks which represent the observational, the experiential and the analytical/ synthetical aspects of a process or system being conceived. In this study, the dependent variable is the post-election violence of 2007-2008, while the independent variables in the study are Kenyan Government, non-State actors, and Kenyan Citizens. All these concepts are encapsulated in a conflict transformation which, according to Lederach (2011) is a conceptual framework that connects an occurrence of violent conflict to underlying patterns and contexts.

Recognising conflict as normal[23] and a potential motor of change, Lederach posits that the term 'conflict transformation' more aptly relates to constructive efforts at change that go beyond the resolution of specific problems. Thus, conflict transformation interrogates the existing structures that allow the manifestation of injustice and violent conflict, and proposes the transformation of these structures accordingly. The rationale is that, although a conflict crisis may be resolved, without adequately addressing the context of violent conflict, there is a strong likelihood that violent conflict will reoccur. Therefore, there is need for long-term analysis of violent conflict situations, their contexts and ways in which these situations can be transformed to reduce the risk of future violent conflict.

In the case of Kenya, the root causes of episodic forms of violence, and in particular the 2007/2008 post-election violence, are by and large indicative of a failure to address contextual

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[23] Although conflict in its most basic form is normal, in the context of incompatible, contested goals, it has the potential to be destructive when it deteriorates into violence

issues surrounding the episodes of conflict, thereby leading to consequent episodes of violent

conflict arising from the same or similar issues.[24]

Independent Variables   **Dependent Variable**

Kenyan Government
-Failures

-Response to violence

Non-state actors

-Role played in security management

-Challenges

Kenyan Citizens

- Response to violence

-Contribution

Post-Election Violence
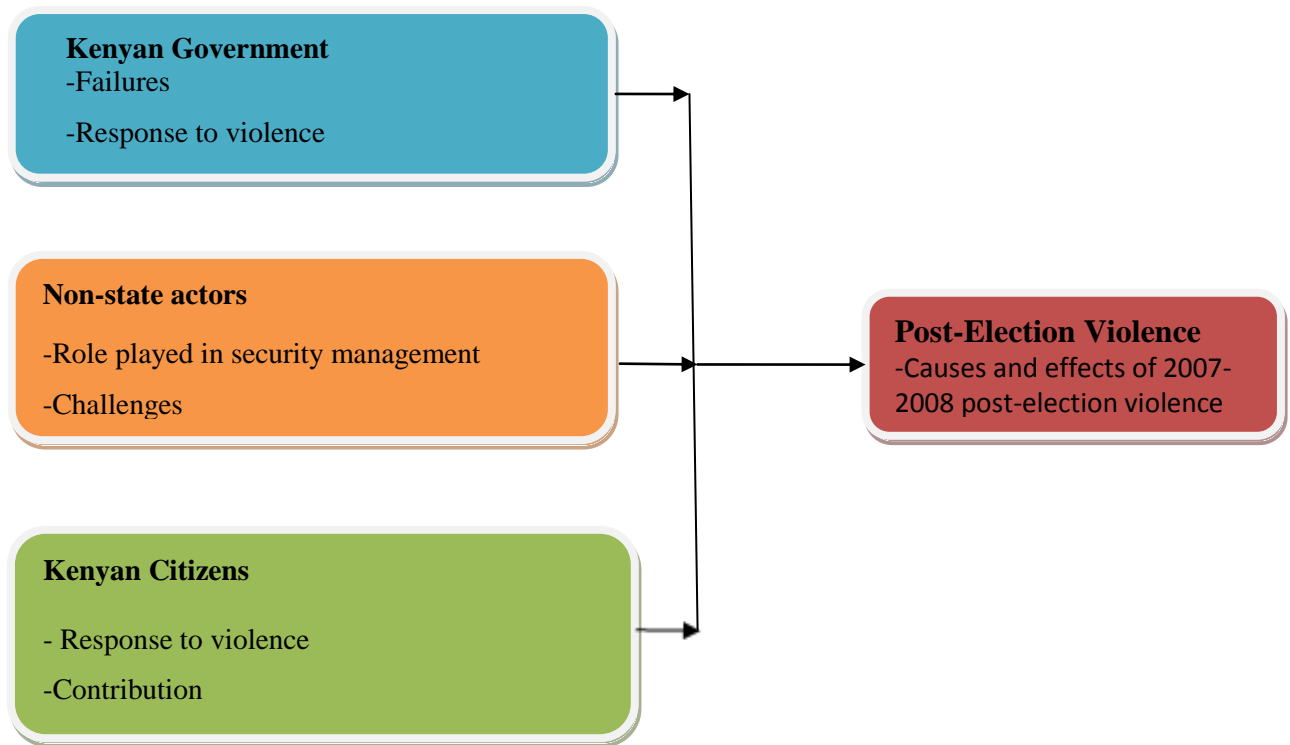-Causes and effects of 2007-
2008 post-election violence

Figure 1.0 Conceptual Framework

1.8 LITERATURE REVIEW

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[24] Conflict over land ownership use and access has been a dominant conflict typology in Kenya. There is therefore need to transform systems of land tenure in Kenya

1.8.0 INTRODUCTION

Non-State actors can be referred to as individuals or organizations that have significant political influence but are not allied to any particular State or country. Non-State actors include religious groups, Multinational Corporation, on-governmental organization, and transnational diaspora communities. These actors play a role in establishing transnational relations by providing their own initiatives and ideas through which civil society groups in various countries can come together, by providing links to various state actors, and by inserting themselves into the public debate and, at least indirectly, contributing to the performance of both the state or other international institutions (Wallace and Josselin 2001: 3-4).

Ghana is one of the most peaceful countries in sub Saharan Africa; it has successfully avoided major violent conflicts affecting its surrounding neighbours (West Africa Civil Society Institute, 2011).This has largely been attributed to the government's involvement of civil societies in decision making and conflict resolutions in the country.

Traditionally, nation states were the sole actors on the world stage. States are often seen to act as rational autonomous entities following their self-interest with the goals of security, sovereignty and survival (Lakhany, 2006). States try to amass resources that allow their military to increase their power relative to other states. According to Lakhany, the emergencies of new discourses examine the growing role of non-state actors within world affairs and the changing nature of global governance.

Non-state actors, from armed groups to Private Corporation and non-governmental organizations play a critical role in heightening or lessening human security (Bruderlein, 2000). The measures required to enhance human security often call for action from numerous non-state actors, particularly NGOs. Human security can act as a platform to help state and non-state actors alike address the causes of global insecurity. Non-state actors are particularly well suited to engendering human security in the new world context. Indeed, in failed states, they are the only actors who are present to do so.

During internal conflicts, non-state actors benefit from close involvement with local communities and they are better able than traditional actors to build local capacity. Non-state actors can and do play many roles in the protection of human security. For example, organizations such as the ICRC and Oxfam act as relief agencies even when governments are unable to respond to emergency needs; NGOs such as the Community of San Egidio facilitate negotiations between warring parties; efforts such as Radio Ijambo in Rwanda aim to help re-establish peace

It is essential for peace building to be more responsive to what the people believe they need (Lenderach, 1997). For peace building approach to be effective, peace workers need to shift away from the traditional framework that focuses on the state as the central actor (Hoffman, 2003). In order to construct a successful peace process, it is necessary that there be operative frame of reference that considers the legitimacy, uniqueness and interdependence of the needs and resources that incorporates the grassroots, middle and elite levels.

1.8.1 THE ROLE PLAYED BY NON-STATE ACTORS IN CONFLICT MANAGEMENT IN AFRICA AND SPECIFICALLY THE 2007/2008 POST-ELECTION VIOLENCE IN KENYA

One of the major changes in conflict management world over has been the emergence of non-State actors as major forces in both domestic and international politics. The proliferation of non-State actors has blurred almost completely the traditional separation of "international" and "comparative" politics.[25] At times these groups exercise coercive force equal to or greater than that of states, whether from within,[26] or across borders,[27] or the near irrelevance of borders in many of the conflicts in central and western Africa. Irrespective of the effectiveness of their coercive power, some of these non-State actors have emerged as a source of identity that is more important than that of an individual's State-affiliation,[28] or provide examples of strategies that are imitated across borders.[29]

Whereas a number of activities linked to non-State actors are centered in conflict management, it does not pass our attention that some concern has been raised about the some threat to human rights posed by some non-State actors. Such concerns have been met by growing demands for the need for respect of human rights and denunciation of human rights abuses.[30] The basis for these concerns is that non-State actors are increasingly expected to comply with principles of international human rights law.

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[25] Philip A. Schrodt *et al*, "Coding Sub-State Actors using the Conflict and Mediation Event Observations (CAMEO)Actor Coding Framework" (Dept. of Political Science University of Kansas Version 1.0B1: March 20, 2008) p 1

[26] As in the case of a "failed state" such as Somali where the AMASON forces exercise overwhelming coercive force to keep the peace in ensuring that normalcy returns for the establishment of a democratic State

[27] As with Israel's attempts to control Hezbollah in Lebanon and Hamas in Gaza

[28] For instance the ability of al-Qaeda to attract adherents from across the Islamic world regardless of one's citizenship

[29] As has been seen in the numerous non-violent popular revolutions in Eastern Europe

[30] Andrew Clapham, *Human Rights Obligations of Non-State Actors,* (Oxford, Oxford University Press, 2006) p 491

With the onset of violence, Kenya, once viewed as a relative haven of stability in the Horn of Africa, faced ethnic violence, a growing humanitarian crisis, economic disruption, and unresolved questions about its future political direction (LanerJ. 2011). The violence resulted in more than 1,000 deaths at the hands of security forces and in violent ethnic clashes; as well as approximately 600,000 internally displaced persons (IDPs).The situation, by no means unprecedented in the history of Kenya, attracted global attention. The United Nations through its Secretary General, Mr. Ban Ki Moon, took diplomatic steps to address the violence by encouraging mediation efforts by his predecessor, Dr. Gen Kofi Annan, under the auspices of the African Union's New Partnership for Development (NEPAD).

Dr. Anan's team of Africa's Eminent Persons[31] laid grounds for the Kenya National Dialogue and Reconciliation (NDR) forum that initiated a process which ended the 2007/2008 post-election violence (PEV). In its fourth agenda item, the NDR considered long-term issues and solutions to address the root causes of conflicts that have led to episodic violence in Kenya.[32] The NDR made proposals for extensive reforms, the foundation of which was a need for constitutional reform to support other legal and institutional reforms to tackle effectively long-standing issues impeding sustainable peace.

Civil societies in Kenya have, through the Civil Societies Organizations (CSOs), played crucial roles in Kenya's political arena. The period preceding the 2002 general elections, CSOs facilitated opposition parties to form a coalition, the National Rainbow Coalition (NARC), so as to defeat the then ruling political party and begin a process of comprehensive reforms after winning the elections. In the post-2007 election violence they again made important

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[31] The team of Africa's Eminent Persons included: Dr. Kofi Anan, formers Tanzanian President, Mkapa and former South Africa's First Lady, Graca Marshell

[32] The National Dialogue and Reconciliation Forum identified the following as the root causes of episodic violent conflicts in Kenya: governance, democracy, human rights, ethnicity and resource sharing

contributions to putting out the fire. CSOs in Kenya have played what appear to be non-traditional and non-conventional roles ascribed to civil society: political leadership in Kenya's transition politics (Karuti Kanyingi, 2010).[33]

During the 2007/2008 post-election violence the Kenyan media played a mixed role inspite of the fact that on the whole, Kenya's print media has been rated among the most professional in Africa. Whereas some media houses were biased in favour of the government,[34] others aired views skewed in favour of the opposition[35] (Department for International Development (DFID), 2009). On their part, the Civil Society Organizations (CSOs) that has an impressive record in sustaining a highly effective voter education and electoral observation over the previous 15 years did find themselves embroiled in dissonance of sorts as they now found themselves divided in lines of diametrically opposing political loyalties.

According to DFID the role of the State exemplified by the Kenya Army and the Kenya Police at the time of the PEV differed considerably. Whereas the Army Generals made it clear to the President that they were not willing to be called out, that they had seen in their peace-keeping work that military involvement could make domestic conflicts worse, and that political problems needed political, not military solutions, the Kenya Police on its side eagerly and cheerfully came out to the last officer to contain what they wrongly judged to be a few disgruntled elements out to compromise Kenya's internal security. It is to be underscored that the stand taken by the Kenya Army bodes well for the future of democracy in Kenya. The assessment of the police is

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[33] Karuti Kanyinga, "Stopping a Conflagration: The Response of Kenyan Civil Society to the post-2007 Election Violence" (Institute of Development Studies, University of Nairobi, 2010)
[34] Especially the government-owned Kenya Broadcasting Corporation
[35] Talk shows on some of the small, vernacular FM stations became vehicles for hate speech while others were vehicles for peace

much less positive, responding to the violence with more force rather than containing or de-escalating it.

The full fruits of the Kofi Anan led international mediation efforts came to bear on the 28[th]February 2008 when the two protagonists, Mwai Kibaki for the government and Raila Odinga for the opposition signed a Power Sharing Agreement. The Power Sharing Agreement crystallized into inception of three distinct commissions[36] whose separate terms of reference were unitary in principle: to get to the bottom of the post-election violence and to avert future similar occurrences (Human Rights Watch, 2011).

In conclusion, it may appear that it is only the African Union through its Panel of Eminent Persons that may have played a role in addressing the 2007/2008 post-election violence in Kenya. Although other non-State actors such as the Human Rights Watch, the Red Cross and others played significant roles in assessing the level of the impact of the violence and affording victims the much needed humanitarian support, the Kofi Anan team is lauded for crafting a workable and practical formula for ending the violence that had threatened to tear Kenya into pieces. The issue of need to hold perpetrators of the violence accountable for their actions is an on-going process both at the International Criminal Court (ICC) and in the local judiciary.[37]

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[36] The Commission of Inquiry on Post-election Violence (CIPEV); the Truth Justice and Reconciliation Commission (TJRC); and the Independent Review Commission on the General Election held in Kenya on 27th December 2007

[37] Efforts to establish a local tribunal failed when Kenya Parliament overwhelmingly voted against the Bill in favour of the ICC process

1.8.2 CHALLENGES FACED BY THE CIVIL SOCIETIES IN KENYA

In Kenya, and much of Africa, the meaning of civil society is a subject of debate especially because definitions tend to draw from Western tradition and experiences. According to Mahmood Mamdani (1996)[38] and Peter Gibbon (2001),[39] the challenges of using this tradition in identifying civil society properties in Kenya and Africa in general not only prevents a full appreciation of the conditions of civil society in Africa but also raises expectations on the role of civil society in spite of the constraints posed by the dominance of the state that continues in politics and the economy in Africa. In spite of this view, the Hegelian liberal conception of civil society has taken center stage in providing a basis for identifying groups that compose civil society in Kenya.

Thus, on the basis on the Hegelian liberal conception, civil society broadly refers to the realm of autonomous and voluntary associations located between the state and the household. Activities of civil society are voluntarily organised and are aimed at promoting public good. This definition of civil society finds resonance with the definition offered by Professor Jan Aart Scholte.[40] Prof. defines civil society as a political space where voluntary associations deliberately seek to shape the rules that govern aspects of social life.[41]

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[38] Mahmood Mamdani, *Citizen an Subject: Contemporary Africa and the Legacy of Late colonialism,*(Princeton, NJ: Princeton University Press, 1996)
[39] Peter Gibbon, 'Civil Society, Locality and Globalisation in Rural Tanzania: A Forty-Year Perspective' in *Development and Change,* Vol. 32: 819-844, (2001)
[40] The Director of the Centre for the Study of Globalisation and Regionalisation
[41] Yves Niyiragira, "Current Challenges Facing the Civil Society in Kenya" (Fahamu, Kenya 2015) p. 1

Kenyan civil society is heterogeneous in composition and interests.[42] Comprising of non-governmental (national, regional and international) and autonomous groups organising outside of the control of the State, the multiple interests also imply potential for divisions, especially with regard to engagement within broader political society. The heterogeneous nature of the Kenyan civil society impacted on how the sector responded to the 2007/2008 post-election violence and the political crisis.

The values for which many of the organisations are formed and how they articulate their concerns on important national issues greatly shaped their approaches toward the crisis.[43] The ability of the civil society, as groups of citizens, to express their views and participate in the affairs of their country is guaranteed in the Constitution 2010.[44] Although literature is a buzz with the significant role played by the civil society, among other non-State actors, in stemming out the 2007/2008 post-election violence, lately there have emerged negative forces within the Government bent on diminishing this role as opposed to the need to infuse the programmes of the non-State actors in a national programme for current and future conflict resolutions in the country.

There have emerged curious attempts by the Government to introduce legislations ostensibly to dilute the provisions of Chapter Four of the Constitution providing for the Bill of Rights with a view to taking away the civil societies' freedom of operation. First, the Statutes Law Miscellaneous Amendments Bill 2014 contains proposals to amend the Public Benefit

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[42] The civil societies in Kenya comprise Non-Governmental Organisations (NGOs) undertaking development work, Community Based Organisations (CBOs), Religious/Faith-Based Organisations (FBOs), Trade Unions, Professional Associations, Clubs, Associations, Trusts, Foundations, Charitable Companies, Forums, Research Institutions, Think Tanks, Universities, the Media, Coalitions and Networks, Self-help and numerous other voluntary organisations. All those entities have one common objective of improving the social, economic and political lives of Kenyan people.
[43] ibid (n 33)
[44] Constitution of Kenya 2010, Chapter Four: The Bill of Rights

Organisations (PBO) Act 2013to noticeably not only limit foreign funding of non-governmental organisations to 15 percent, but also require fresh registration of all not-for-profit organisations with the government. Clearly this sets ground for denying the civil society an enabling environment to operate. Second, the Security Laws (Amendment) Act, No 19 of 2014 had its portions suspended by the High Court on grounds that they were offensive to the provisions of Chapter Four of the Constitution.

Third, in December 2014, the Government's Non-governmental Organisation (NGO) Coordination Board deregistered 540 organisations for "non-compliance with the law" for the reason, among others, that the said NGOs were using their charitable status as a front for raising funds for terrorism.[45] Although there could be some entities and groups using the cover of the not-for-profit status for other purposes, the mass deregistration of more the 540 NGOs is a strong message to civil society by the Government. In the circumstances, the most effective way for self- protection and self-preservation from Government onslaught is for the civil society to comply with laws of the land.

1.8.3 CONCLUSION

Non-State actors, including the civil society, are present in many and important sectors of the society generally but significantly they play an important role in conflict management world over. African countries, among them Kenya, have been beneficiaries of conflict management programs of non-State actors. The Kenya case arose during the 2007/2008 post-election violence. As a result a lot has been written on the role played by non-State actors during the post-election violence. However, none of the literature has taken an academic angle as this study. There are

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[45] ibid (n 41)

glaring gaps in the literature on the management of 2007/2008 post-election violence in Kenya. This study therefore aims at filling the gap.

1.9 RESEARCH METHODOLOGY

1.9.0 INTRODUCTION

This chapter gives a systematic description of the research methodology that was used in this study in order to enable data collection, data analysis and data presentation (Orodho 2003). The methodology used in the research study included research design, target population, sampling design and data collection and analysis procedures (Kothari, 2001).

1.9.1 SCOPE OF THE STUDY

The study was limited to Kenya and it focused on the role non-State actors played in the promotion of security and conflict resolution during the 2007/2008 post-election violence. It collated the various reports emanating from various groups, scholars and researchers generally on the activities of non-State actors during the 2007/2008 post-election violence in Kenya.

1.9.2 LIMITATION OF THE STUDY

The study was limited to documented works of the various groups, scholars and researchers and did not involve a survey upon the various non-State actors who were involved in resolving Kenya's 2007/2008 post-election violence. As a result, the study was greatly diminished in terms of collection of primary date. The study's limitation was informed by the difficulty which may result in trying to locate members of Mr. Kofi Anan team either individually or severally for

personal interviews, among other non-State actors who were involved in resolving the conflict one way or the other.

1.9.3 RESEARCH DESIGN

The study was premised on qualitative research. According to Mwituria (2012),[46] qualitative research is concerned with developing explanations of social phenomena and therefore aims at understanding the world in which we live and why things are the way they are. Unlike quantitative approach, qualitative approach recognizes that anybody is capable of constructing knowledge (Mugenda & Mugenda, 2003).[47] Thus, as designed, through this study, the researcher assumed the role of providing a voice in setting forth the role played by non-State actors during the 2007/2008 post-election violence.

For the reason that qualitative research is concerned with finding answers to questions as to: why? how? and in what way?, qualitative research is therefore tailored towards, among other things, expressing opinions and feelings of individuals producing subjective data. Thus, qualitative research depends on the ability to identify a set of variables and hence leads to understanding of a situation in a holistic perspective.

It was the approach adopted to this study so as to understand the role played by non-State actors during the 2007/2008 post-election violence in a holistic manner. This position is buttressed by Mugenda and Mugenda (2003) when they opine that emerging issues relating to social, political and economic development in poor countries have enhanced the use of qualitative approaches in search of sustainable solutions to the myriad of problems facing these countries.

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[46] Mwituria Maina, *Qualitative and Quantitative Research Methods Simplified,* Frajopa Printing Mall, Nairobi, 2012) pp. 156-7
[47] Olive M. Mugenda & Abel G. Mugenda, *Research Methods: Qualitative and Quantitative Approaches,* (Africa Centre for Technology Studies, Nairobi 2003) p. 201

1.9.4 TARGET POPULATION

A population is the aggregate of all cases that conform to some designated set of specifications (Paton, 2002). The target population was all civil societies registered in Kenya as well as all regional and international non-State actors recognized in Kenya.

1.9.5 SAMPLE DESIGN

Stratified sampling design was used in the study. Kombo and Tromp (2006) point out that it involves dividing your population into homogenous sub groups and then taking a simple random sample in each sub group. The stratified random sampling method was best suited in this research because the population consisted of non-State actors who played various and different roles in managing the conflict during the 2007/2008 post-election violence.

This method, while minimized biases (Cooper & Schindler, 2011), was appropriate because it represented not only the overall population but also the key sub groups of the population. The general procedure for taking a stratified sample involved stratifying the population, defining a number of separate partitions using sample size, and then combining the results to obtain the required stratified sample (Kothari, 2001).

1.9.6 DATA COLLECTION TECHNIQUES

The study was carried out through scrutiny of publications which highlight the roles played by publications of the various non-State actors in the management of the 2007/2008 post-election violence. This basically entailed a historical research methodology which involved understanding the past through the examination and interpretation of evidence to (Mwituria 2012).[48] The researcher laid emphasis on text books, publications, journals, the Internet and media reports touching on conflict management generally and the role played by non-State actors

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[48] ibid (n 46) p. 169

in the management of post-election violence in Kenya. Thus, by and large, the use of secondary data formed the basis of the data collected.

1.9.7 RELIABILITY

Reliability is the measure of the degree to which a research instrument yields consistent results or data after repeated trials (Mugenda & Mugenda, 2003). In order to enhance reliability of the collected data, the researcher confined herself to publications highlighted under data collection techniques. This ensured that only authentic date was used in the study.

1.9.8 DATA ANALYSIS

The information received from the various secondary sources was analysed in a systematic way in order to come to some useful conclusions and recommendations about the role of non-State actors in the management of the 2007/2008 post-election violence in Kenya. The analysis of the information aimed at, and did establish the pattern, trend and relationship of the activities of the non-State actors under study.

CHAPTER TWO

THE MANAGEMENT OF 2007/2008 POST-ELECTION VIOLENCE IN KENYA

2.0 INTRODUCTION

The violent conflict which engulfed Kenya after a dispute over the results of the December 2007 presidential election has been widely reported to have been a dispute which was deeply rooted in the old age tribal tensions based on perceived un-equitable sharing of national resources in Kenya since independence.[49] Over the years, the tensions have taken a political angle crafted along tribal lines. The populous tribes dominate the stage, and each trying to outdo the other at the Presidential polls. Recognizing their separate inadequacy in numbers to dominate the polls, each populous tribe often woos smaller tribes to its side of the political divide ostensibly to 'assist' it elect 'one of its own' to the Presidency for purposes of controlling national resources.

During the 2007 general elections, two major political parties represented this erasable divide in Kenya. Mai Kibaki's Party of National Unity (PNU) drew membership from Kibaki's Kikuyu ethnic group and related communities - the Meru and Embu - in the Mount Kenya region.[50] On the other hand, the Orange Democratic Movement (ODM) of Raila Odinga had the support of the Luo in association with the Luhya, the Kalenjin and the Mijikenda communities. Thus, in terms

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[49] Bobby Mkangi and Nyambura Githaiga, "Kenya's New Constitution and Conflict Transformation," (Institute for Security Studies Paper No. 232, February 2012)

[50] The Kikuyu, Embu and Meru constitute the Gikuyu, Embu and Meru Association (GEMA), a post-independent tribal association with an underlying political agenda to keep the Presidency within the Mt. Kenya region. The GEMA community is widely believed to have been politically and economically advantaged during the first post-colonial regime of President Kenyatta, a Kikuyu. The Association seemed to have been dealt a death blow by Moi, a non-GEMA, who succeeded Kenyatta when he banned all tribal associations soon after ascending to power in 1978. Under President Kibaki, a Kikuyu, who succeeded Moi the group again began to dominate the political and economic spheres by staffing senior and powerful public sector positions with people from the region. This exacerbated feelings of marginalisation among other groups.

of provinces, while PNU enjoyed support in roughly two provinces,[51] ODM had overwhelming support in six provinces.[52] Upon the declaration of Mai Kibaki by the Electoral Commission of Kenya (ECK) as the winner of the Presidential poll, violence broke out, spread rapidly along the ethno-regional patterns of political party affiliation   election results. The basis of the violence was a flawed vote count.[53]

Although the violence began as spontaneous protests in ODM strongholds where the youth organised attacks targeting members of the GEMA community as perceived to be allied to PNU, on the other hand, in PNU areas, militia groups quickly organised retaliatory attacks targeting members of communities perceived to be supporters of ODM.[54] On the whole, militia and other gangs formed to violently evict supporters of either party from the regions they considered their territory.[55] Thus, the violence split the country into two: ethnic divisions deepened as anti-Kikuyu resentment spread in ODM areas. The Kikuyu resentment of other communities allied to ODM was similarly high. The result was an unprecedented ethno-political crisis in which over 1, 100 people were killed and over 500,000 others were displaced.[56]

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[51] Central Province (the Gikuyu community), Upper Eastern (the Aembu and Ameru communities) and Parts o Nairobi (the GEMA community)

[52] Nyanza Province (the Luo community), Western Province (the Luyha community), Rift Valley Province (the Kalenjin and Maasai communities), Coast Province (the Mijikenda community), North Eastern Province (the Somali community and Nairobi Province (the non-GEMA communities)

[53] David Throup, "The Count," Journal of Eastern Africa Studies 2 No.2 (2008) pp. 290 – 304

[54] Muthoni Wanyeki, "Kenyan Civil Society and the 2007/2008 Political Crisis: Towards and Following the Kenya National Dialogue and Reconciliation (KNDR)," a Paper Prepared for African Research Resource Foundation, Nairobi, 2010

[55] Republic of Kenya, "Commission of Inquiry into the 2007/2008 Post-Election Violence," (Nairobi, Government Printers, 2008): The Commission of Inquiry on the Post-Election Violence (CIPEV), the Waki Commission, has documented this pattern of violence in all the regions; Muthoni Wanyeki, "Kenyan Women and the Post-Election Violence," (Nairobi, The Kenya Human Rights Commission (KHRC), 2009): Muthoni Wanyeki has also filled gaps in gender-based violence; she has given an analysis of how gender based violence took place

[56] ibid (n 33) pp. 1-2

In response, Kenyan Civil Society Organisations (CSOs) and their networks generated and sustained domestic pressure to end the violence.[57] The appearance of the international community on the stage finally bore pressure upon the two parties to agree to international mediation under the auspices of the African Union's (AU) Panel of Eminent African Personalities, chaired by the former United Nations Secretary General, Kofi Annan.[58] Commencing in mid-January 2008, the mediation saw the end of the violence on 28[th]February 2008 when the parties signed the 'Principles of Partnership of the Coalition Government' which provided for a political power sharing in a Grand Coalition Government.[59]

2.1 AN OVERVIEW OF THE ROLE OF CIVIL SOCIETIES IN KENYA

The Civil Society Organizations in Kenya have played a rather non-traditional and non-conventional roles ascribed to the civil society. Although their role in political leadership in Kenya's transition politics is yet to be analysed, in the period preceding the 2002 general elections, CSOs facilitated opposition parties to form a coalition, the National Rainbow Coalition (NARC), so as to defeat the then ruling political party and begin a process of comprehensive reforms after winning the elections. Yet again, in the post-2007 election violence CSOs made important contributions in quelling the nationwide violence. All in all, a need arises to examine how CSOs play such roles and what lessons can be learnt from this.

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[57] ibid

[58] The cloud of secrecy and demand for high levels of confidentiality required of the mediation process has meant that few studies have been conducted on the mediation process. However, two publications: Elizabeth Lindenmayer and Josie Lianna Kaye, *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya*, (New York, International Peace Institute, August 2009); Makumi Mwagiru, *The Water's Edge: Mediation of Violent Conflict in Kenya,* (Nairobi, Institute of Diplomacy and International Studies, 2008)have shed some light on what transpired.

[59] The ultimate was the parties' agreement to amend the Constitution of Kenya and to enact the National Accord and Reconciliation Act, 2008, establishing Grand Coalition Government

The nature of the civil society in Kenya as a heterogeneous implies that its fundamental basis as being voluntarily organised and aimed at promoting social well-being of the general populace stands the risk of being dotted with multiple interests which is a potential for divisions, especially with regard to engagement within broader political society. Despite this threat to its smooth and concerted functioning, the civil society in Kenya has immensely contributed to national development and democratisation processes.[60]

In regard to national development, not a single sector of the country's economy is without the presence of CSOs. The civil society organizations operating as such are involved in service delivery activities. These include, among other activities, the provision of water, health care, and support to various community development efforts aimed at up-lifting lives. As a result of significant involvement of the CSOs in the country's development, the government recognises the civil society as an important partner in the development process.[61]

In terms of democratization, Ndegwa (1996), Mutunga (1999), Murunga (2007) and Makau (2007) posit that the civil society in Kenya has been synonymous with democratization, especially in the period between the early 1990s and the 2002 general elections. Its concerted criticism and near mass actions against the authoritarian single-party dictatorship of the 1990s yielded the return to multi-party democracy.[62] In charting a democratization course for Kenya,

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[60] Karuti Kanyinga, Winnie Mitullah, and Sebastian Njagi, *The Non-Profit Sector in Kenya: Size, Structure and Financing,* (Nairobi, Institute for Development Studies, 2007); Connie Ngondi-Houghton, *Philanthropy in East Africa: Nature, Challenges, and Potential* (London, Allavinda, 2005)

[61] Through Sessional Paper No.1 of 2006 on Non-Governmental Oganisations, the Government has put in place a National Policy on NGOs' role in development. The policy seeks to facilitate the work of NGOs in the development space and to improve coordination in the sector

[62] Stephen Ndegwa, *The Two Faces of Civil Society: NGOs and Politics in Africa,* (West Hartford, CT: Kumarian Press, 1996); Willy Mutunga, *Constitution-Making from the Middle: Civil Society and Transitional Politics in Kenya, 1992-1997,* (MWENGO, Nairobi, SAREAT/MWENGO, 1999); Godwin R. Murunga and Shadrack W. Nasong'o, *Kenya: The Struggle for Democracy,* (London, Zed Books in Association with CODESRIA, 2007); Makau Mutua, *Human Rights NGOs in East Africa: Political and Normative Tensions,* (Philadelphia, University of Pennsylvania Press)

the civil society acted as the training ground for opposition politics and political leadership in general (Mutunga, 1999).

In this regard, it is gainsaid to note that the organic relationship between the civil society and politics in Kenya was not only manifest in the strong civil society background the first leaders of opposition politics in the 1990s had, but also in the continued push to reforms which saw the formation of the National Alliance Rainbow Coalition (NARC) to dislodge Kenya African National Union (KANU) from power in 2003. Realizing its potential, politics and public service turned to and drew heavily from the civil society. The experienced leadership of the sector was elected to parliament as the other received government appointments.

Although Karuti (2010) argues that this had a boomerang effect of weakening the sector in playing a watchdog role,[63] we opine to the contrary. The effect of engraining a leadership that had a strong civil society background in the various arms of government was the jack lift that real reforms had lacked since independence. With the civil society elements in various arms of government, the government started implementing the desired reforms and undertaking activities similar to those that CSOs were undertaking. The landmark consequence was the formulation of several policies and enactment of legislation that promoted and protected fundamental freedoms and human rights.

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[63] Recruitment of individuals who had sharpened skills for advocacy, lobbying and mobilising for reforms depleted the sector of experienced leadership, developed over many years. While a much more youthful leadership took over, the sector was plunged into inexperienced leadership in the sector in the new political environment.

2.2 THE NON-STATE ACTORS' RESPONSE TO THE 2007/2008 POST-ELECTION VIOLENCE

Although the 2007/2008 post-election violence was highly rooted in tribal lines, it played itself on the political podium. The political podium had been well prepared and laid out by the fractious nature of NARC. When President Kibaki failed to honour the post-election memorandum of understanding with Raila, tribal emotions started to simmer by the day. Fractions which developed in NARC widened contributing to rejection of the draft constitution which had been developed amid the differences. Eventually NARC split into two distinct political parties with constituencies differentiated along ethnic as well as ideological lines in preparation for the 2007 General Election. The split was acrimonious and confrontational. This is the context that informed the 2007/2008 post-election violence.[64]

The 2007/2008 post-election violence was complex due to its multiple and interwoven underlying causes. Furthermore, the factors that originally appeared to trigger the crisis continued to mutate in tandem with the deepening of the crisis. The first trigger was the flawed vote count and the subsequent dispute over the result. The second trigger was the question of justice in terms of justice for victims of violence and bringing the ECK officials who had committed electoral malpractices to book. Identifying and punishing those who committed irregularities was critical in this context.[65]

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[64] ibid (n 33) pp. 3-4
[65] ibid, p. 8

Thus, the 2007/2008 post-election violence required equally complex responses. The heterogeneous nature of the Kenyan civil society became handy in this regard. The civil society's response to the violence took queue from the every organization's values and moral persuasion.[66] According to Karuti (2010), the civil society found itself divided into two distinct blocks which were distinguished by what they considered as the core problem that required priority attention. The conservatives or moderate group, while advocating for the status quo on the election results, insisted on peace as an end in itself.[67] The progressives or the radicals demanded actions and other forms of accountability on the election results and the violence and urged for justice and truth as a foundation for sustainable peace.[68]This divide was not politically neutral. Whereas the government/PNU was in consonance with conservatives, the opposition/ODM argued in line with the progressives.

Prior to the elections, the Church and Religious Organisations in general had taken partisan positions during the elections. This weakened the Church's moral authority and legitimacy to command, from the pulpit, an end to the violence thereby eroding the Church's social authority to provide leadership. Despite this, the Church nonetheless church also participated in the mediation initiatives.

Further, the conservatives also assumed the role of moderators and lobbied the government, other parties in the conflict, and the media to assist in finding peace. Comprising high profile retired senior army officers, a former diplomat and a number of peace building researchers and peace-workers, this section of the conservatives prioritised achievement of peace and as opposed

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[66] ibid

[67] The conservative group comprised the Faith Based Organisations and the Church in particular whose major strategy for peace was prayers as well as lobbying all to find peace

[68] The progressive group comprised Kenyans for Peace, Truth and Justice (KPTJ), a grouping of over 30 organisations and individual academics and researchers who had earlier assisted in monitoring the election outcome, the evolving violence, and other problems around the disputed elections

to prioritising connecting peace to the problem of justice and truth. George Wachira, Thomas Arendshorst and Simon M. Charles (2008) opine that in a bid to legitimize their activities, this group of the conservatives having distinguished themselves as the moderates founded the Concerned Citizens for Peace (CCP)around 31[st]December 2007 just when violence was spreading in the country.[69]

The media on its part came into sharp focus as it allied itself to the conservative group. The Nation Media Group (NMG) took the lead and partnered CCP to publicize the urge for peace through electronic and print media and also to engage and dialogue with different actors in the mediation process under the auspices of the AU Panel of Eminent African Personalities on regular basis. Earlier, the NMG had stopped live broadcast of results as the controversy over vote tallying raged ostensibly after it lost the data and backup.[70]

The progressive group on their part argued that sustainable peace would be obtained only when the country resolved the question of justice and truth about the election result, truth and justice about the violence spreading in the country, and justice for victims of police brutality and the militia attacks. This led to the formation of Kenyans for Peace, Truth and Justice (KPTJ) to provide strategic leadership on how to articulate this relationship. According to Onyango Oloo, Shailja Patel and Anders SjÖgren, (2008),[71] the activities of KPTJ were complemented other civil society organizations, notably the Kenya National Commission on Human Rights (KNHCR) which provided the resources required, including space for meetings.

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[69] George Wachira, Thomas Arendshorst and Simon M. Charles,*Citizens in Action: Making Peace in the Post-Election Crisis in Kenya – 2008,* (Nairobi, Nairobi Peace Initiative – Africa)
[70] ibid (n 33) p. 10
[71] Onyango Oloo, Shailja Patel and Anders SjÖgren, "A Citizens Response to the Kenyan Crisis: Kenyans for Peace with Truth and Justice (KPTJ)," (Nairobi, KPTJ, 2008)

Other smaller groups such as Citizens for the Re-Counting of Votes, the National Civil Society Congress, the Kenya Red Cross, Women's Organisation's inter-ethnic caucus known as the Vital Voices, the Centre for Multi-Party Democracy's (CMD) National Salvation Forum and individual leaders of human rights and governance organisations, among others, complemented either the radicals or the conservative-cum-moderates to generate strategic synergy in the search for Peace, Truth and Justice.

2.3 ENDING THE VIOLENCE

As the two ideological view-points took center stage in the discussion of the best way to end the post-election violence, one thing remained poignantly common to both sides of the divide: there was an urgent need to put out the fire. The country was up in flames and something needed to be done sooner or else Kenya was on the verge of extinction. As the crisis intensified, so did its internal dynamics continue to rapidly take on board new dimensions.[72] Only flexible strategies would adapt to the continually changing context. The civil society had to adopt new and flexible approach. The new approach had to be strategic and political.

The civil society, with KPTJ in the lead, tactfully abandoned its demand for a recount as it appeared that the records for the process may have been tampered with. The recount became a political, not a legal problem. Aiming to serve two purposes, KPTJ advocated for the need for well-researched and objective analysis of the evolving situation. First, was developing message

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[72] In spite of the Attorney General's advice on a vote re-count, the President reiterated that he was properly in control of government and that those unhappy with the outcome of the election should challenge the result in the courts of law if they wished to. The progressive group and ODM would here none of this As they were skeptical of the politically appointed members of the judiciary

for advocacy locally and internationally; and secondly, the government had to be sent back to the drawing board by stopping the 'go to courts' argument (Onyango Oloo*et al,*2008).

KPTJ developed several working groups which collected and analysed data which formed a basis for critical messages for the local and international community. Finally the group succeeded in roping in progressive donors such as Open Society Initiative for East Africa (OSIEA) which was pivotal in enabling it schedule several strategic meetings with various international agencies and governments. It visited and made presentations to the United Nations in New York, the United Nations Office for Human Rights in Geneva, the United States Senate and Congress, and the European Commission. At the AU, KPTJ made presentations to the Peace and Security Committee and met representatives of several countries (Onyango Oloo *et al,*2008).

The presentations urged the international community to facilitate international mediation, ensure that all solutions focused on accountability and justice for victims, and that truth be known about what happened to the election and those behind the wave of violence. Riding on this renewed avenue of hope, the CCP and its associated networks established an "Open Forum" which drew in the support of international peace makers who impressed on the government and Kenyans to prevent the country from drifting to civil war. CCP developed a programme strategy detailing what should inform an agenda for peace which emphasised building trust between the principal actors, election closure and formation of a government of national unity, among others.

These interventions ensured greater focus on Kenya and prevented international recognition of the new government before resolving the issues of peace, truth, and justice.[73]Meanwhile, KPTJ had the occasion to address the US Congress and Senate calling for high-level intervention from the US government. This bore fruit when the US government sent the Secretary of State to assess the situation. By this time KPTJ analysis of the context revealed that the crisis was attracting several mediators. The need to for a singular mediator to streamline a coherent mediation process led the US, EU, UK and others to align their efforts with the AU. In Europe, KPTJ lobbying and messaging had a similar impact. Finally, the two protagonist sides bowed to pressure from continued coverage to accept mediation (Wachira *et al,* 2008).

In addition, KPTJ membership and the civil society at large formed support groups to protect human rights workers and provided relief to those in distress. Working in collaboration with the Kenya Red Cross and private individuals, the human rights networks gave assistance to many families who were evicted from their farms or homes.[74] Through these initiatives, civil society ensured that there was objective data to inform support and various interventions. Such data was disseminated for public consumption through the media.[75]

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[73] However, a few countries had hurriedly recognized the new government. They included Uganda, Mauritania, and Somalia. The US government which had initially recognised the new administration withdrew its recognition almost immediately after allegations of fraud intensified. Uganda too clarified that it had only commended the Kenyan voters

[74] They achieved this by Office of Special Programmes in the Office of the President, the UN agencies, and the Office for the Co-ordination of Humanitarian Affairs (OCHA). Through this network, civil society reached displaced families and offered assistance to thousands of homeless people.

[75] ibid (n 33) pp. 14-15

2.4 CRAFTING A POLITICAL SOLUTION

Following the end of end of violence and restoration of peace[76] through the signing of the accord on 28th February 2008, the next task was the need to address the humanitarian crisis[77]with a view to heal and reconcile the nation which, by then, was deeply divided. This gave way to discussions on political settlement.[78]The civil society started to demand for a political settlement arguing, as opposed to the government's stand, that the crisis was not of a legal nature.

According to the Kenya National Dialogue and Reconciliation,[79] a political solution was urgent and necessary since even the Panel of Eminent Persons, having studied the issue as a whole, was of the concurrent with the civil society that the crisis was as a result of long-standing issues that largely remained un-addressed. The unresolved issues that dogged the wide division in the country, and which required to be addressed to prevent recurrence of the violence, were identified to be failure of constitutional and institutional reforms as well as the failure to stop impunity.

A power sharing arrangement between ODM and PNU was crafted and agreed upon by the political parties as a precursor to a conducive environment to undertaking far reaching reforms in the social, political and economic lives of the people of Kenya. The proposed new arrangement of government needed a legal ground to stand. This necessitated an amendment to the

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[76] Agenda Item 1 which concerned undertaking actions to end the violence and at the same time restore fundamental rights and freedoms

[77] Agenda Item 2 which concerned addressing the humanitarian crisis and promoting healing and reconciliation. About 600,000 people were displaced from their homes and were living in makeshift tents in different places away from their homes. Communities were divided along ethnic lines

[78] Agenda Item 3emphasised the need for both parties to share power and entrench the principle of consultation and consensus as well as compromise in order to move the country forward

[79] The Kenya National Dialogue and Reconciliation, Annotated Agenda found at <www.dialoguekenya.org/agreements.aspx> accessed 25 August 2015

Constitution of Kenya thereby establishing a Grand Coalition complete with the office of the Prime Minister, two Deputy Prime Ministers and to share cabinet posts on a 50/50 basis.[80]

2.5. CONCLUSION

Although civil society in Kenya did face various challenges in addressing the 2007/2008 post-election violence, this did not stop the society from responding to the crisis and in a polarised social-political context. Deeply rooted ethnic divisions around which the political divisions in the country revolved did not affect the activities of new civil society groups that emerged to respond to end the crisis.

All in all, the crisis surrounding the 2007/2008 post-election violence was founded on ideological differences which were about whether to pursue peace as an end in itself or whether to pursue sustainable peace through the search for truth, justice and accountability. They were divisions about ideals for social justice and freedoms and how these would be pursued. But the differences did not prevent civil society from impacting on the mediation process; by articulating peace and articulating demands for justice and truth, civil society informed the mediation process in many ways. The language of their messages also found its way in the final agreement signed by the parties.

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[80] ibid (n 33) p. 17

CHAPTER THREE

ANALYSIS OF CHALLENGES FACED BY CIVIL SOCIETIES IN KENYA

3.0 INTRODUCTION

In order to appreciate the challenges facing the civil society in Kenya, it is important to take a look at their history and the wider socio-cultural, economic and political realm they function in. The origins of NGOs in Kenya are traced back to the colonial era whereby formal NGOs were of a religious (mostly Christian) or philanthropic nature with no political aspirations and primarily involved in service provision (Kameri-Mbote, 2000). According to Manji (2002), NGOs played a vital part in making colonial rule socially acceptable as they defined existing problems as related to being 'uncivilized' rather than injustice, exploitation or oppression (Manji, 2002). It follows that these organizations were not intended to bring about change, but merely to treat the 'symptoms' of oppression.

As it would come to pass, the colonial system of oppression prepared ground upon which the majority of African nationalist leaders who took over the running of the state from the British had already accepted, and were committed to, the bourgeois tenets of Western democracy and capitalist production (Ochieng, 1989:204). Consequently, what followed in independent Kenya was not surprising. NGOs as 'moderates' aided the process of centralized and authoritative rule by supporting the development of Sessional Paper No. 10 of 1965 which essentially contributed to the demobilization and silencing of popular movements like the Mau Mau (Manji, 2002).

Thus, the state was the main agent of development and NGOs were subordinated, allowed to exist as 'independent, if malleable, organs of patronage' (Ndegwa 1996:26).

3.1 DONOR DEPENDENCY

Civil society often struggles with a dependency on donor funding which hinders sustainability, distracts from their missions, and encourages a short-term strategy of chasing funds. As organizations face a global decline in donor funding, the issues of dependency and unsustainability only grow in importance.According to USAID (2014),[81] in an effort to ensure financial stability, organizations have a tendency to focus their energy and attention on finding more funding rather than focusing on implementing their mission.

The donor dependency found deep roots in Kenya in the 1990 when donors shifted their money to NGOs for multiple reasons (Chegge, 1999). First, donors argued that the state was too corrupt to fund it directly, and NGOs presented new hopes to bring about democracy and development (Gibbon, 1995). Second, Western states used the withholding of aid - or channeling of it to NGOs - as means of control (Campbell, 2008). Further, the funding of NGOs was intended to silence criticism and social uprisings in opposition of the Structural Adjustments Programmes introduced by the World Bank and donor agencies in the 1980s as part of debt-restructuring among developing nations.

These trends led to the worsening of already tense state-civil society relations, especially since NGOs had multiplied into thousands and their funds and elite membership increased exponentially. According to Ndegwa (1996), this political environment led the Kenya

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[81] <http://www.usaid.gov/africa-civil-society> accessed 25 August 2015: Civil Society Organizations Sustainability Index for Africa

government to enact the NGO Act of 1990 whose purpose was to control and limit NGOs. In response, NGOs started to oppose the government of the day progressively, not due to grassroots demands, but to ensure organizational survival. The result was increased donor funding by the donors community to enhance multiparty democracy (Githongo, 2013).

In the wake of the new era of shrinking donor funding, a new world order has emerged whereby the message has been to move from donor dependence to independent and self-sustaining safeguards to guarantee civil society organizations' existence. Emphasis has been on a move away from the model of organizations being sustained by grant money for grant-specific activities and instead shifting to a model of investing to create local trust funds that will sustain the organizations. This may require, among other things, 'seed funds' from the donors to scintillate the process; and the need to build the assets and capacity of civil society organizations.

3.2 HOSTILE LEGAL ENVIRONMENT

The second major challenge civil society in the developing world faces is a growing backlash of draconian laws against civil society organizations, as host governments increasingly view civil society organizations as foreign-funded agents of opposition and seek to thwart their influence. As observed by USAID (2014), "in many of the countries' civil society organizations, particularly those engaged in advocacy or human rights work, face significant and often vague restrictions on their operations. This has resulted to a shrinking of civil society space as many civil society organizations are seen by governments as opponents instead of partners.

In Kenya, despite the progress gained by the Constitution of Kenya 2010 which provides for the Bill of Rights, the civil society has lately been subject of government machinery to amend existing legislation to take way the constitutional gains. In May 2013, the government published a Billwhich sought to revise the Public Benefit Organisations (PBO) Act 2013, amongst other laws. The proposals in the Bill are largely similar to those included in the Miscellaneous Amendments Bill of 2013, which had earlier been was rejected by Parliament in December 2013.[82]

Largely, the Bill contains amendments that do not promote an enabling environment for the civil society sector.This has the potential of seriously undermining the spirit and letter of the Public Benefit Organisation (PBO) Act 2013 and is likely to put at risk the ability of civil society organisations and other actors of the not-for-profit sector to carry out their activities effectively, independently and free from governmental interference.

Cleverly targeting the operations of the civil society organizations was the Security Laws (Amendment) Act, 2014 whose clauses raised serious curtailing of fundamental freedoms and have since been suspended by the High Court. Clause 12 of the Act limits the freedom of expression and freedom of the media and imposes a hefty fine of KES 5,000,000 (€ 50,000) for the offenders or three years in prison or both. Clauses 16, 26 and 29 have the effect of violating Article 50 of the Constitution. Clause 56 introduces new Part V dealing with special operations meant to neutralize threats against national security.

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[82] This Bill which was sponsored by the government side of Parliament, had sought to among other things to limit foreign funding of non-governmental organisations to 15 percent.

3.3 HOSTILE POLITICAL ENVIRONMENT

In the wake of increased terrorist attacks in recent years, the political arm of the Government of Kenya has convened on the civil society as the enhancer of the terrorist activities in the country. Camouflaging in the text of the law,[83] the political establishment used the government's Non-Governmental Organisation (NGO) Coordination Board in December 2014 de-registered 540 organisations ostensibly fornon-compliance with the law. The affected NGOs faced a myriad of accusations by the government. These ranged from using their charitable status as a front for raising funds for terrorism and failure to provide audited accounts of their activities.

Fifteen out of those 540 NGOs were accused of links with terrorism while 12 organizations reported to had incomes of over KSh. 500 and were required to provide their audited accounts or face deregistration.[84] The mass deregistration of NGOs has portrayed a strong message to civil society actors that the Government of Kenya was after their sector. There is thus need for concerted efforts from all actors of the civil society in Kenya to work towards the protection of Chapter Four of the Constitution (2010) of Kenya because the Government can use a small excuse to silence all actors of the civil society including the media.

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[83] Regulation 24 of the NGOs Coordination Regulation Act of 1992, Laws of Kenya

[84] Adventist Development and Relief Agency International, Artsen Zonder Grenzen - Holland, Center for Health Solutions - Kenya, Concern Worldwide, FH Association, LVCT Health, Medecins Sans Frontieres - Switzerland, Medecins Sans Frontieres - Belgium, Medecins Sans Frontieres - France, Technoserve Kenya, Veterinaires Sans Frontieres Belgium and Water For Life

3.4 COMPLEXITY IN DIVERSITY

Whereas it is a widespread international agreement that primary responsibility for conflict prevention rests with national governments and other local actors, the primary role of non-State actors is to create spaces and support inclusive processes that enable those directly involved to make decisions about the specific arrangements for addressing the causes of conflict. It is now established that non-State actors only but help in building on the capacities that exist and avoid actions that displace and undermine homegrown initiatives or that promote short-term objectives at the expense of long-term prevention.[85]

In the domestic front, the relationship between non-State actors and the government in responding to conflict in their midst is dynamically complex. Furthermore, it is important to distinguish between 'government' *per se* and the wider array of state structures. As the government of the day is likely to be a party to conflict to a greater or lesser extent, it may be questionable whether other state institutions, such as the parliament, the judiciary, or local authorities, are perceived as a credible and capable actor in responding to conflict. Nevertheless, all the domestic actors are 'stakeholders' to the conflict. They therefore share a degree in responsibility for fostering the basis of their future.[86]

Often, the relationship between governments and non-State actors at the domestic front has been to focus on resolving a specific conflict, on addressing underlying contradictions that give rise to ongoing tensions, or on transforming relationships marred by persistent conflict and building a culture of peace. To achieve a lasting resolution, the efforts to address conflict are often are well

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[85] Catherine Barnes, "Governments & Civil Society Organisations: Issues in Working Together Towards Peace," *Discussion Paper for GPPAC Strategy Meeting* (Nairobi, October, 2006) p. 10
[86] ibid, p. 14

structured in legal, institutional, social and resource mobilization fronts. This opens the potential field of cooperation to a multi-dimensional and a broad spectrum of issues.[87]

At the international sphere, the relationship between non-State actors and governments concerning policies and practices in response principally to conflicts 'elsewhere' can be slightly more abstract - as the actors are less likely to be personally affected - and is likely to be more formal, conducted through existing communication channels and procedures. As domestic considerations are, however, always a factor in formulating foreign policy, the prevalent public opinion can be influential on a government's actions.[88]Thus, there is always need for public campaigning as an important tool for the technicalprofessional contributions made by more specialist no-State actors. Additionally, a government's approach to foreign policy and international action is typically subject to competing interests and priorities. Policies on trade and the economy may take priority over policies on prevention and peacebuilding.

The distinctions between 'foreign' and 'domestic' cooperation between non-State actors and governments are made more complicated by the fact that domestic non-State actors often have links with international non-State actors, who in turn have links with a range of governments with an interest in a conflict-affected country. To this end, it is the case that mandate and operations are many non-State actors are influenced both by the response of the government of the Member State(s) in which the conflict takes place, as well as by the interests of other Member States.[89]

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[87] ibid
[88] ibid, p.18
[89] ibid, p 20

3.5 CONCLUSION

The civil society sector is and will continue being an important player in Kenya for many years to come. Apart from their applauded response to the 2007/2008 post-election violence, the civil society also contributes significantly to the country's economy. Despite the crucial role played by the civil society in Kenya, the society is faced with various challenges whose origin dates back to pre-independent era. All in all, the civil society in Kenya is strong and vibrant as it is felt in every sphere of the life in Kenya and for the foreseeable future, the Constitution and the judicial system will continue protecting and strengthening the civil society in Kenya.

CHAPTER FOUR

INCORPORATION OF NON-STATE ACTORS BY GOVERNMENT IN CONFLICT RESOLUTION

4.0 INTRODUCTION

Many commentators regard increased levels of non-State actor engagement in conflict prevention and peace building as a positive development. [90] For the reason that non-State actors engage in early warning activities, preventive diplomacy through third-party intervention, facilitation of dialogue workshops and mediation, negotiations, networking and initiatives for cross-cultural understanding and relationship-building, the general argument is that they contribute to a "global public sphere" and "increase the repertoire of international politics.[91]

It is in this context that politicians, practitioners and scholars continue to debate the capacities, impacts and legitimacy of civil society actors at both the international and local levels. Through these for a, international relations theory introduces the term *non-state actors* to reflect the assumptions of realist theories, which assert that interactions between states are of central concern in studying international policy.

Non-State actors do not operate as to replace the state. At its worst, an authoritarian government can constrict or even crush the functioning of non-State actors through methods that violate human rights. Yet it is difficult for non-State actors to thrive amidst lawlessness and widespread violence. Flourishing non-State actors typically depend upon the security and predictability

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[90] Barnes Catherine 2005. Weaving the Web: Civil Society Roles in Working with Conflict and Building Peace, in: Paul van Tongeren et al. (eds.), *People Building Peace 2, Successful Stories of Civil Society*, (London: Lynne Rienner, 2005) pp. 7-24; Paffenholz, Thania (ed.), *Civil Society and Peacebuilding. A Critical Assessment,* (London, Boulder: Lienne Rienner, 2010).
[91] Martina Fischer, " Civil Society in Conflict Transformation: Strengths and Limitations" (London: Leinner Rienner) p. 293

provided by an effective State run by democratic governments that ensures the rule of law. If these conditions are not present, people - through non-State actors -strive to create the elements of self-governance and security. In so doing, they are recreating the basis for democratic government, which rests on the consent of the governed. Thus non-State actors and democratic States are highly complementary and even inter-dependent.

4.1 CODING OF NON-STATE ACTORS

Owing to the complex relationship between non-State actors and governments, it is imperative that governments undertake a coherent coding of non-State actors in a manner that allows groups to be compared over time and geographical region.[92] This also puts non-State actors on the spot especially with regard to their performance in every sphere where their services are required. For several decades, two coding frameworks dominated event data research: Charles McClelland's WEIS (1976) and the Conict and Peace Data Bank (COPDAB) developed by Edward Azar (1982).[93]

While innovative when first created, these coding systems are no longer optimal for dealing with contemporary issues such as ethnic conflict, low-intensity violence, organized criminal activity, and multilateral intervention, such as was the case in the 2007/2008 post-election violence in Kenya. With the advent of the Protocol for the Analysis of Nonviolent Direct Action (PANDA)

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[92] Philip A. Schrodt, Omur Yilmaz, Deborah J. Gerner and Dennis Hermrick, "Coding Sub-State Actors using the CAMEO (Conict and Mediation Event Observations) Actor Coding Framework" (Dept. of Political Science University of Kansas Version 1.0B1 : March 20, 2008)

[93] Both were created during the Cold War and assumed a "Westphalian-Clausewitzian" political world in which sovereign states reacted to each other primarily through social diplomacy and military threats.

project in the early 1990s, a major breakthrough in the systematic coding of non-State actors was ushered. PANDA's primary focus is on contentious politics within states.[94]

4.2 PARTICIPATION OF NON-STATE ACTORS IN NON-CONFLICT SPHERES

The Poverty Reduction Strategy Paper (PRSP) process opened new political space to involve non-State actors in national development cooperation. The European Development Fund (EDF) has been used to co-finance nationwide non-State actors' consultations. This, however, has elicited a reaction from some non-State actors who strongly feel against the domination of the international financial institutions in the process.[95]

In "*The relationship Between the State and the Voluntary Sector*", John Clark[96] explores principal ways in which states can influence the operational environment for non-State actors. He lists these as: the nature and quality of governance (pluralism, accountability); legal frameworks (registration, reporting requirements); taxation policies (imported goods, local philanthropy); public consultation and information; coordination; and official support (government funding, contracts).

In order for non-State actors to have a real impact on governance processes in their countries, they have to show that they themselves conform to the basic norms of good governance, transparency and accountability by respecting their constitutions and ensuring probity in their financial affairs. It is no good for groups of unelected citizens to point fingers at wrong-doing in government when they cannot account for their own activities.

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[94] <http://vranet.com/idea/> accessed 26 October 2015
[95] Charlotte Carlsson *In* **Brief** Non-state actors in ChadTurning natural partners into effective allies No. 3B – December 2003
[96] John Clark, "*The relationship Between the State and the Voluntary Sector*", The Global Development Research Centre, October 1993

Former US Ambassador John W. MacDonald,[97] drawing on his long experience working with non-State actors, advised them to take the following factors into account when dealing with interlocutors in the public sector: take cognizance of the differences in approach between state and non-state actors, styles and modes of operations; take into consideration the factor time: Many state actors want results to show 'on their watch;' let them take short-term credit for 'instant' success, and you can have long term change in policy; and work through personal contacts, seek the face-to-face encounters as they tend to last and have greater impact than faxes and emails.

4.3 NON-STATE ACTORS' ROLES AT DIFFERENT STAGES OF CONFLICT CYCLE

Before citing how and in what areas a government ought to involve non-State actors in conflict resolution, it is imperative that a brief outline of the roles played by non-State actors at different stages of conflict be highlighted. There are four distinct stages in conflict cycle where non-State actors play respective roles. These include structural prevention to address the causes of conflict; early operational crisis response and during violent conflict; peacemaking; and preventing reoccurrence and post-settlement peace building.

The elements involved in structural prevention to address the causes of conflict include: addressing structural violence & promoting human security. This is achieved when non-State actors engage in development, human rights monitoring and promotion and prevention of environmental degradation. Non-State actors also have a duty to make governments State

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[97] Ambassador John Mac Donald, "A View from Another World: The Policymaker's Perspective,"(Windhoek Namibia, 2002)

structures more responsive through participation in political processes, policy dialogue, monitoring, advocacy campaigns, and protests. They also have a duty to alleviate social tensions and conflict through challenging xenophobia and discrimination, facilitating dialogue, promoting tolerance and a culture of peace. Lastly, non-State actors have a duty to strengthen capacities to mediate conflict and manage differences through conflict resolution training, mediation services, education, promoting rule of law.

With regard to early operational crisis response and during violent conflict, non-State actors involve themselves inearly warning of emerging crises by monitoring, analysis, and communication strategies to raise awareness and generate attention; developing options and strategies for response by formulating recommendations, engaging in policy dialogue, problem-solving workshops; and mobilizing political will for response by lobbying and campaigning, sensitizing domestic audiences. In addition, non-State actors also have a duty to develop and strengthen 'constituencies for peace' and public awareness work; facilitate social dialogue and public protests. As well they have a duty in violence reduction and monitoring; creating 'zones of peace' and provision of humanitarian relief and support to war-affected communities

Non-State actors' roles in peace making include: facilitating communication and generating alternatives; creating a 'pragmatic peace' at the local level; developing a negotiation agenda and vision for the future that addresses the causes and consequences of conflict; participating in the political negotiations; and facilitating/mediating political negotiations process

Lastly non-State actors' roles in preventing reoccurrence and post-settlement peace building include: public education and awareness-raising on the peace agreement and consolidating support; facilitating the rehabilitation of war-affected relationships and communities; laying the

groundwork for reconciliation; contributing to transitional justice processes; and resumption of initiatives contributing to structural prevention by encouraging good governance, reconstruction and development, mediating social conflict, promoting human rights.

Given these vital roles played by non-State actors in conflict resolution, it is imperative that governments and non-State actors purposely negotiate dynamic and strategic partnerships between themselves for an effective conflict resolution process. This can then be operationalized through stronger mechanisms and resources for interaction in order to institutionalize the capacity for prevention.

These efforts give rise to the much needed complementary partnerships for peace between governments and non-State actors; the result of which is increased acknowledgement of the legitimate role of non-State actors in peace and security matters.[98] This necessity to work together in partnership and to complement each other is envisioned in the recent UN Progress Report on the prevention of Armed Conflict, in the Secretary-General urges "Member States to consider innovative means to intensify the dialogue with civil society."[99]

4.4 POSSIBLE ARENA FOR COOPERATION IN CONFLICT RESOLUTION

Some potential areas for cooperation between governments and non-State actors in conflict resolution and which need developing partnerships include: policy development and legislative processes; Civilian crisis response, violence prevention and peace building; and international peace and security institutions and policy frameworks.

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[98] Catherine Barnes, "Governments & Civil Society Organisations: Issues in Working Together Towards Peace," (European Centre for Conflict Prevention, 2006) p. 9
[99] Unites Nations Secretary General, "Progress Report on the Prevention of Armed Conflict," (Geneva, A/60/891, 2006) p. 29

One of the aims of many peace builder non-State actors is to mobilize political support for constructive action to address conflicts and their causes. This capacity can be directed towards influencing both government policy and national legislation. Thus, government officials and non-State actors can engage in a number of collaborative processes for developing policy frameworks and developing action plans to implement them.[100]

In the United Kingdom, for instance, specialist non-State actors who are at the forefront of identifying policy challenges are often consulted by many government departments in advance of preparing policy papers. These non-State actors prepare draft papers and the hold public consultations before the draft papers are revised and adopted by the government as official policy.

The platform of civilian crisis response, violence prevention and peace building is an area of partnership which exploits the fact that people based in a society are often best placed to understand what is going on and to identify specific actions that can be taken to address conflict issues and dynamics. In this respect, community based non-State actors are particularly well suited to provide information and analysis and to suggest appropriate responses. Their insight should be maximized when exploring response options, which may require collaboration from key partners elsewhere in the global system.

With regard to Kenya, the collaborative between the National Council of Churches of Kenya (NCCK), communities and the national government which has led to the creation of an early warning and early response network throughout Kenya ought to be replicated and enhanced to

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[100] Policy frameworks may consist of a set of principles, a list of priorities, and a menu of possible actions to address the issues concerned. A policymay be accompanied by a set of operational guidelines that indicate howthe action plan is to be implemented.

include more community based non-State actors.[101] This may be done along the German model of institutionalizing strategic partnerships for implementing civilian crisis prevention and peace building policy wherebyan integrated policy and institutional structure for civilian crisis prevention, conflict resolution and peace building as part of a forward-looking peace policy has been created as a national policy.[102]

Although operating at a national platform, non-State actors have the ability to set compelling national agenda on various ides including conflict resolution which resonates with the global requirements. This has the potential of forcing a significant re-shaping of global responses to key structural problems. In this regard, some scholars observe that non-State actors, although lacking on various powers of States, have been able to draw on the power of 'discursive legitimacy' rooted in their analysis of the problems, the moral 'voice' that they bring to identifying solutions, and the perception that they have the support of large numbers of people who want change.[103]

4.5 NATIONAL INFRASTRUCTURE FOR RESPONDING TO CONFLICT

Sustainable prevention requires effective systems, processes and institutions for managing disputes, addressing grievances and responding to conflict. A country's capacity to prevent and resolve violent conflict at home may be strengthened by creating national conflict prevention mechanisms and joint platforms that enable dialogue among all stakeholders. The need of a national conflict prevention mechanism has been emphasized at the United Nations forum. In July 2006 Progress Report, the UN Secretary-General urged Member States 'to consider creating

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[101] Peter Juma Gunja and Selline Otieno Korir "Working with theLocal Wisdom: The National Council of Churches of Kenya PeaceProgram" in van Tongeren, et al., *People Building Peace II*, op.cit.

[102] <http://www.auswaertiges-amt.de/www/de/aussenpolitik/friedenspolitik/ziv_km/aktionsplan_html> accessed 2 September, 2015

[103] Clark John D., *Worlds Apart: Civil Society andthe Battle for Ethical Globalisation.* (Bloomfield CT: Kumarian Press, Inc. 2003).

elements of a national infrastructure for peace ... and to make use of available external support, including from the United Nations, in that regard.'[104]

4.6 MECHANISMS FOR ENGAGEMENT

Effective cooperation between governments and non-State actors in conflict resolution requires a set of dedicated mechanisms for interaction and methods for working together. These may include, but not limited to: mechanisms for inter-non-State actors' cooperation; mechanism for government and non-State actors' exploratory dialogue, consultation and cooperation; and institutional structures and mechanisms to facilitate cooperation.

Given the plural and structurally diverse nature of non-State actors, it can be difficult to organize systematic cooperation between governments and non-State actors unless there is an existing structure for engaging the range of non-State actors concerned with conflict resolution issues. In line with the Global Action Agenda, there is need to create more effective mechanisms and possibly institutions to improve communication, coordination and mutual assistance. These should enable transversal links between local, national, regional and global levels.[105] Such strategies have been successful in the United States of America and in Switzerland, among other progressive nations with such national and global agenda.[106]

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[104] Report of the Secretary-General to the United Nations General Assembly,p. 29, paragraph 103
[105] ibid (n 87) pp. 24-25
[106] U.S. Government- Civil Society Dialogue Series, TCP (Transition,Conflict and Peace) working group,<http://www.interaction.org/disaster/TCP/USAID_PVO.html> accessed 2 September 2015; <www.swisspeace.org> accessed 2 September 2015

4.7 FUNDING RELATIONSHIP

Many non-State actor-based conflict resolution initiatives not only emerge as a spontaneous response of people affected by the conflict to address the turmoil around them, but may also spring from the urge of concerned people elsewhere to provide solidarity to those suffering from conflicts. Such initiatives are generally characterized by a quality of urgency and the ability to mobilize whatever limited resources are available to do whatever can be done to make a difference in the situation. These efforts can be complemented and sustained by the support of donors, both foreign and domestic, who are willing to provide funds for conflict resolution. This calls for the need for a major form of cooperation between donors, governments and non-State actors in conflict resolutions for prudent management of resources sought.

Amidst this cooperation is the need for parties to adhere to prudent fiscal management procedures. Two classical examples from Africa helps to illustrate this: In Malawi, with a much poorer government and weaker capacity, prudent management of resources between the State and non-State actors has proved useful in the provision of essential services. On the flip side, Nigeria, even with abundant resources has not achieved much owing to misuse coupled with less allocation to smaller non-State actors acting in small geographical areas in favour of larger organizations, mainly government friendly non-State actors operating in cities.[107]

4.8 CONCLUSION

The logic of cooperation between governments and civil society organizations is quite clear, and the good will from both sides is not a matter of choice as it is also well established. But moving

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[107] Larbi George, Promoting Synergies Between Non State Providers of Public Services and the State in Nigeria, 26th Roundtable Conference of the African Association for Public Administration and Management (Mombasa, Kenya, March, 2007

from good ideas and good intentions to effective action will require hard work and firm commitments, especially from the government side. Patience, tolerance, and mutual understanding of the issues and forces that all actors at all levels confront are certainly required. But that does not mean that the status quo can be allowed to prevail indefinitely. Moving ahead, the focus needs to begin to shift from the articulation of principles to the elicitation of firm commitments, and beyond, to effective action.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 CONCLUSION

The unprecedented 2007/2008 post-election violent conflict that engulfed Kenya attracted global attention. Although the country's history includes episodes of violent conflicts, the repeated failure to resolve their causes acted to set ground for the 2007/2008 post-election violence. The entrenched negative factors such as impunity, weak accountability in governance, corruption, politicized ethnicity, inequitable resource distribution, poverty and marginalisation continue to dissolve the social fabric of the society.

A brief look at key causes of conflict in Kenya reveals threats within the political, economic and social spheres, with crosscutting implications.In the political sphere, the key identified root causes of violent conflict include the politicisation of ethnicity; non-adherence to the rule of law; reliance on centralized and highly personalized forms of governance; inequitable development; corruption and abuse of power; a winner-takes-all form of political victory; and a perception that certain groups are not receiving a fair share of resources.

Furthermore, progressively over the 52 years of the country's independence, an increasingly powerful presidency has rendered the quest for political power a zero-sum game. Once elected, the President is able to assume total control over state resources in the absence of effective accountability structures. This control has been at the expense of other political players and has yielded incremental political powers to the President. The previous Constitution,under which the 2007 general elections were conducted, allowed for an excessively powerful presidency with

ineffective accountability structures, and allowed past presidents to sanction marginalisation and impunity.

Imperial presidency allowed presidents to manipulate political processes to their own ends in two ways. First, has been the use of the state as an instrument of material acquisition and ensuring political exclusion through ethnic marginalisation.This has led to the high-stakes nature of Kenyan politics as political power has emerged as one of the primary means to access and amass wealth in a political environment that is above censure.Second, has been the politicisation of ethnicity as a means of both political and economic marginalisation.It is against this background that the non-State actors in Kenya crafted a middle ground to ending the 2007/2008 post-election violence.In deed their efforts, in the backdrop of the system-imposed huddles remain lauded.

The Kenya National Dialogue and Reconciliation process, which ended the 2007–2008 post-election violence, considered in its fourth agenda item long-term issues and solutions to address the root causes of conflict. To-date, a new constitution, the Constitution of Kenya 2010 has been promulgated and is fully operational. What remains is to hope that the constitutional reform, as a foundation, will support other legal and institutional reforms to tackle effectively long-standing issues impeding sustainable peace.

The discussion has shown the challenges that face civil society in responding to crises in Kenya on the basis of a polarised social-political context. Worth noting is that with regard to the 2007/2008 post-election violence, the main ethnic divisions around which the political divisions in the country revolved did not affect the activities of new non-Stateactorsthat emerged to respond to the crisis.

The new differences emerging with regard to the Kenyan crisis were ideological: they were about whether to pursue peace as an end in itself or whether to pursue sustainable peace through the search for truth, justice and accountability. They were divisions about ideals for social justice and freedoms and how these would be pursued. But the differences did not prevent non-State actors from impacting on the mediation process; by articulating peace and articulating demands for justice and truth, civil society informed the mediation process in many ways. The language of their messages also found its way in the final agreement signed by the parties.

Non-State actors were also successful in both local and international advocacy. Lobbying both parties to agree to dialogue and engaging in international advocacy had important results. It is this success in lobbying and advocacy that one can draw lessons from, for engagement by non-State actors. Important also is that external interests converged with the non-State actors' interests at the time. International actors and civil society created and sustained huge demand for peace and thereby compelled the two parties into mediation.

5.1 RECOMMENDATIONS

It is evident fact in situations that there has to exist a complexity of engagement between governments and non-State actors in conflict resolutions. This study therefore recommends a joint identification of potential areas for cooperation by government and non-State actors.

The study also recommends a prudent financial sourcing and management systems to govern the partnerships that may arise. Lastly, it is recommended that an effective and mutually agreed on conflict prevention and resolution systems, processes and institutions for managing disputes, addressing grievances and responding to conflict be put in place through legislation

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