UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

Colonialism and Ethnic Conflict in Post Colonial Africa: A Case Study of Kenya 1963-2007

By

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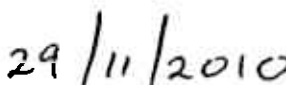
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DECLARATION

I declare this research is my original work and has not been previously published or presented for award of degree in any other university.

Signed: ~~S.Nhhtmutura~~   Date 29/11/2010

Samuel Wilfred Ngugi Mwaura

SUPERVISORS' DECLARATION

The research project has been submitted for examination with our approval as university supervisor:

Signed: ....   Date 3rd Dec 2010

Prof. J. Olewe Nyunya

DEDICATION

This research study is dedicated to all the freedom fighters that fought for the first liberation of this country the likes of Jomo Kenyatta, Jaramogi Oginga Odinga Paul Ngei, Ochieng Oneko, Kung'u Karumba, Bildad Kagia and other freedom fighters. Not forgetting the freedom fighters of the second liberation Kenneth Matiba, Charles Rubia, Raila Amollo Odinga, James Aggrey Orengo, Kiraitu Murungi, Paul Muite, Wamalwa Kijana Rev's David Gitari, Timoth Njoya, the Late Bishops Henry Okullu, Alexander Kipsang Muge and all that risked their lives for the sake of this country. All those whose hearts are sincere with the words of our national anthem *justice be our shield and defender may we dwell in unity peace and liberty plenty be found in our borders.* I dedicate this research to you.

ACKNOWLEDGEMENT

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ACRONYMS

ASAL	Arid and Semi Arid Land
AU	African Union
CIPEV	Commission of Inquiry into Post Election Violence
DP	Democratic Party
ECK	Electoral Commission of Kenya
FORD	Forum for Restoration of Democracy
FORD-K	Forum for Restoration of Democracy-Kenya
GEMA	Gikuyu, Embu, Meru Association
GOK	Government of Kenya
IDP	Internally Displaced Persons
IIBREC	Interim Independent Boundary Review Commission
IIEC	Interim Independent Electoral Commission
KADU	Kenya African Democratic Union
KAMATUSA	Kalenjin, Maasai, Turkana and Samburu
KANU	Kenya African National Union
KHRC	Kenya Human Rights Commission
KCA	Kikuyu Central Association
KNCHR	Kenya National Commission on Human Rights

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KPA	Kalenjin People Alliance
LU	Luhya Union
MUF	Mwambao Union Front
NDF	North Frontier Districts
MP	Member of Parliament
ODM	Orange Democratic Movement
OHCHR	Office of the High Commissioner of Human Rights
PA	Provincial Administration
PEV	Post Election Violence
PNU	Party of National Unity
SDP	Social Democratic Party
THA	Taita Hills Association
TJRC	Truth Justice and Reconciliation Commission
UNDP	United Nations Development Program
YKA	Young Kavirondo Association

ABSTRACT

Kenya was a British Colony from 1895- 1963. The British stamped their imperial power through the way they administered Kenya. They used divide and rule whereby they divided the administrative boundaries based on tribal population patterns. The land policy which saw people being moved from their native land so that the British might take the fertile land for agriculture cannot be denied.

When Kenya got her independence in 1963 nothing much was done to address the issues the colonial legacy had bequeathed the newly independent Kenya. The successive regimes of Jomo Kenyatta, Daniel Moi and Eventually Mwai Kibaki did not address the issues so as to avoid potential conflict.

The study has established that colonial legacy laid a foundation of the many ethnic conflicts that have plagued Kenya after her independence. Land, ethnicity and governance problems are issues that have brought ethnic conflict in Kenya. Kenya experienced the worst ethnic conflict in 2007 -2008, whereby 1,300 people died and about 350,000 people were internally displaced.

From the grievances that caused the conflict, there emerged long-term issues which have not been dealt with. These are land issues, governance and economic issues. In order for ethnic conflicts in Kenya to be mitigated, long term solutions for long-term issues ought to be found. This is what the Kofi Annan led mediation attempted to do. The mediation proposed reform agendas which should they be followed ethnic conflicts in Kenya can be mitigated.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

European colonialism had a profound lasting, and wide-ranging effects on the development of contemporary African states. One of the most profound legacies has been ethnic conflict. When European powers imposed formal boundaries through the continent in 1885, the seeds for ethnic conflict were sown.[1] The boundaries were drawn with little or no consideration to the actual consideration of indigenous ethno-cultural groups. With demise of colonial rule, the former colonies, with their colonial borders essentially intact, were transformed into some of the most ethnically fragmented states in the world.[2]

It is important to note that. The artificial boundaries created by colonial rulers as they ruled and finally left Africa had the effect of bringing together many different ethnic people within a nation that did not reflect, nor have (in such a short period of time) the ability to accommodate or provide for, the cultural and ethnic diversity.[3]There is enough evidence to corroborate this fact with examples of conflict in Rwanda and Burundi.

Before the 19th century, European contact with Africa, though extensive was largely confined to a limited number of coastal enclaves. The changes that came to Europe as a result of the industrial revolution warranted that they look for raw materials for their industries. As their specializations, moved towards manufacturing, European powers began importing agricultural goods and raw materials .In order to guarantee the supplies of these commodities, Europe used colonialism to assume direct administrative control over territories that produced

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[1]Wilson, Henry S: *African Decolonisation; London*; Edward Arnold.(1994) pp 151

[2] Ibid

[3] Global Issues; *Colonialism in Africa* .http://www.global issues.org/article84/conflicts-in- Africa

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them.[4] In dividing Africa. the Europeans (the colonial powers) showed little regard for boundaries of existing ethnic communities' .Each colony encompassed multiple ethnic groups with its newly imposed territorial boundaries, and many ethnic nationalities were divided between two or more colonial entities. With independence these boundaries gained international (though not necessarily domestic) legitimacy as the borders of newly sovereign nation states.[5]

The disjunction between state borders and the geographical distribution of ethnic groups immediately confronted the new African states with the twin problems of secessionist problems within their borders and the threat of the irredentist wars across their borders.[6] In establishing administrative control over their colonial territories, European powers transformed productive relations within society. In so doing they undermined longstanding patterns of social organization and authority.

Institutions of social control and social organization that had evolved over the centuries according to the rhythms of local needs, local markets and local communities were interrupted as the productive base of the society was transformed to serve the demands of the markets of Europe[7]. The multi-ethnic character of African colonies did not much vary between different colonial powers because the criteria used to draw colonial boundaries had nothing to do with ethnic boundaries. It is important to note that. The extent to which traditional patterns were disrupted by the colonial power varied with style of colonial rule.[8] Variances of colonial ruling styles had significant consequences for post colonial patterns of ethnic conflict in Africa.

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[4] Young, Crawford, *The African Colonial State In Comparative Perspective*. New Haven CT:Yale University Press.(1994) p.267
[5] Young
[6] Bates,Roberts.*Ethnic Competition and Modernization in Contemporary Africa; Comparative Political Studies*.Vol.6.No.4 (1974), p.457-484
[7] Lunyiigo, Lwanga S., 1985, The Colonial Roots of Internal Conflict Resolution in Uganda. International Peace Research Institute, Oslo
[8] Nielsen, Francois. *Toward a Theory of Ethnic Solidarity in Modern Societies; American Sociological Review*. Vol 50.(April 1985) , p.133-149

Some of the European powers that colonized Africa are France, Germany, Portugal, Spain, Italy and Britain. Each of these colonial powers had a distinct style unto which they administered their colonies. There is a great relationship between ethnic conflict in post colonial Africa and the style unto which each the colony was administered. The underlying factors that cause ethnic conflict were partly laid by the colonialists. The British rule in Kenya is a perfect example of how colonialism has contributed to some extent ethnic conflict in Kenya. The ramifications of divide and rule have manifested themselves very much in Kenya in the form of negative ethnicity. The fact that the British preferred to develop certain areas of Kenya which they deemed of economic importance is a fact that cannot be ignored. Investment in infrastructure, schools and other social amenities have had an effect in ethnic conflict in Kenya[9].

1.2 Statement of the Problem

Economic disenfranchisement, lack of economic opportunities has been the main contributors of ethnic conflict in Kenya. Post-colonial Kenya is an excellent case study in the myriad difficulties that multiethnic states face during the processes of development and democratization. There have been several ethnic conflicts in Kenya since 1963 when Kenya got her independence from the British colonialists.

The colonial administration established the administrative structure of provinces and districts, which slotted either similar or different ethnic groups in the respective administrative units to which either the groups belonged willingly or which they resented[10]. The colonial government bequeathed to Kenya some problems of governance. This colonial past has kept haunting Kenya and Kenyans as the country and its people whose ways see themselves in terms of their ethnic group.

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[9] Oucho, John Oloo. *Under Currents of Ethnic Conflicts in Kenya:* Boston, Brill, (2002) p.101
[10] Ibid

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Ethnic conflict in Kenya in the form of ethnic clashes happened in 1992, 1997. 2002 and 2007.The worst was 2007 which was as a result of disputed presidential election results. The research will endeavor to show how colonialism has contributed in laying a foundation of the underlying factors that have brought about ethnic conflict in Kenya.

The economic aspect in inducing conflict cannot be denied. Lake and Rothschild have postulated that. "Intense ethnic conflict is most often caused by collective fears of the future .As groups begin to fear for their safety ,dangerous and difficult-to-resolve strategic dilemmas arise that contain within them the potential for tremendous violence".[11] .The ethnic inequalities within Kenya in terms of extraction and distribution of the scarce resources has been a source of negative competition between those who control power and those who perceive themselves to have been marginalized even after colonization . This study seeks to investigate colonialism and ethnic conflict in post colonial Africa focusing on a case study of Kenya from 1963 to 2007.

1.3 Objectives of the Study

In order for the purpose of this research to be achieved, the research will be guided by the following objectives,

    (i)   To finds out the influence of colonial administration on ethnic conflicts in Kenya

    (ii)   To investigate cause of post colonial conflicts in Kenya from 1963 to 2007

    (iii)   To find out effects of ethnic conflict in Kenya

    (iv)   To finds out ways through which conflicts facing Kenya can be resolved.

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[11] Lake, David & Donald Rothchild. *Containing Fear: The Origins and Management of Ethnic Conflict International Security*, Vol.21No.2 (October 1996),pp 41-75

1.4 Justification of the Study

The research endeavours to contribute in understanding about ethnic conflict and how colonialism has contributed in occurrences of ethnic conflicts in postcolonial Africa. This view is hoped will help in mitigating ethnic conflicts. This understanding will be utilized in both academic and policy formulation.

1.5 Academic Justification

There has been literature about ethnic conflict written by many scholars. Most of the scholars writing on the subject of ethnic conflict, write from the structural violence point of view without considering much the contribution colonialism has had in laying the foundation of ethnic conflict in post colonial Africa. It is hoped that this research will contribute to the body of knowledge on how colonialism has contributed in ethnic conflicts in post colonial Africa.

1.6 Policy Justification

Following the ethnic conflict after the 2007 disputed presidential elections, the government together with other stakeholders formed the National Cohesion and Integration Commission with a view that it will promote national integration and mitigation of potential future ethnic conflicts in Kenya. It is hoped that this research will be helpful to policy makers and conflict managers who would be involved in solving ethnic conflicts in Kenya and Africa. For the Vision2030 to be realised national cohesion and integration is very important. Most of ethnic conflicts have been as a result of long term issues whose ramifications if not dealt with, would inhibit the full implementation of Vision 2030.These issues date back from colonial period until now.

It is therefore important to deal with them and come up with a policy that would address the problems. The researcher hopes to develop policies that he will share with the relevant stakeholders to prevent ethnic conflicts and country disintegration.

1.7 Scope of the Study

The study will not go into elaborate details on how the colonialists partitioned Africa. Colonialism styles and how different colonialists administered will not be dealt with in great detail however the British colonial style in administration of the Kenyan colony will be looked at. The British colonial style of divide and rule and how the colonial administration divided ethnic groups in administrative units will be considered since it has ramifications that have continued to haunt Kenya even after a long time of independence. These have had economic aspects that have contributed greatly in ethnic conflicts in Kenya. This study will also look at the mitigation aspect of ethnic conflict from a structuralist paradigm.

1.8 Hypothesis

i)   Colonialism has cause ethnic conflicts in post colonial in Kenya.

ii)   Post colonial politics, economic and social aspects has caused conflicts in Kenya.

iii) Ethnic Conflicts in post colonial era can be mitigated.

1.9 Literature Review

1.9.1 Introduction

Conflict arises when there is an incompatibility of goals among different parties. The value of the objectives being sought out by the parties involved is proportional to the intensity of the conflict.[12] From the definition above, corroborated with evidence it becomes clear that ethnic conflicts occur due to incompatibility of goals between different ethnic groups in a country. The relevant literature will be analyzed so that the objectives of the research are realized. Sections of literature analyzed include.

- Theories of Conflict
- Structural violence
- Causes of Ethnic Conflicts
- Relationship between Colonialism and Ethnic Conflict

1.9.2 Theories of Conflict

Conflict theories are perspectives in social science which emphasize the social, political or material inequality of a social group, which critique the broad socio-political system, or which otherwise detract from structural functionalism and ideological conservativism. Conflict theories draw attention to power differentials, such as class conflict, and generally contrast historically dominant ideologies. For the purpose of this study, human need theory, relative deprivation theory are discussed due to their relationship with the causes of colonialism and ethnic conflicts in Kenya.

/ On human needs theory, ethnic groups fight because they are denied not only their biological needs, but also psychological needs that relate to growth and development. These include peoples' need for identity, security, recognition, participation, and autonomy.

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[12] A de Reuck The Logic of Conflict: It's Origin, Development and Resolution *Conflict in World Society: A New Perspective on International relations*, (Sussex:Harvester,1984), pp 96-111

This theory provides a plausible explanation of ethnic conflicts in Africa, where such needs are not easily met by undemocratic regimes[13].

This study also focuses on human needs theory to explain ethnic conflict in Kenya, because it provided cogent reasons for the conflicts in the case studies. [14]The human needs theory was introduced to debunk the other theories that attribute causes of conflict to the innately aggressive nature of human beings.[15] The importance of this theory to ethnic conflict management in Africa is that it moves beyond theories that blame African conflicts on a primordial past.

Instead, it points to ineffective institutions unable to satisfy the basic human needs of their citizens. Wherever such non-negotiable needs are not met, conflict is inevitable. Obviously, the problem of ethnicity and ethnic conflict in Africa largely depends on the level of state effectiveness, accountability, and transparency in handling the demands of diversity. The focus on the human needs theory in this study does not mean the neglect of other theories, which are considered to be equally useful[16]. It is necessary to emphasize that proper analysis of ethnic conflicts is very important in order to avoid prescribing a wrong medicine for the ailment. Failure to find solutions to Africa's ethnic problem will have devastating social and economic consequences on a continent that is already worn out by conflict, poverty and disease. Relative deprivation theory offers an explanation based on an ethnic groups' access to power and economic resources.

This is closely related to Evans[17] who's arguments are corroborated by Hansen who wrote that a group worth is based on the results of economic and political competitions.[18]

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[13] Hansen, E., *Africa: Perspectives on Peace and Development*, Zed Books, London, (1987)

[14] J. Galtung, Violence, Peace and Peace Research *Journal of Peace Research* , 3 (1969)

[15] Max Webes, Ethnic Groups in Talcott Parsons et al.,*Theories of Society, Volume* 1,(New York: Free Press,1961), 305-306

[16] J. Galtung, Violence, Peace and Peace Research *Journal of Peace Research* , 3 (1969) pp 168-170

[17] Ivans, Evans, Bureaucracy And Race. Native Administration In South Africa. South African Institute of Racial Relations. Johannesburg. (1997)

Ethnic conflict is a sign of a weak state or a state embroiled in ancient loyalties. In this case, states act with bias to favour a particular ethnic group or region, and behaviour such as preferential treatment fuel ethnic conflicts. Therefore, in critical or difficult political situations. the effectiveness of governance is dependent on its ability to address social issues and human needs.

1.9.3 Structural Violence

Analysis of structural violence would be very illustrative when trying to unravel ethnic conflict. Johan Galtung defines structural violence as. "Violence is present when human beings are influenced so that their bodily and mental realizations are below their potential realizations"[19] He continues to state that, the potential level of realization is that which is possible with a given level of insight and resources. If insight and or resources are monopolized by a group or class or used for other purposes, then the actual level falls below the potential level, and violence is present in the system.[20]

Structural violence derives its conceptual underpinnings from structural theories which assume that human behaviour cannot be adequately understood by examining individual motivations and intentions since, when aggregated, human beings behaviour precipitates structures of which individuals may be unaware.[21] Structural violence may sometimes take form of cultural violence where an aspect of culture is used to legitimize violence in its structural violence.[22]Some cultural aspects include acts of religion, ideology, culture, or even language which makes physical or structural violence acceptable in society.

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[18] Hansen, E., *Africa: Perspectives on Peace and Development,* Zed Books, London, (1987)
[19] J. Galtung, Violence, Peace and Peace Research *Journal of Peace Research* , 3 (1969) pp 168-170
[20] Ibid
[21] A.J.Groom,Paradigms in Conflict the Strategist, the Conflict Researcher and the Peace Researcher in J.Burton and F.Dukes, eds, *Readings in Management and Resolution,* (London: Macmillan 1990),71-98
[22] J.Galtung Cultural Violence, *Journal of Peace Research,* Vol 27,3, (1990) pp 291-305

Structural violence if not dealt with may eventually lead to physical violence as life becomes unbearable[23].

Structural violence is linked to ethnic conflict fashioned by the conflict of interests and human needs. The whole basis of law and order in a society is challenged when people's basic needs are frustrated.[24] Structural violence is closely tied to the inadequate satisfaction of basic needs because its essence is the idea that people are unable to develop their full potential. Structural anomalies in many African countries including Kenya have implied that the needs of some ethnic groups are served at the expense of others. As long as a state serves specific interests rather than the common good, the needs of many citizens will remain unsatisfied.[25]

1.9.4 Causes of Ethnic Conflicts

Ethnic conflict arises fundamentally because anomalous social structures lead to marginalization of certain ethnic groups within states. Such structures are a source of structural violence[26]. Ethnic conflict can be partly explained by an evolved predisposition towards ethnic nepotism where members of an ethnic group tend to favour their ethnic group members because they are closely related to their group members than to outsiders.[27] It will be important to note that, the predisposition to favour one's ethnic group becomes important in social life and politics where different ethnic groups compete for scarce resources.

[23] Mwagiru, *Conflict: Theory, Processes, and Institutions of Management*,25
[24] J.Burton, *Violence Explained*, (Manchester: Manchester University Press,1997),pp 32-40
[25] P.Sites,Legitimacy and Human Needs, in J.Burton and F.Dukes, *Conflict: Readings in Management and Resolution*, (London: Macmillan, 1990), pp 117-141
[26] A de Reuck The Logic of Conflict: It's Origin, Development and Resolution *Conflict in World Society: A New Perspective on International relations*, (Sussex:Harvester,1984),
[27] T.Vanhanen, Domestic Ethnic Conflict and Ethnic Nepotism: A Comparative Analysis, *Journal of Peace Research*, Vol 36, No.1,(January,1999) pp 55-73

The more a society is ethnically divided, the more political and other interest conflicts are channeled along ethnic lines. Factors that cause ethnic conflicts relevant for this study include economic factors, ethnic fear and insecurity and failure of government institutions.

1.9.5 Economic factors

Economic issues have been identified as one of the major causes of conflict in Africa. Theorists believe that competition for scarce resources is a common factor in almost all ethnic conflicts in Africa. In multi-ethnic societies like Nigeria and South Africa, ethnic communities violently compete for property, rights, jobs, education, language, social amenities and good health care facilities[28]. In the case of South Africa, Gerhard Mare confirms that ethnicity and ethnic conflict appear to be a response to the uneven development in South Africa, which caused ethnic groups (Xhosas, Zulus and even Afrikaners) to mobilize to compete for resources along ethnic lines. It follows that multi-ethnic countries are likely to experience distributional conflicts[29].

Reforms in Africa play an important role as Ogachi [30]postulates that violent ethnic conflicts have increased in Africa, especially from the mid 1970s, and have picked up on a large scale from the 1980s. According to him, this was a period during which most African countries entered a state of economic austerity. At the same time, pressure was put on these countries from the international community to initiate programmes of political and economic liberalization. As a result of this, by 1980, most Africa countries had entered into agreements with international financial institutions on specific areas of economic reform without much insistence on political reforms.

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[28] Bates, Roberts.Ethnic*Competition and Modernization in Contemporary Africa; Comparative Political Studies.*Vol.6.No.4 (1974).
[29] Glazer, N, and Moynihan D.P., eds Ethnicity And Experience. Cambridge. Mass. Harvard University Press. Atlanta Georgia. (1975).
[30] Ogachi, O. 1999. "Economic Reforms, Political Liberalisation and Economic Ethnic Conflict in Kenya", in *CODESRIA Quarterly Journal,* The Political Economy of Conflicts in Africa, Africa Development, Volume XXIV Number 1 and 2, pp.77-108

Furthermore to him, from this statement, three observations can be made to help build a holistic theory of studying conflicts in Africa. The first has to do with manner in which the reforms both political and economic) were introduced and implemented. While the donors have insisted that democratic political systems are crucial for the success of the economic reforms, they have always not put into place. The second observation in his view relates to the nature of the current state of ethnic conflicts in Africa.[31]

The level of violence and organization makes them slightly different from those that were experienced during the colonial period and may therefore not adequately capture the internal dynamics of these conflicts-cause and effects. Ogachi continues to assert that, new theoretical postulations have to be sought. Thirdly, the point that has already been made about the occurrence of the present ethnic conflicts in Africa is two faced by this he means that. A good analytical framework for conflicts in Africa should be sought from themes emanating from ethnicity, economic austerity and adjustment of regimes. [32]Commenting on the issue further Ogachi postulates that. Ethnicity should not always be seen as a colonial invention in Africa or just a continuation of the pre-colonial manifestation of sheer tribal emotions as postulated by the modernization school.[33] .Magubane[34] argued convincingly that a focus on ethnicity impedes a serious effort to understand Africa societies because it ignores the ownership of the primary productive forces, the material basis of societies, and nature of the social system.

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[31] Ibid

[32] Ibid

[33] Ogachi, O. 1999. "Economic Reforms, Political Liberalisation and Economic Ethnic Conflict in Kenya", in *CODESRIA Quarterly Journal*, The Political Economy of Conflicts in Africa, Africa Development, Volume XXIV Number 1 and 2, pp.108

[34] Magubane, A.B. 1962. "Pluralism and Conflict Situation in Africa: A New Look." *African Social Research*, 5(1): 6-8.

1.9.6 Ethnic Fear and Insecurity

Another major cause of ethnic conflict is psychology, especially the fear and insecurity of ethnic groups during transition. It has been opined that extremists build upon these fears to polarise the society[35]. Additionally, memories of past traumas magnify these anxieties. These interactions produce a toxic brew of distrust and suspicion that leads to ethnic violence. The fear of white Afrikaners in South Africa on the eve of democratic elections was a good case in point. Relative deprivation theory offers an explanation based on an ethnic groups' access to power and economic resources. [36]This is closely related to what he found that that a group worth is based on the results of economic and political competitions.

1.9.7 Failure of Government Institutions

According to Rothchild ethnic conflict is a sign of a weak state or a state embroiled in ancient loyalties. In this case, states act with bias to favour a particular ethnic group or region, and behaviours such as preferential treatment fuel ethnic conflicts. Therefore, in critical or difficult political situations, the effectiveness of governance is dependent on its ability to address social issues and human needs[37].

Recently, scholars have come out with different approaches to conceptualizing ethnicity. Faced with the proliferation of separatist conflicts in North America, the inadequacies underlying modernization theory are being exposed[38]. The notion that modernity would result in smooth transition from community to association, with gradual dissolution of ethnic affiliations, simply did not work.

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[35] Global Issues; *Colonialism in Africa* :http://www.global issues.org/article84/conflicts-in- Africa retrieved on 30th March 2010

[36] Hansen, E. *Africa: Perspectives on Peace and Development*, Zed Books, London, (1987),

[37] D. Rothchild, Managing Ethnic Conflicts in Africa: Pressures and Incentives for Cooperation, (Washington: Brookings Institution Press,1997), pp 3-22

[38] J.Burton, *Violence Explained*, (Manchester: Manchester University Press, 1997), pp 32-40

Ethnicity has persisted in North America, Africa and elsewhere. This failure simply means ethnicity will remain, and that the stability of African states is threatened not by ethnicity per se, but the failure of national institutions to recognize and accommodate ethnic differences and interests. According to this argument, the lesson for ethnic conflict management is that governments should not discriminate against groups or they will create conflict[39].

1.9.8 The Relationship between Colonialism and Ethnic Conflict

The British colonial legacy has impacted significantly on Kenya's governance. Four aspects of the colonial legacy verify this fact: coterminous ethnic-cum-administrative boundaries that makeup the country; the land question', which remains unsolved; conflict-prone migrant labour system, which generated farm labourers and squatters.[40] An imperial constitution has stood firmly in the way of efforts to entrench democratization until recently when Kenyans overwhelmingly voted for a new constitution which has since been promulgated into new law to govern Kenya. These aspects are very important in this research and they will be critically dealt with in chapter 2 of this research.

1.10 Analysis of the Literature

The literature that has been reviewed has shown that colonialism has a lot to do with ethnic conflict in post colonial Kenya. The colonialists divided the country on ethnic administrative units as the research has earlier stated. The fact that the colonialists developed regions they deemed to be of economic importance to them largely explains the pattern of

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[39] Chanaiwa, David "Southern Africa Since 1945", In , (eds), Ali Mazrui and Wondji, C., General History Of Africa Since 1935, Vol. 8, Heinemann. California. UNESCO, (1993)
[40] Kanyinga K., (2006) Governance Institutions and Inequalities in Kenya in Readings of Inequalities in Kenya Nairobi Society for International Development.

ethnic conflict in Kenya.[41] This was reinforced by the regimes which have been in power since 1963 when Kenya gained independence.

The literature has shown that most of ethnic conflicts occur due to anomalous structures in politics, economics and social institutions. It becomes apparent that most ethnic conflicts have a direct relation to economics. Every manifestation of negative ethnicity is an effort of preservation on the part of ethnic groups which feel threatened by either losing their grip of power or trying to gain it[42].

There are gaps however missing when it comes to structural explanation of ethnic conflict. Much as there is wealth of literature on structural causes of conflict, religious aspects that cause conflict have not been adequately dealt. Galtung [43]has done an excellent analysis on the economic aspects that bring about ethnic conflict however he has not adequately addressed the religious aspect of ethnic conflict.

Amutabi [44]agrees that the ethnic conflicts experienced today especially in Africa are deep rooted. These conflicts over race, religion, language and identity have become so complex that they are difficult to resolve or manage. Ethnicity has a strong influence on one's status in a community. Ethnic conflicts are therefore often caused by an attempt to secure more power or access more resources. The opinion of this study is that conflict in Africa is synonymous with inequality[45]. Wherever such inequality manifests among groups, conflict is inevitable.

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[41] Max Webes, Ethnic Groups in Talcott Parsons et al.,*Theories of Society* .*Volume* 1, (New York: Free Press,1961) p 365
[42] Lunyiigo, Lwanga S., The Colonial Roots of Internal Conflict Resolution in Uganda. International Peace Research Institute, Oslo, 1985 pp 78-95
[43] J. Galtung, Violence, Peace and Peace Research *Journal of Peace Research* , 3 (1969)
[44]Amutabi N. Maurice, "Challenging the Orthodoxies: The Role of Ethnicity and Regional Nationalism in Leadership and Democracy in Africa", UNESCO Seminar, 28 - 31 May, 1995,
[45] Ivans, Evans Bureaucracy And Race. Native Administration In South Africa. South African Institute of Racial Relations. Johanesburg. (1997)

Recently, scholars have come out with different approaches to conceptualizing ethnicity. Faced with the proliferation of separatist conflicts in North America, the inadequacies underlying modernization theory are being exposed. The notion that modernity would result in smooth transition from community to association, with gradual dissolution of ethnic affiliations, simply did not work[46]. Ethnicity has persisted in North America, Africa and elsewhere. This failure simply means ethnicity will remain, and that the stability of African states is threatened not by ethnicity per se, but the failure of national institutions to recognize and accommodate ethnic differences and interests[47]. According to this argument, the lesson for ethnic conflict management is that governments should not discriminate against groups or they will create conflict[48].

Mostly as a result of distributive injustice, ethnicity remains an effective means of survival and mobilization. Ethnic groups that form for economic reasons, easily disband after achieving their objectives. This corresponds with [49] the argument that ethnicity is "a construct" rather than a constant. Additionally, scholars' attention has also shifted to the nature of ethnic conflict and violence because the post Cold War era has been marked by the resurgence of ethnic conflict and even genocide in some societies like Rwanda, Bosnia, and Democratic Republic of Congo. [50]The human needs theory was introduced to debunk the other theories that attribute causes of conflict to the innately aggressive nature of human beings.[51]

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[46] Gurr, Ted and B. Harff) Ethnic Conflict In World Politics. (San Francisco: west View press.), (1994
[47] Glazer, N, and Moynihan D.P eds Ethnicity And Experience. Cambridge. Mass. Harvard University Press. Atlanta Georgia. ., (1975)
[48] Mwagiru, Conflict: Theory, Processes, and Institutions of Management
[49] Bates,Roberts.Ethnic Competition and Modernization in Contemporary Africa; Comparative Political Studies.Vol.6.No.4 (1974) p27
[50] Nthamburi, Zablon. The Paradigm of Ethnicity its Influence and Relevance in Public Life Today: in Ethnicity, Conflict and the Future of African States: Nairobi.Kenya, Daughters of Saint Paul(2008) p68
[51] Burton, John "Violence Experienced: The Source Of Conflict Violence and Crime And Their Prevention". New York. Manchester University Press. (1997)

The importance of this theory to ethnic conflict management in Africa is that it moves beyond theories that blame African conflicts on a primordial past. Instead, it points to ineffective institutions unable to satisfy the basic human needs of their citizens. Wherever such non-negotiable needs are not met, conflict is inevitable. Obviously, the problem of ethnicity in Africa largely depends on the level of state effectiveness, accountability, and transparency in handling the demands of diversity. The focus on the human needs theory in this study does not mean the neglect of other theories, which I consider to be equally useful.

It is necessary to emphasize that proper analysis of ethnic conflicts is very important in order to avoid prescribing a wrong medicine for the ailment. Failure to find solutions to Africa's ethnic problem will have devastating social and economic consequences on a continent that is already worn out by conflict, poverty and disease[52]. The analysis of the literature supports the notion that when theories of conflict are understood well and are applied appropriately to ethnic conflicts there will be a degree of success in managing them.

The research has shown that many ethnic conflicts are as a result of economic deprivation and human needs. Since independence in 1963, there have been many ethnic conflicts in Kenya. Most of these conflicts have revolved around economic aspects whereby some ethnic communities felt that they have been deprived important aspects of their existence.

1.11 Conceptual Framework

Ethnic groups are defined as a community of people who share cultural and linguistic characteristics including history, tradition, myth, and origin. Scholars have been trying to develop a theoretical approach to ethnicity and ethnic conflict for a long time[53].

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[52] Babbie Earl (. *Survey Research Methods* (2nd Edition). Belmont Wodsworth. 1990)

Some scholars, like Donald Horowitz, Ted Gurr, Donald Rothschild and Edward Azar, agree that the ethnic conflicts experienced today-especially in Africa are deep rooted. These conflicts over race, religion, language and identity have become so complex that they are difficult to resolve or manage.

Ethnicity has a strong influence on one's status in a community. Ethnic conflicts are therefore often caused by an attempt to secure more power or access more resources. The opinion of this study is that conflict in Africa is synonymous with inequality. Wherever such inequality manifests among groups, conflict is inevitable. Hence the question, how can we effectively manage ethnic conflict in Africa to avoid further human losses Is there a blueprint for conflict management[54].

[55]It was considered that an ethnic community is a "named human population," with a myth of common ancestry, shared memories and cultural elements; a link with a historical territory or home land and a measure of solidarity.[56] Ethnic conflicts in Kenya have been as a result of incompatibility of goals in relation to political, economic, social, cultural, or territorial issues between two or more ethnic communities.[57]The incompatibility of goals may arise as ethnic groups seek to serve their political, economic and social interests Many societies in Africa are deeply divided. In such societies, people seek security by identifying with something close to their experience over which they have some control.[58]The unit of identity may be clan, ethnicity, religion or regional affiliation or a combination of them all.

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[53] Nyukuri Barasa,: Of Ethnicity and Leadership in Kenya: An article published by the Daily Nation newspaper's Weekly Platform, 3rd April, Nairobi, 1993

[54] Lunyiigo, Lwanga S., , The Colonial Roots of Internal Conflict Resolution in Uganda. International Peace Research Institute, Oslo, 1985

[55] D. Rothchild, Managing Ethnic Conflicts in Africa: Pressures and Incentives for Cooperation, (Washington: Brookings Institution Press,1997), pp 3-22

[56] A. Smith, "The Ethnic Sources of Nationalism", *Ethnic Conflict and International Security*, pp 28-29

[57] M.E Brown, Ethnic and Internal Conflicts in C.A. Crocker,et al, *Turbulent Peace: The Challenges of Managing International Conflict*, (Washington,DC:Institute of Peace,2001) pp 209-226

[58] J.P.Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*, (Washington, DC:United States Institute of Peace,1997), pp 11-85

The sharpening of a group's cohesion may sometimes be in response to a clearer definition of external threats. Human needs theorists argue that one of the primary causes of protracted or intractable conflict is people's unyielding drive to meet their unmet needs on the individual, group, and societal level.[59]There have been grievances by some ethnic communities in Kenya that they have been marginalized and that their needs have not been met hence calling for devolution of power and resources as the only solution to have their needs met.

The frustration aggression theory states that aggression is caused by frustration. When someone is prevented from reaching his target, he becomes frustrated. This frustration then can turn into aggression when something triggers it.[60]The worst scenario of ethnic conflict in Kenya has been the 2007-2008 ethnic conflict as a result of the disputed presidential results. There are those communities that felt their victory was denied and had to vent their anger. From this aspect as a result many underlying issues that have not been addressed and had the potential for causing conflict were clearly demonstrated.

The third theoretical approach is the Instrumentalist argument. [61]In Africa where poverty and deprivation are becoming endemic, mostly as a result of distributive injustice, ethnicity remains an effective means of survival and mobilization. Ethnic groups that form for economic reasons, easily disband after achieving their objectives. According to theorists, conflicts management means constructive handling of differences. It is an art of designing appropriate institutions to guide inevitable conflict into peaceful channels.

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[59] Terrell A. Northrup, "The Dynamic of Identity in Personal and Social Conflict," in *Intractable Conflicts and their Transformation*, ed. Louis Kriesberg, Terrell A. Northrup and Stuart J. Thorson (Syracuse, New York: Syracuse University Press, 1989), 55-82.
[60] Dollard, Miller et al.. *Frustration and aggression*, Yale University Press, New Haven p 15, (1939) p35
[61] Brass, P.R., Ethnicity And Nationalism. Theory And Comparison. Sage Publication. London. (1991)pp 66-85

The research has demonstrated and will continue demonstrating that many ethnic conflicts are as a result of economic deprivation and human needs. Since independence in 1963, there have been many ethnic conflicts in Kenya. Most of these conflicts have revolved around economic aspects whereby some ethnic communities felt that they have been deprived important aspects of their existence.

The ethnic clashes in the Rift Valley province have clearly demonstrated this whereby the indigenous communities have felt that some strangers have come and taken their land that is rightfully theirs. The post election violence after the 2007 disputed presidential elections corroborates the fact that most of the grievances aired out were as a result of anomalous structures in political social and economic institutions. Theories that will form the theoretical framework of this research are human needs theory and frustration aggression theory.

1.12 Methodology

Research as noted by [62]is defined as a scientific and systematic method consisting of enunciating the problem, formulating a hypothesis, collecting the facts or data, analyzing the facts and reaching certain conclusion either in the form of solutions towards the concerned problem or in certain generalization for some theoretical formulation. Research methodology on the other hand, is a way to systematically solve the research problem. It indicates the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them[63].

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[62] Kothari, C.RResearch *methodology*: Methods&techniques.New Dehi: New Age International (P) Limited Publishers. . (2004).

[63] Kothari,C.R.*Research methodology*:Methods&techniques.New Dehi:New Age International(P) Limited Publishers. (2004)

1.13 Research Design

Research design refers to the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in the procedure[64] .In addition Kothari[65] observed that research design is a blue print which facilitates the smooth sailing of the various research operations, thereby making research as efficient as possible hence yielding maximum information with minimal expenditure of effort, time and money. The researcher noted that, research design deals with the decision regarding: What techniques were used to gather data? What kind of sampling strategies and tools were used? How time and cost constraints were dealt with? The function of research design therefore is to provide for the collection of relevant evidence with minimal expenditure of effort, time and money.

The research design that was used in answering the research objectives was a descriptive survey. A descriptive study determines the frequency with which something occurs and investigates the relationship between two or more variables[66]. The study framework was chosen because it was in line with the objectives of the study. The research utilized secondary data due to time constraints. The fact that the research was done during the sensitive time of constitution campaigning the researcher could not interview some key people who would have been useful in giving information that would have enhanced field data collection relevant for this research.

The research was qualitative. Text books, scholarly journals, news paper articles, and monographs were used. They were used to analyze the themes emerging from the research.

[64] Babbie Earl (. *Survey Research Methods* (2nd Edition). Belmont Wodsworth. 1990)
[65] Kothari,C.R.*Research methodology*:Methods&techniques.New Dehi:New Age International(P) Limited Publishers, .(2004).
[66] Cooper,D& Schindler,P.S, *Business Research Mthods*.8th.ed.Tata McGraw-Hill Publishing Company. India. .(2003).

The libraries of the University of Nairobi, the National Archives and centre for African studies were used. The internet was also used while locating important documents which helped on the research.

1.14 Organization of the study

The study seeks to investigate the colonial and ethnic conflict in post colonialism a case study of Kenya 1963 to 2007. It is organized in five chapters.

Chapter one is the introduction and contains the background of the research, the problem statement, objectives, justification of the study, hypothesis, the literature review, theoretical framework and methodology of how the research will be done.

Chapter two will be the overview of ethnic conflicts in Kenya. In this chapter, ethnic conflicts from 1963 to 2007 will be dealt with. Structural causes of conflict, state, conflict and eras will be dealt with. The relationship between electoral politics will also be addressed in this chapter. The coalition government and post election violence will also be dealt with.

Chapter three will deal with the mitigation of ethnic conflict. Ethnic conflict mitigation especially the aspects of institution reforms will be dealt in this chapter. International mediation efforts and its outcomes will be captured in this chapter.

Chapter four will be a critically analysis of the role of colonialism and how it has contributed to the occurrence of ethnic conflict in post colonial Kenya. The analysis will be done using secondary data as postulated in the themes found in the research.

Chapter five will be recommendations and conclusion. Summaries of the various chapters of the research will be in this chapter. Findings and areas of further research will also be included in this chapter.

CHAPTER TWO

OVERVIEW OF ETHNIC CONFLICTS IN KENYA FROM 1963TO 2007

2.0 Introduction

An understanding of how colonialism has contributed in the occurrence of the ethnic conflicts in Kenya is of great importance. By investigating causes of conflicts from colonial and ethnic point of view is very important in that ways of conflicts resolution will be considered to be addressed in order to reduce occurrence of conflicts and thereby promoting peace among the various ethnic groups living in the country[67].

As earlier observed the causes as well as the consequences of ethnic conflicts that took place in Kenya may not render themselves easily to categorization. This is perhaps because of the fact that the practice of ethnicity is subterranean most of the time. Ethnic conflicts are caused by many factors such causes and consequences must fall under broad categories such as social, economic, political, religious, environmental as well as psychological realms of life[68].This chapter addresses the causes of post colonial ethnic conflicts in Kenya from 1963 to 2007. Some of the issues are not confined in causes of ethnic conflicts. They are important in that they informed the mediation process, shaping its outcome hence important in the mitigation process. The critical analysis of colonialism and its relationship with ethnic conflicts in Kenya has utilized some of the issues in this chapter since they emerge as important themes in the analysis. The issues are.

    i.   Colonial Administration and Legacy

    ii.   Land Resources

    iii.   Unequal Distribution of Resources

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[67] Chanaiwa, David "Southern Africa Since 1945", In , (eds), Ali Mazrui and Wondji, C., General History Of Africa Since 1935, Vol. 8, Heinemann. California. UNESCO, (1993)
[68] Hansen, E. *Africa: Perspectives on Peace and Development*, Zed Books, London, (1987),p79

2.1 Colonial Administration and Legacy

One of the long term causes of the clashes in Kenya is attributed to the colonial legacy, which is essentially historical but with ramifications in the post independence era. It is a historical fact that the indirect rule administered by the British colonialists later turned out to be the 'divide and rule' strategy which polarized the various ethnic groups in Kenya[69]. This in turn contributed to the subsequent incompatibility of these ethnic groups as actors on one nation-state called Kenya.

It was unfortunate that the early political parties in Kenya that championed the nationalist struggle against colonial establishments were basically 'distinct ethnic unions'. The Kikuyu for instance, formed the Kikuyu Central Association, the Akamba formed the Ukambani Members Association, the Luhya formed the Luhya Union, the Luo formed the Young Kavirondo Association, the Kalenjin formed the Kalenjin Political Alliance, the Coastal tribes formed the Mwambao Union Front, and Taita formed the Taita Hills Association, in that order of ethnic conglomerations. As a result of the foregoing ethnic trends, a situation prevailed in the country in which a common political voice was not possible[70].

At the dawn of independence, African leaders ascended to governmental structures which had been intended to preserve the colonial administrative legacy.

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[69]Hislop, Robert, "Ethnic Conflict And The Generosity Moment", Journal Of Democracy, Vol.9, no, 1: 140-53, (1998),pp 110-127

[70] Oucho, John Oloo. *Under Currents of Ethnic Conflicts in Kenya:* Boston, Brill, (2002) p35

These leaders were armed with the Western Constitution and ill-trained manpower to soldier on and make provisions for the enlarged nation-state, now encompassing diverse ethnic groups with variegated interests. As if this was not enough, Kenya, like most other African countries, inherited from the colonialist's scarce national resources, inadequate infrastructure, inadequate human resource capacity, inadequate capital, inadequate education and health facilities, among others. The scramble for the scarce national resources and facilities intensified and ethnicity became the main vehicle through which the dominance and preservation of power as well as resources could be achieved.[71] Indeed, leadership in post colonial Kenya has often relied heavily on ethnicity to remain in leadership positions or settle a dispute with their perceived enemies.

2.2 Land Resources

Related to post colonial ethnic conflict is the undeniable aspect of colonial legacy of land controversy. Several commissions have prescribed recommendations that have never been implemented. Land has been at the core of Kenya's political evolution since the colonial period. The 'land question' originated during the 1930s when the Kenya Land Commission (1932-1933) – otherwise known as the Carter Land Commission –made recommendations that planted seeds of discord, among them: rejection of the notion that Africans had any rights in the former 'White Highlands'; setting stage for the Resident Labour Ordinance of 1937 which defined squatters as labourers; directing that the disaffected Gikuyu be awarded 21000acres(8,500hectares) of land and £2,000 as compensation for loss of land.[72] This created conditions that lead to the country's administrative segregation into a 'dual' economy and society by the colonial state.[73]

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[71] Menkhaus, K., *Keny a-Somalia Border Conflict Analysis*, Development Alternatives, Nairobi, (2005) pp 15-35

[72] Oucho p.154

[73] Ibid

The land settlement program soon after independence seems to have steered clear of this unresolved agenda, which interested parties have addressed as best suits them, even when it least suits other contestants. It is the view of the researcher that the land issue as was set by the colonialists continues to haunt the post independent Kenya up to date.

Land is yet another source of ethnic conflicts in Kenya, both in the long term and in the short term. For a long time in the history of this country, land has remained a thorny economic and political issue[74]. Various scholars like Christopher Leo and Mwangi wa Githumo, have attempted to provide some explanations as to why land has been a major source of ethnic/political conflicts .The land issue has its origin in the colonial history of Kenya, where the colonialists dreamed of making this part of Africa a white man's country. The colonialists established the Kenya protectorate and later on the Kenya colony with the finance that was to be generated from the white settler plantations which covered the highly potential areas of the country[75]. History has it that large tracts of agriculturally potential land (white highlands) were alienated by the British colonial administration.

As a result of the massive land alienation activities in the early period of colonialism, many of the hitherto cultivating populations were pushed into the `infertile' native reserves that were not conducive for arable farming. The displaced populations lived as farm labourers, casual workers, tenants as well as squatters. The process of land alienation was also extended to the pastoral ethnic groups like the Maasai, Samburu, Nandi, Pokot and other Kalenjin speaking communities[76].

Like their agricultural counterparts, the pastoralists were pushed to the less conducive reserves. During the period of nationalism and decolonization, land grievances were central to all ethnic groups that actively participated in the struggle for independence.

[74] Pkalya, R., Adan, M., Masinde, I*Conflict in Northern Kenya: A Focus on the Internally Displaced Conflict Victims in Northern Kenya*, DTP Martin Karimi, Nairobi,. (2003),p 100
[75] Nying'uro, P.O., "The resource dimension of conflicts in sub-Saharan Africa", *Regional Development Dialogue*, Vol. 26 No.1, pp.50-61, (2005)
[76] Hansen, E. *Africa: Perspectives on Peace and Development*, Zed Books, London, (1987),

In fact the land question is one of the main factors for the MAU MAU rebellion of 1952 to 1956 in Kenya and the subsequent declaration of the state of emergence by the British[77]. After this historic resistance of land alienation by the Africans, the British became very conscious in dealing with the issue of transferring power to the Kenyans at independence. Indeed, the colonialists were afraid that if the land issue was not handled properly, it could degenerate to civil strife as numerous ethnic groups engaged in the scramble to recover their alienated pieces of land.

The British administration, on the eve of independence, worked out a formula of handing over land to the indigenous ethnic groups in Kenya[78]. The British government established a special grant that was aimed at facilitating the re-distribution of land, particularly in the former white highlands. The transfer on land took various forms, starting from small holdings to medium and large holdings. The obvious expectation during the struggle for independence was that the land would be freely distributed to the people since it had in the first place, been forcefully taken away from them. But this was not to be the case because under the independence agreement with Britain, the Kenya government was to buy it from the settlers. In fact, the British advanced a loan to Kenya to facilitate this purchase.

[79]That in turn meant that there was no free land for distribution. The price-tag made land very scarce. This is the critical point at which the subsequent; land-tenure became a factor of ethnicity and hence ethnic animosity intensified. It is on record that the largest beneficiaries of this land distribution program were the Kikuyu and their allies, thus the Embu and Meru. By projecting some mythological kinship and taking advantage of neighborliness, the Kikuyu managed to win the Embu and Meru into some 'land alliance' within the framework of GEMA which was a bargaining organ for these communities on the

[77] Kiraitu Murungi, , Ethnicity and Multi-partism in Kenya. Thoughts of Democracy: Series III Kenya Human Rights Commission Publication, February, 1995
[78] Mwaniki, T., Mbuchi, P.M., Leleruk, M., Mwei, F *Peace Building and Conflict Management: Joint Case Study of North Rift Region of Kenya*, Paulines Publishers, Nairobi, (2007), p 37
[79] Mboya, T.J.Freedom and After. London : Deutsch. 1963pp 107

sharing of the 'national cake'[80]. The Kikuyu with their allies quickly formed land buying companies and cooperatives with the blessing of Mzee Jomo Kenyatta. The critics of GEMA have often stated that the membership of these land buying companies and cooperatives was strictly unethical. The critics continued to argue that the transactions were and contrary to constitutional and company law provisions against land transactions.[81] Where did they get the money from? The critics further argue that the Kikuyu ethnic group which constituted the membership of these organizations were just as poor as other Kenyan ethnic groups. And yet they managed to buy some of the largest and most expensive tracts of land from white settlers.

One possibility is that they raised money from their meager incomes. But this alone would not certainly have sufficed. The main source was banks and non-bank financial institutions into which President Kenyatta had appointed mostly Kikuyu management[82]. For instance, the top management of the Kenya Commercial Bank, National Bank of Kenya and the Industrial and Commercial Development Corporation (ICDC) were registers of managers from one ethnic group[83].

By 1978 when President Kenyatta died, the Kikuyu had, far more than all other ethnic groups put together. They also bought the bulk of the so-called "white highlands". Besides, they were the main beneficiaries of the government's settlement plan for the landless at no cost or at minimal rates. They thus expanded their land ownership and settlement beyond their traditional home-Central Province-into the Rift Valley province, and a bit into the Coast

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[80] Lunyiigo, Lwanga S., 1985, The Colonial Roots of Internal Conflict Resolution in Uganda. International Peace Research Institute, Oslo.
[81] Mwaura, C., "Kenya and Uganda pastoral conflict case study", occasional paper UNDP Human Development, Report Office, New York, NY,(2005)
[82] Amutabi N. Maurice, "Challenging the Orthodoxies: The Role of Ethnicity and Regional Nationalism in Leadership and Democracy in Africa", UNESCO Seminar, 28 - 31 May1995,.
[83] Nying'uro, P.O. "The resource dimension of conflicts in sub-Saharan Africa", Regional Development Dialogue, Vol. 26 No.1, pp.50-61. (2005),

province, apart from their widespread networks in urban centres within Kenya[84]. The distribution of land formerly occupied by the white settlers to Kikuyu people mainly was perceived by other ethnic groups as unfair. With that, there were parliamentary debates that called for equal distribution of land. Unfortunately, these debates did not address the issue of ethnic imbalance. And the subsequent animosity that later on degenerated in the recent ethnic conflicts between the Kikuyu and the Kalenjin in the Rift Valley[85].

2.3 Unequal Distribution of Resources

The issue of unequal distribution of resources is yet another source of potential instability in Kenya. Apart from their easy access to land, the economic success of the Kikuyu region in the first ten years of Kenya's independence was enviable by other ethnic groups[86]. The Kikuyu also enjoyed good modern roads, abundant school and education facilities, expanded health services, piped water, electricity and other forms of infrastructure .More than that GEMA helped its members to acquire land and businesses. They visibly outdistanced other ethnic groups at a pace that posed immediate political risks to their newly acquired positions in the government structures[87].

In sharp contrast, Nyanza suffered severe repression and neglect, more than any other province for trying to challenge and question the unjust enrichment of one region on what was a 'national cake'. A few illustrations to buttress the fact that there were ethnic suppressions during the Kenyatta regime are very important. This is due to the fact that myths and legends that informed partly the post elections violence after the 2007 disputed presidential elections trace their roots from there.

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[84] Gettleman, J. (2008), "As Kenyan rivals haggle, a mother mourns at 2 graves", *New York Times*, 15 February,
[85] Pkalya, R., Adan, M., Masinde, I. (2003), *Conflict in Northern Kenya: A Focus on the Internally Displaced Conflict Victims in Northern Kenya*, DTP Martin Karimi, Nairobi,
[86] Oyugi, W.O, "Politicized ethnic conflict in Kenya: A Periodic Phenomenon", in Bujra, A., Ahmed, A. (Eds),*African Conflicts: Their Management, Resolution, and Post-Conflict Reconstruction*, DPMF/OSSREA, Addis Ababa, . (2002).
[87] Fearon, James and David Laitin "Violence and the Social Construction of Ethnic Identity," International Organization, 54, 4, Autumn, 845-877, (2000)

In 1966. Oginga Odinga. the undoubted Luo leader, who had hitherto been the vice president of the nation, and the ruling party, Kenya African National Union (KANU), lost both posts at the famous Limuru Party Conference[88]. The message was clear but milder at this point in time. Odinga responded by forming his political party - The Kenya Peoples Union. The accusations and counter-accusations between Odinga and Kenyatta over KPU were largely emotive and it succeeded in heightening Luo-Kikuyu ethnic animosities that sometimes degenerated into open confrontations.

The assassinations of Joseph Tom Mboya from the Luo ethnic group for motives never fully ascertained on July 9, 1969, a few months after the mysterious death of Argwings Kodhek, another prominent Luo politician intensified the ethnic animosity between the Luo and the Kikuyu[89]. The banning of KPU in October 1969 and the detention of Odinga and other leaders without trial sent wrong signals to the Luo ethnic group who could not hide their emotions and anger during the visit of Kenyatta to Kisumu. During this visit, a large crowd of Luo's reportedly menaced Kenyatta's security and was fired on by the security guards in what later came to be known as the 'Kisumu massacre'[90].

In an explanatory statement, the government accused KPU of being subversive, intentionally stirring up inter-ethnic strife, and accepting foreign money to promote anti-national activities. The proscription in effect brought a return of Kenya to the single party state.

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[88] Lunyiigo, Lwanga S., The Colonial Roots of Internal Conflict Resolution in Uganda. International Peace Research Institute, Oslo. 1985,

[89] Oyugi, W.O., "Politicized Ethnic Conflict in Kenya: a Periodic Phenomenon", in Bujra, (2002) p230

[90] Nthamburi, Zablon. *The Paradigm of Ethnicity Its Influence and Relevance in Public Life Today:* in *Ethnicity, Conflict and the Future of African States:* Nairobi.Kenya, Daughters of Saint Paul (2008) p68

Following these incidents, Nyanza province, like other non-Kikuyu areas, was virtually written off from 'national' development plans. For instance, the government terminated the construction the Kenya-Uganda highway (part of a Trans Africa highway system) in 1969 because the road had reached Luoland. The plans to construct the Yala falls hydro-electric plant was also brought to a halt for spurious reasons[91].

Other tribes suffered their punishments in the same or varying fashions[92], which are not within the scope of this paper[93]. The same trends of unequal distribution of land, infrastructure and other national resources have been witnessed in the Moi regime, where the Kalenjin ethnic group has been 'perceived' to have benefitted more than others. However, just like for the Kikuyu, not all Kalenjin have benefited. It is only a clique that surrounds the mantle of power (i.e. executive) who seem to have enjoyed in the Moi era [94]

The mysterious death of Robert Ouko in 1990 strained the relationship between the Luo and Kalenjin ruling elites. This could be considered as one of the long term causes of the conflicts between the Luo and the Kalenjin in the build-up to the 1992 General Multi-Party elections and after. The assertion is that as long as there exists ethnic prejudice and animosity among the diverse Kenyan communities, the search for peace and nation-building will remain elusive[95].

Another long term factor of ethnic prejudice and subsequent conflict is attributed to the Africanization of the civil service. Just as there was immediate need to 'Africanize' the land, the government moved equally fast to give jobs in the civil service and para-government sector to the Africans. Independence had after all been fought for on the popular

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[91] Owen, T., "Challenges and opportunities for defining and measuring human security", Disarmament Forum, Vol. 3 pp.15-23. (2004)
[92] Amutabi N. Maurice, , "Challenging the Orthodoxies: The Role of Ethnicity and Regional Nationalism in Leadership and Democracy in Africa", UNESCO Seminar, 28 - 31 May1995.
[93] Ibid
[94] Nyukuri Barasa, , "Ethnicity, Nationalism and Democracy in Africa: The Dilemma of Sustainability". A paper read at a UNESCO seminar, 28 - 31 May ,1995.
[95] Kobia Samuel, , The Quest for Democracy in Africa, NCCK, pp.33-34. 1993

slogan "Uhuru na Kazi. During the colonial period, the African population had worked essentially as plantation labourers or domestic hands for whites. It was therefore natural that independence should give them mobility into the higher echelons of the labour market as a realization of self-governance. Understandably, the government came up with a policy, first described as `Africanization', then `Kenyanization', and eventually, by some unofficial baptism `Kikuyunization 'and `Kalenjinization[96]`. This terminological mutation succinctly explains how a policy, otherwise well-conceived, deteriorated into the ethnicization of employment in the civil service[97].

2.4 Leadership style adopted by Kenya Leaders

Leadership adopted by various leaders in Kenya played a crucial role in fueling ethnic conflicts. Indeed, much of what has been written or pronounced in the fore mentioned literature implicates the leadership of the day, top government officials; top ranking members of the ruling party and opposition parties, some church leaders and other high ranking members of society[98].

Secondly, the misunderstanding of pluralism and Majimboism is also a source of ethnic conflicts in Kenya. The re-introduction of multi-party politics in Kenya in the early 1990s had a number of far reaching consequences one of which was the eruption of ethnic clashes in Western, Rift Valley, Nyanza and Coast provinces. This was partially a fulfilment of President Moi's earlier prediction that a return of Kenya to a multi party system would result in an outbreak of tribal violence that would destroy the nation.

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[96] The two ethnic groups are thus christened due to the fact that the presidents that have ruled Kenya have come from these tribes and there is a perception that the presidents have favoured members of their community.
[97] Nyukuri Barasa: Of Ethnicity and Leadership in Kenya: An article published by the Daily Nation newspaper's Weekly Platform, 3rd April, Nairobi, , 1993
[98] Mwangi wa Githumo: Land and Nationalism in Kenya

It was also because of the misconception of pluralism and Majimboism by leaders from the ruling party and opposition parties as well as the general public[99]. Beginning with the late 1980s, after the 1988 rigged elections and early 1990s many Kenyan political elites started questioning the quo perpetuated by the one party political system in the name of Kenya Africa National Union (KANU)[100]. They began to view multiparty political system (pluralism) as a panacea to democratic governance which was and was not the case. It was the case because pluralism could offer a forum for competitive politics and hence guarantee freedom of choice. It was not the case because multi-partism is not synonymous to democracy and single partism is not synonymous to autocracy.[101]The leadership style adopted by successive regimes has led into ethnicity and patronage. Ethnicity and patronage partly explains the many sentiments that became clear after the disputed presidential elections of 2007.

2.5 Ethnicity, patronage and the post-colonial state

[102]What has happened to the colonial state and its links to patronage networks and ethnic development since independence is a question that warrants an answer. The paradoxical answer appears to be 'very little' and 'a very great deal'. On the one hand, the colonial power structure of bureaucratic authoritarianism and clientelism has continued essentially unchanged, especially the structures of rural control and collaboration between the state apparatus and local strong men. The nationalist regimes that came to power at independence faced the continuing problem of exercising effective control in the country-side and most chose not only to rely upon the existing apparatus, including the prefectural

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[99] Kiraitu Murungi, 1995, Ethnicity and Multi-partism in Kenya. Thoughts of Democracy: Series III Kenya Human Rights Commission Publication, February.
[100]Ibid
[101] Ibid
[102] The analysis of the reproduction of class, ethnic and patronage politics within and between churches in Kenya in Mutahi Ngunyi,

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field administration immediately over the local tribal authorities. but also to extend and intensify colonial modes of domination and surplus appropriation[103].

[104]Moreover, the regimes were preoccupied with the nation-state model of development, over which they had in any case been given little choice by the departing metropolitan powers; and obsessed, with the problem of 'national integration' and achieving it through the use of state power. As Nnoli points out, the task became cone of transforming a multi-ethnic society into a national society through the instrumentality of the state. The task of social engineering is to find a structure of state that would accomplish the goal. A strong state is often deemed desirable.

The hastily carpentered institutions of liberal democracy and independence constructions quickly faded and disappeared in the face of growing authoritarianism of both civilian and military regimes[105]. On the other hand, if nationalist leaders feared the disruptive effects of ethnic cleavages) they also significantly underestimated the power of politicized ethnicity. The colonial state had provided little institutional scope for the expression of political tribalism within its structures of fragmentation and isolation

The nationalist struggle movements strived to achieve a unity which, in Tom Mboya's words, was 'based on the simplification of the struggle into certain slogans and into one distinct idea, which everyone can understand without arguing about the details of policy or of government programmes after Independence[106]. Everyone was taught to know the enemy the colonial power and the one goal independence.

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[103] The Quills of the Porcupine: Asante nationalism in an emergent Ghana (University of Wisconsin Press, Madison, 1993)

[104] , Civil Society and Democracy in Kenya (Nordiska Africainstitutet Uppsala, 1995).

[105] Young, 'Nationalism, ethnicity and class', pp. 82-5. 89

[106] Tom Mboya, Freedom and After (Andre Deutsch, London, 1963), p. 61. 88

At that moment of independence. however. competitive elections and the Africanization of the bureaucracy began to make ethnicity increasingly important as a basis of political support and access to the higher levels of the state.

2.6 Debate on Majimbo (Federalism)

While dealing with ethnic conflicts in Kenya it is important to discuss about Majimbo. Elsewhere in the research structural violence was discussed and the aspect of anomalous structures catalyzing physical violence. It is also important to note that the constitutional change that had proven elusive for almost twenty years discussed a lot about devolution of power and of resources. Having been an emotive topic and one that would elicit support the Orange Democratic Movement (ODM) campaigned on the platform that should they form the next government they would ensure that power was devolved so as to address the issue of unequal distribution of resources. A discussion about Majimboism will be very important for this research.

The re-introduction of multi-party politics in Kenya in the early 1990s had a number of far reaching consequences one of which was the eruption of ethnic clashes in Western, Rift Valley, Nyanza and Coast provinces. This was partially a fulfillment of President Moi's earlier prediction that a return of his country to a multi party system would result in an outbreak of tribal violence that would destroy the nation.[107] It was also because of the misconception of pluralism and Majimboism by leaders from the ruling party and opposition parties as well as the general public. The aforementioned discussion appeared when the researcher discussed the leadership style adopted by the Kenyan leaders. A link between leadership style and Majimboism debate cannot be ignored.

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[107]Ibid

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The advent of pluralism in Kenya was misconceived as the advent for democracy as implied in some of the political slogans and ideologies propagated by the various pressure groups and political parties that were formed in the early, 1990s. For instance, FORD was dubbed as the Forum for the Restoration of Democracy, implying that democracy was once full realized, but later destroyed and now pluralism had given the orchestrators a forum to re-capture or reconstruct it. This is misleading in the sense that although the intended meaning may have been good but the apparent implication was questionable.

One is triggered to raise a critical question as to when did Kenya ever witness full democracy since her independence in 1963. The same analogy applies to other political parties like DP dubbed as the Democratic Party of Kenya, SDP - which are the initials for the social Democratic Party of Kenya. The so called champions of these political parties and pressure groups never took enough time to explain to their euphoric supporter the meaning and practice of pluralism, and hence the subsequent confusion, conflict as well as instability.

On the other hand, leaders and supporters of the one party political system in the face of this misconception or confusion were compelled to think that pluralism was a seed bed to chaos and anarchy. Perhaps such fear was justifies if we go back to the historical experience of some countries that failed to promote democratic governance in an atmosphere of pluralism. Samuel Kobia asserts that pluralism is not a magic wade to introduce a new era of peace and stability. He goes ahead to identify some of the issues in society that can be intensified by a multiple - party system. These include corruption, tribalism, and ungovernability[108].

On Kobia's list there can be added nepotism, favouritism, unhealthy competition, hatred, animosity, ethnic conflict, among others. However, it is important to emphasis that pluralism is not synonymous to democracy.

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[108] Kobia

It is neither a root cause of tribal animosity and retardation in development[109], a thesis advanced by President Daniel Arap Moi and other single party die-hard during the re-introduction of pluralism in Kenya.

Ethnic conflicts between 1992 and 2002 could also be attributed to the calls by then high ranking KANU officials for the re-introduction of a Majimbo (federal) system of government based on ethnicity. Federalism (Majimboism) as a political system in which a Union of states or regions leave foreign affairs and defence to the central government but retain powers over some internal affairs is not necessarily undemocratic but the federalism system of governance that is based on ethnicity is a threat to any country's unity , stability, and development. In Kenya federalism or Majimboism has a long history which has been greatly documented. However, the assertion is that the advocates of Majimboism in the built up for the 1992 elections and after, often called for the expulsion of all other ethnic groups from land occupied before colonialism by the Kalenjin and other pastoral ethnic groups [110].

It is fair to assert that the recent Majimbo debate was recipe of chaos, ethnic animosity and conflict that be fell Kenya in 1992,1995,1998,2002 and 2007. The country's political history has it that the clashes began shortly after the infamous Kapsabet and Kericho Majimbo conventions held by prominent Kalenjin and KANU politicians like Hon Dr. Joseph Misoi, Hon. Nicholas Biwott, Hon. Kipkalya Kones, Hon. Henry Koskey, Hon. Ezekiel Barngetuny, Hon. Wilberforce Kisiero, among others. The Majimbo meetings were conducted later on in numerous places in the Rift Valley and Coast provinces and it took President Daniel Arap Moi such a long time to comment on this disastrous and loop-sided debate.

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[109] Ibid
[110] Ibid

The debate about Majimbo was sparked off in late 1991 by Rift Valley Kalenjin KANU leaders. A part from the fore mentioned, other prominent advocates of Majimboism were Hon. Timothy Mibei, Nathaniel Chebylon, Hon. Julius ole Sunkuli, Hon. Bishop Daniel Tanui, Hon. Francis Lotodo, Hon. William Ole Ntimama and Hon. Sharrif Nassir of the Coast province. The debate on Majimboism was deliberately initiated to counter the calls for the re-introduction of pluralism in Kenya. None of the above mentioned leaders of the Majimbo debate however came on as strongly in defence of the interests of the Kalenjin community as was Hon. Nicholas Biwott[111].

The debate about Majimbo could not be washed away. The constitutional making process had a lot to do with discussions on devolution of both resources and devolution of power. The word Majimbo evoked a lot of emotion and the ODM party noticing that it might not work well for them should they use the word in their pre election pledges changed it from Majimbo to Ugatuzi. Ugatuzi meant the distribution of power, resource allocation from the Central Government to the grass root. This idea will be dealt with in the critical analysis section of the research.

The grievance of devolution cannot be ignored altogether as the research will show. The British Colonial administration set the platform for these grievances when they chose to develop certain areas they deemed of importance in their imperialistic goals[112]. Areas that were not of great economic important were left under developed and even after Kenya got her independence the successive regimes were not very keen to develop them.

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[111] Ibid

[112] Afigbo.A.E(1989) *"Federal Character: Its Meaning and History"* in P.P Ekeh and E.Osaghae,(eds) Federal Character and Federalism in Nigeria.Ibadan.Heinemann

2.7 Politicization of Conflicts

Politicization of conflict issues by both the government and opposition politicians, as well as rising poverty, have created poor governance because rather than seeking ways of resolving conflicts, politicians place blame and call for violence and expulsion of people from particular ethnic groups. As noted above, the Luo, Luhya and Kikuyu were evicted from the Coast in the run up to the 1997 elections[113]. In North Rift, politicization and commercialization of cattle rustling has damaged traditional arrangements and interventions in the use and control of water and pasture. Unclear policies and conflict over traditional communal and individual land ownership is a source of violent conflict between the two Kalenjin sub tribes and Turkana. Attempts by the Pokot to graze their animals across the Kerio River have been seen by the Marakwets to mean their land has been grabbed[114].

This coupled with the recent drought and concomitant socio-economic adjustments, grievances over arms influx, loss of life and property, and a perceived bias in development interventions by agencies and church organizations are easily manipulated by politicians and local leaders. In South Rift, the land issue is still a sore spot because where once there was mutual cooperation and tolerance, political incitement to evict outsiders' has led to a fractured society marked with ethnic animosity, bitterness and stereotyping[115].

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[113] Hazlewood, Arthur: *The Economy of Kenya: The Kenyatta Era* (O.U.P.N.Y. 1979), Chap. I, pp.46.
[114] Global Issues; *Colonialism in Africa: http://www.global* issues.org/article84/conflicts-in- Africa retrieved on 30th March 2010.
[115] Nyukuri Barasa, 1993: *Of Ethnicity and Leadership in Kenya:* An article published by the Daily Nation newspaper's Weekly Platform, 3rd April 1993, Nairobi.

2.8 Impact of Ethnic Conflict in Kenya

Ethnic conflicts have caused extensive damage to life, property and adversely impacted on economic development in the country. The impact of violent conflicts has manifested itself psychologically, physically and emotionally going beyond the material, and affecting heavily the lives of hundreds of thousands of women, children and men. Conflicts have political, economic, social and cultural costs including the lowering of economic productivity, weakening of political institutions, incapacity to provide essential services, destruction and depletion of natural resources, loss of food production and capital flight. It may be possible to measure the costs of conflict in economic terms through the assessment of the loss of potential foreign and domestic investment due to fear of crime and insecurity, loss of income from tourism and loss of income from sectors such as agriculture[116].

Other direct consequences of violent conflict are large numbers of refugees from neighboring countries living in Kenya, as well as internally displaced persons (IDPs) and besieged populations (BP). The adverse impact of conflict on social and economic infrastructure is enormous as civil servants, teachers, medical officers, as well as development partners and NGOs opt to leave for better opportunities elsewhere; and schools and health centers are closed down; and development projects are suspended prematurely. Cattle rustling alone resulted in a loss of US$5 million over a three- to four-year period in Samburu District[117].

The impact of ethnic conflicts cannot be ignored. As the research has shown else where ethnic conflict is caused by many factors which are structural in orientation. The ramifications of ethnic conflict are negative. Some of the ramifications that manifest themselves in relation to structural violence include:

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[116] T.Vanhanen, Domestic *Ethnic Conflict and Ethnic Nepolism:* A Comparative Analysis, *Journal of Peace Research,* Vol 36, No.1,(January,1999)
[117] Kobia Samuel, , The Quest for Democracy in Africa, NCCK, pp.33-34, 1993

i.   Displacement / Migration

ii.   Social Impact of ethnic Conflicts

iii.   Economic consequences of ethnic conflicts

iv.   Property Damage

v.   Political Consequences

vi.   Economics of insecurity and state planning

2.8.1 Displacement / Migration

Conflict also adversely affects the migratory routes and patterns of pastoralists and leads to "unsustainable utilization of natural resources as livestock tends to be concentrated in secure areas, resulting in environmental degradation. Well-watered areas with good pasture are avoided due to insecurity. It is estimated that as a result of conflicts, about 164,457 people have been displaced in the northern frontiers of Kenya. Out of this, 70 per cent or 105,500 are women and children aged below 14 years old. The same study indicates that Turkana district has the highest number of displaced people, followed by Wajir District at 41,097 and 32,914 people, respectively[118].

As internally displaced peoples (IDPs) do not cross-international borders, they do not receive international protection and related aid that is often available to refugees who cross-borders. After displacement, many become exposed to violence and other human rights violations. Among IDPs, women and children are particularly vulnerable, suffering higher rates of rape, physical assault and exposure to child labour and trauma[119].

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[118]Ogachi, O. 1999. "Economic Reforms, Political Liberalisation and Economic Ethnic Conflict in Kenya", in *CODESRIA Quarterly Journal*, The Political Economy of Conflicts in Africa, Africa Development, Volume XXIV Number 1 and 2, pp.87

[119] Mwaniki, T., Mbuchi, P.M., Leleruk, M., Mwei, F *Peace Building and Conflict Management: Joint Case Study of North Rift Region of Kenya*, Pauline Publishers, Nairobi, (2007),

There is a strong correlation between displacements and increased rape cases, physical assaults, prostitution, child labor and growing number of children living in the streets". As inter-ethnic conflicts rage between the various communities, men and young adults are killed, thereby leading to a rise in the number of women-headed households. This has a direct adverse impact on the poverty levels among women because in some communities (for example the Turkana), widows have no right or access to land their husbands owned[120]. Under these difficult circumstances, widowed women become outcasts in their own community, forcing some to turn to prostitution for their livelihood.

2.8.2 Social Impact of ethnic Conflicts

The social consequences of ethnic conflicts in Kenya have been enormous and cannot be easily quantified, especially the psycho-social ones. Most of the victims of these clashes were left homeless, landless, destitute, injured, dead, abused, to mention but a few of the atrocities resulting from the menace. The immediate and real consequence of ethnic conflicts in Kenya was felt most at personal and family level[121]. There was loss of security in the clash-prone areas as the civilians took the law into their own hands, targeting perceived enemies. As a result of insecurity, there was indiscriminate loss of human life.

Many people sustained physical injuries and others were traumatized. The state of insecurity interfered with the day-to-day socio-economic and political undertakings within the clashes areas. There was loss of life among the Kikuyu, Kalenjin, Luhya, Luo, Iteso, Kisii and others. However, there is increasing evidence to suggest that although the loss was felt on either side of the conflict, the non-Kalenjin ethnic groups suffered most.

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[120] Nyong'o P. Anyang,, Popular Struggles for Democracy in Africa. London, Zed-books. 1987
[121] Mwaniki, T., Mbuchi, P.M., Leleruk, M., Mwei, F Peace Building and Conflict Management: Joint Case Study of North Rift Region of Kenya, Pauline Publishers, Nairobi, (2007),

The Kiliku Parliamentary Select Committee of September, 1992 put the death toll of clashes victims at 778, those injured at 654 and those displaced at 62,000. These figures exclude the number of persons who were killed, injured and displaced after September 1992. The Human Rights Watch/Africa estimated that the number of those killed by November, 1993 was at least 1500, while those displaced was at least 300,000. However, with continued clashes in 1994 and 1995, the total number of those who died, injured or displaced increased drastically, following the Enosopukia, Maela, Mtondia, Nyatike and Kibera incidence[122].

It is during and after the clashes, that there had been a crisis in terms of identity and culture, especially for the offspring's of the ethnic groups that fought each other. As earlier recounted, several families have broken down and the children of mixed families are at crossroads in terms of ethnic and cultural identity. Some have been forced to leave on the paternal ethnic sides, while the others live on the maternal side, depending on where the pressure is most[123]. This trend has created a new dimension in societal lives where children (potential marriage partners) are discouraged from engaging in any affairs with the 'enemy' ethnic group.

This unless checked, may go a long way to affect inter-ethnic marriages and interactions. The first-hand accounts by the clashes victims in the affected areas were extremely disturbing as far as health was concerned. The thousands of displaced families, having lost their shelters and food supplies, had to camp in over-crowded temporary shelters organized through donations and support from various organizations, such as the Catholic Mission, Red Cross, NCCK, Action-Aid Kenya and the UNDP among others. These camps were established haphazardly all over the clashes zones and had poor ventilation.

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[122] Nyukuri Barasa, 1996, "Ethnicity and the Politics of National Integration in Kenya". A paper presented in Kisumu
[123] Mwaura, C., "Kenya and Uganda Pastoral Conflict Case Study", Occasional Paper UNDP Human Development, Report Office, New York, NY, . (2005)

The grossly inadequate water supply and sanitation facilities, coupled with overcrowding, made these camps ideal conditions for major outbreaks of communicable diseases such as meningitis, typhoid, upper respiratory tract infections, cholera and other related diseases. The mixing of people with cattle, sheep, chicken, goats and other domestic animals was in itself a health hazard.

The clashes in various parts of the country brought about a situation of gender and child vulnerability. Indeed, it is the children and women who suffered more during the period of the clashes. They were abused, violated, embarrassed and at times raped in broad daylight during the clashes. In most internal refugee camps, there was inadequate room to accommodate thousands of the displaced families. Both men and women, together with children, were forced to share the often congested sleeping places in close proximity with one another with little or no privacy. Nature being what it was, expected that uncontrolled, indiscriminate sexual behaviour, not only between adult men and women, but also involving sex abuse of young children, particularly girls. As a result of such immoral practices, sexually transmitted diseases and HIV/AIDS were passed from one individual to another, with children and women being the most affected victims of the circumstances.

2.8.3 Economic consequences of the clashes

The total economic impact of the clashes in the affected areas is literally unquantifiable and not easy to quantify. There was gigantic waste of human and economic resources as partly illustrated by figures in the Kiliku Report and other publications. The clashes had lasting consequences that will continue to alter Kenya's economic development for many years[124]. One overall observation that emerges from the study of ethnic conflicts in Kenya is the fact that the economic consequences go far beyond the available statistics.

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[124] Leo Christopher, 1984, Land and Class in Kenya. University of Toronto Press

Much of the destruction worked to the economic advantage of the perpetrators of the violence and their close aides. Generally, the clashes allowed some groups of people and individuals to capitalize on the insecurity to usurp land or purchase it at throw-away prices from the victims who had no otherwise.

According to this study, one of the long term economic consequences of the clashes was the fact that land ownership patterns have been permanently altered. There was a general decline in economic production as many of the potential farmers ran away due to insecurity created by the violence. In a state of insecurity, as was the case in the study areas, agricultural activities were disrupted. In most cases, maize, coffee, pyrethrum, tea, sugarcane and other crops were either destroyed or abandoned because of the widespread violence caused by the clashes. In some areas of Trans Nzoia, Kericho, Nandi and Uasin Gishu districts, work on agricultural land stopped for a long time as farm workers stayed away for fear of being attacked by the 'clashing enemies'. There were other subsequent economic problems related to the clashes such as food insecurity, labour disruption on farms, industry and the public sector institutions, destruction of property, land grabbing, commercial disruption, breakdown in transport and communication, resource diversion, misallocation and unexpected expenditure, infrastructural disruption, inflation and fluctuation of prices and environmental destruction among others.

Food shortage was one of the far reaching economic consequences of the clashes in the study areas. There was a drop in food production, food supply and raw materials for the agro-based industries such as sugar, tea, coffee, cereal (maize), pyrethrum and other agricultural crops. As a result of food shortages, many clashes victims experienced famine and this necessitated the appeal for local and international food aid and relief.

Before we go any further on this point of food shortage, we should repeat the earlier question asked by an NCCK report published in 1992: When we feed those who are hungry, we must also ask why they are hungry[125].

2.8.4 Property Damage

As a result of the clashes in Kenya, thousands of families lost a lot of personal and household possessions as their houses, granaries, farms, shops and other business premises went down in flames[126]. Poverty, crime and other social ills violence leads to loss of life and property as crops and livestock are looted or destroyed.

This, and abandonment of economic activities amounts to the loss of livelihood for the affected population, hence impoverishment and destitution as families deplete savings and sell household assets below their market value. Movement of displaced people into market centres has put pressure on social amenities like housing, hospitals and schools. Those who have found their way into big towns like Nairobi live in slum areas doing odd jobs because having been farmers, they have no practical skills to start new careers. A large number of 'street families'61 are beggars, thieves, hawkers, prostitutes or drug peddlers.

The worst economic scenario as a result of ethnic conflict was the Post Election Violence after the 2007 disputed presidential elections. It was estimated that the country had lost about 100Billion Shillings of property and goods and services delivery. Besides these estimates as stated earlier in the research it may not be possible to quantify the amount of loss incurred during the period when the ethnic conflict was going on. Earlier on before the elections were held the economy recorded a growth rate of 7.1 percent.

[125] Lunyiigo, Lwanga S., The Colonial Roots of Internal Conflict Resolution in Uganda. International Peace Research Institute, Oslo, 1985
[126] Nyukuri Barasa, "Ethnicity, Nationalism and Democracy in Africa: The Dilemma of Sustainability". A paper read at a UNESCO seminar, 28 - 31 May. 1995,

These are statistical figures given by the Central Bank of Kenya mid 2007.After the violence the economy grew dismally at 1.7 percent[127]. This illustrates the devastating effects of ethnic conflict. The research postulated a structural paradigm as a catalyst that can result into physical conflict. The anomalous structures gave in and as a result physical violence occurred which undoubtedly caused a lot of damage of property.

2.8.5 Political Consequences

Kenyans must watch out against the revival of ethnic politics as we approach the next General Elections. This warning has been echoed several times as General Elections approached. Over the years, Kenya has experienced the rise of ethnic tides and tensions which if left to continue may eventually turn into ethnic hatred and violence as witnessed in South Africa, Rwanda, Burundi and Somalia. This supposed prediction came to pass after the 2007 disputed presidential elections. Since the 1992 General Election, there has emerged an ugly fact of politics in Kenya- that political parties are vehicles of ethnic sentiments and interests.

For instance, KANU was a party of the so-called minority ethnic groups such as the Kalenjin, Maasai, Turkana and Samburu. Following the exit of Daniel Arap Moi as the president of Kenya this has changed. Political loyalties are divided between ODM and PNU. The FORD-Kenya was mainly composed of the Luo ethnic but as time has gone by the Luo have had many parties with them recently rallying behind the party of their defacto leader Raila Odinga's ODM party. In the advent of multi party politics in Kenya, FORD-Asili was mainly composed of members from the Kikuyu ethnic community and so was the Democratic Party of Kenya, which of course has a few supporters from the Akamba, Meru and Embu ethnic communities. The other parties like PICK, KSC, SDP, and KNC and even the then unregistered Safina party had no national outlook in their leadership and composition.

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[127] WWW.Central Bank.go.ke Economic Information retrieved on 3ist August 2010

It is important to note that a lot has changed since most of the parties mentioned in the research are not the main political parties in this day and age. Their mention in the research is important because they serve as an illustration of how Kenyan politics has been ethnicized. Political ethnicization can partly explain ethnic conflicts occurrence in Kenya.

The ethnic clashes that took place in Kenya between 1991 and 1995, 1998 not only increased ethnic animosity and prejudice but also made ethnic politics a reality[128]. Indeed, the common ideology, especially among leaders of different political parties, is national democracy, but the practice or reality is ethnic democracy for their supporters. There was common talk that the Kikuyu 'ate' during the Kenyatta era, the Kalenjin have 'eaten' during the Moi era and it is the turn of other ethnic groups like the Luhya, the Luo and the Kisii to eat. In essence, the 1992 election results reflected numerous manifestations of block voting, this time closely related to ethnic nationalism, sectarianism and other forms of parochialism. After the exit of president Moi from power Mwai Kibaki a Kikuyu was elected to be president of Kenya. This couldn't be better and after a while murmuring and grumbling began. The accusation was that Kibaki was benefiting the Kikuyu community as Kenyatta had done earlier.

It was evident before the 2007 General Elections that history was going to repeat itself. Anti Kikuyu sentiments were very rife and what this left was that ethnicity in politics could not be avoided. Some politicians campaigned on the platform of making sure that certain tribes did not dominate others politically, socially or economically. This partly explains the ethnic conflict which followed the announcement of the presidential elections on 30th December 2007 by the now defunct Electoral Commission of Kenya.

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[128] See the Akiwunmi Report on Ethnic Clashes 1999

2.8.6 Economics of insecurity and state planning

Northern Kenya falls within ASALs of Kenya. Pastoralism is the dominant economic activity of the region and it is dependent on a fragile ecology. Livestock accounts for 95 per cent of the family income and provides employment for 90 per cent of the population[129]. Oftentimes, there are draughts and floods that adversely affect the region. Various local communities also face competition and conflict over access and control of natural resources such as water and pasture. In recent years, these conflicts have led to loss of life and property and aggravated poverty in the region. Incidence of poverty in the area is estimated to be about 65 per cent[130]. In this regard, high-poverty levels and food insecurity have become serious development challenges in Northern Kenya. Lack of critical social services including health and education services, as well as physical infrastructure such as roads have worsened the development problems in general and poverty of the region in particular.

To address these and other socioeconomic challenges, the Government of Kenya prepared and launched the Economic Recovery Strategy for Wealth and Employment Creation in 2003. This strategy aimed at poverty reduction, employment creation and enhanced decentralized development. The government identified several policies to achieve its economic recovery strategy, including effective utilization of natural resources and sustainable environmental management as well as consultation and participation of stakeholders in the formulation and implementation of development policies[131].

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[129]Pkalya, R., Adan, M., Masinde, I. *Conflict in Northern Kenya: A Focus on the Internally Displaced Conflict Victims In Northern Kenya*, DTP Martin Karimi, Nairobi(2003),,

[130] Oyugi, W.O. "Politicized Ethnic Conflict in Kenya: A Periodic Phenomenon", in Bujra, A., Ahmed, A. (Eds),*African Conflicts: Their Management, Resolution, and Post-Conflict Reconstruction*, DPMF/OSSREA, Addis Ababa, (2002),

[131] Ibid

In the study area, the government aimed at strengthening peoples' livelihoods through support to livestock production and marketing for livestock products; promotion of eco-tourism; initiating irrigation projects; and provision of the necessary infrastructure including roads as well as improving security[132].

The land tenure systems in Northern Kenya have also complicated the socioeconomic development of the region. The land tenure system in the region comprises trust land, government and private land[133]. The trust land is the dominant land holding system in the area but is poorly recognized in the current land tenure arrangement of Kenya. Consequently, oftentimes, the local communities have lost their communal land to wildlife conservation as well as to government institutions and individuals [134]

When the coalition government named its cabinet on 13th April 2008 there was reprieve among the residents who reside in Northern Kenya since among the ministries created was a ministry that was to deal with the affairs of Arid and Semi Arid Lands. Northern Kenya falls in the category of these areas and for once the residents of Northern Kenya felt that the government had not abandoned them.

[132] GoK), *National Policy for Sustainable Development of Arid and Semi-arid Lands of Kenya*, Government of Kenya, Nairobi, (2003.
[133] GoK *National Policy for Sustainable Development of Arid and Semi-arid Lands of Kenya*, Government of Kenya, Nairobi, (2006),
[134] Gettleman, J. "As Kenyan rivals haggle, A mother mourns at 2 graves", *New York Times*, 15 February, (2008),

CHAPTER THREE

MITIGATION OF ETHNIC CONFLICTS IN KENYA

3.0 Introduction

The research has demonstrated that there is a relationship between colonialism and ethnic conflicts in post colonial Kenya. As a result, there are many ramifications that have been manifested due to the foundation the colonialists laid when they were governing Kenya. Since independence in 1963 Kenya had experienced several ethnic conflicts[135]. It is not within the scope of this research to go into elaborate details to detail each conflict. Some of the notable conflicts are ethnic conflicts that began at the advent of multiparty politics when Kenyans began agitating for a return of multiparty democracy in Kenya.1992, 1997, 2002 and 2007 have seen Kenya sinking into ethnic conflict the worse scenario being 2007-2008 after the 2007 disputed presidential elections.

Chapter one of the research discussed some of the general causes of ethnic conflicts. Chapter two described causes of ethnic conflicts in Kenya and the negative effects of ethnic conflicts. Background issues, international mediation efforts are important issues if ethnic conflicts are to be mitigated in Kenya. Immediate issues which formed the mindset before the 2007 general election and its aftermath will be dealt with in this chapter for they form a basis of issues which would later shape the outcome of the international mediation efforts.

It is therefore the contention of the researcher that the objectives of the research will be reached when these issues are dealt with in this chapter. Mitigation of ethnic conflicts is analysed using the Kofi Annan lead mediation because it lead into discussion of long term issues that have caused ethnic conflicts in Kenya from 1963 until 2007.

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[135] The researcher had a discussion with a former civil servant who has vast information of Kenya political history who told him the colonial foundations of ethnic conflicts in Kenya.

3.1 Background Issues

At the end of December 2007, widespread violence broke out in Kenya following the announcement of the results of presidential elections held on 27 December. In the ensuing days, official figures stated that over 1200 people were killed, there was massive destruction of property in some areas, and several hundred thousand Kenyans were displaced from their communities. In addition, human rights defenders who made Statements critical of the electoral process began receiving serious death threats.

The violence triggered by the flawed electoral process should be analysed in its context of longstanding conflict over land rights, prevailing impunity for human right violations and highly unsatisfactory fulfilment of economic and social rights. As documented elsewhere in the research the issues mentioned above have manifested themselves in the causing of ethnic conflict in Kenya. Among issues analysed after the announcement of the presidential results are long standing dispute over land rights, recurrent violence and persistent impunity and Pre-existing violations of economic and social rights. The issues have a structural dimension which caused physical violence as experienced during the post election violence following the 2007 disputed presidential elections. It is important to note that the issues have a long time effect and should there be good mitigation of ethnic conflict in Kenya, the issues of land, recurrent violence and impunity and pre-existing violations of economic and social rights should be dealt with.

3.2 Long standing dispute over land rights

The Government Lands Act [136] which regulates the former "crown lands" now known as Government lands gives considerable power to the president. This act extends the power of the Commissioner of Lands a President's appointee – to lease land within the townships for

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[136] Government Lands Act (Cap. 280).

99 years and agricultural areas for 999 years, with the power to convert leases into freeholds. In light of the centrality of the presidential figure and the community-based political environment, land has thus often been used in Kenya to award patronage, solidify support and build alliances.

In the early 1900s, the British colonialists evicted the Rift Valley's communities (Nandi, Maasai, Samburu and Turkana) to create the "White Highlands". Agricultural labourers from the provinces, particularly Kikuyu from the Central Province, were recruited to work on the colonial farms. In the aftermath of Kenya's independence from the British Empire, some of these agricultural labourers took advantage of the land-buying schemes offered by President Jomo Kenyatta and bought the land they had worked on for the British colonialists.

These small lands were in Nakuru, Uasin Gishu, Nandi, Trans Nzoia and Narok districts. This situation was largely maintained until 1992-1993 when, during President Moi's tenure, politically-instigated violence forced many Kikuyu farmers out of their farms. At this point, some ministers and national politicians from the Kalenjin and Maasai communities rallied on the reestablishment of a *Majimbo*[137] system of Government – a federal system based on ethnicity[138]. Some proponents of *Majimboism* simultaneously called for the expulsion of all other ethnic groups from land they claimed to be historically theirs, and the return of the "Kikuyu outsiders" to their "homeland" or "ancestral home", in the Central Province.

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[137] Literally, the term Majimbo means "region" in Kiswahili.
[138] The *Majimbo* debate dates back to 1960s, when minorities, both African and European, of the newly independent Kenya argued for a form of regionalism – *Majimboism* – that could counteract the economic domination of more populous ethnic groups.

The debate about Majimbo was key during the electioneering period where many analysts saw that the sentiments echoed by the politicians who were advocating for the Majimbo system could have fuelled passions for people to fight after the announcement of the presidential elections on 30th December 2007.

3.3 Recurrent violence and persistent impunity

Ever since the restoration of multiparty democracy in December 1991, violence has been common in Kenya's elections. In 1992 and 1997, the then incumbent President Moi was elected in a violent environment. During both campaigns, Moi's party, the Kenya African National Union (KANU) instigated violence to exclude opposition leaders from certain areas, notably from localities in Uasin Gishu and Nakuru districts. Meanwhile members of the communities considered to be the opposition's supporters were regularly targeted[139].

It is worth highlighting that, in 1992, violent attacks were organized under a central command, often with the participation of local administration and security forces officials, and that alleged perpetrators arrested in connection with the violence were often released unconditionally[140].As a result of the 1990s politically-instigated communal clashes, some380,000 Kenyans were still internally displaced in 2007[141].

The 2002 presidential election was however a notable exception. In a relatively calm atmosphere, a large coalition of opposition leaders headed by Mwai Kibaki– the National Rainbow Coalition (NARC) – defeated Moi's designated successor, Uhuru Kenyatta, the son of the first independence leader.

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[139]International Federation of Human Rights/Kenya human rights commission. "Massive internal displacements in Kenya due to politically instigated ethnic clashes", No 471/2, April 2007.
[140] See Inter-Parties "Symposium I Task Force Report", June 1993 and Republic of Kenya, "Report of the Parliamentary Select Committee to investigate Ethnic Clashes in Western and Other Parts of Kenya", September 1993
[141] idem

3.4 Pre-existing violations of economic and social rights

Unsatisfactory fulfillment of economic and social rights have been long-standing in Kenya as seen in the lack of access to water, food, health, decent housing together with the rate of youth unemployment and gross inequalities. According to the World Bank, Kenya is one of the ten most unequal societies in the world, with the richest tenth of households controlling more than 42 percent of the country's income while the poorest tenth survive on less than one per cent.

Some 45 percent of the Kenyan population experience absolute poverty, a figure that declined from 52.3 percent in 1997 according to the most recent Government data. Yet, poverty increased in cities where one out of five Kenyans lives. Meanwhile, sharp divergences in province level rates of adult literacy or distribution of health facilities indicate that some regions and groups benefited from the Government's attention for decades while others make do with little or no services and infrastructure[142].

Anomalous structural aspects cannot be denied when there are land problems, violence and impunity, and economic inequality. It therefore becomes clear that if the issues are addressed, ethnic conflict can be mitigated[143]. There have been many ethnic conflicts in Kenya since independence however they never reached the extent of reaching international mediation like they did after the 2007 disputed presidential elections that triggered the worst ethnic conflict in Kenya. The absence of serious conflict resolution mechanisms to deal with issues causing ethnic conflicts would partly explain why ethnic conflicts have occurred several times in Kenya. International mediation that followed the eruption of violent conflict after the 2007 General Elections becomes important since issues not dealt with during past efforts to manage ethnic conflict were discussed during the mediation process as the research will show.

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[142] Kanyinga
[143] Anomalous structure explain a great deal on why there is violent conflict especially in Africa

3.5 Context for International Mediation in Kenya

Between January and July 2008, Kenya, for the first me in her history, went through an internationally-supported internal mediation process[144]. This was occasioned by the post-election constitutional and political crisis that threw the country into an unprecedented civil crisis. On February 28, 2008, Mwai Kibaki, leader of the Party of National Unity (PNU), and Raila Odinga, leader of the Orange Democratic Movement (ODM) signed a political settlement.

Parliament enacted this as an amendment to the Kenyan Constitution as the Constitution of Kenya (Amendment) Act 2008, and as the National Accord and Reconciliation Act, 2008. There were also agreements establishing the Commission of Inquiry into Post Election Violence (CIPEV), the Independent Review Commission (IREC), and related mechanisms to address other matters incidental to the settlement[145].

It is important to note that the mediation process stopped blood-letting and ushered in a measure of political and constitutional stability through power sharing and specifically through the formation of a Grand Coalition Government[146].An argument about Grand Coalition power sharing formula is that this type of power sharing, and the circumstances that created it, significantly undermines democratization. It permits rogue access' to power by both protagonists, besides being inadequate in dealing with the underlying causes of structural conflict. The opportunity for negotiated government undercuts competitive democratic elections and constitutional government by encouraging rogue incumbents to manipulate the electoral process so as to maintain power, and, by provoking violent protests from victims at this fraud as a strategy to at least share power.

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[144] Sihanya, Ben (2009) Kenya in2012: Like Ghana or Zimbabwe?
[145] Ibid
[146] Ibid

Thus, either way, negotiated government provides perverse incentives to, and actually does, undermine constitutionalism[147].

3.6 Ethnic Conflicts in Africa

There have been ethnic conflicts not only in Africa but other parts of the world have experienced ethnic conflicts also. Post colonial experience has been experienced more in Africa since with the exception of Ethiopia and Liberia every other country in Africa was colonized. It will therefore be within the objectives of the research to briefly describe the scenario of ethnic conflicts in Post colonial Africa. Okello and Sihanya postulates that. "Most of Africa's post colonial history has increasingly witnessed sudden outbreaks of serious systematic intra-state and inter-state violence"[148].

Gerner and Schrodt, in their discussion echo sentiments to corroborate Okello and Sihanya by saying that. "Conflict in Africa has indeed raged, and shocked the world by its proportions. It is estimated that 8.5 million people have died as a direct result of conflict since 1947, the vast majority being civilians. At its peak in the early 1990s, conflicts breed 23 million people to flee their homes."[149] Through international, regional and national peace interventions, there was a 50 per cent reduction in the number of violent conflicts in Africa between 1999 and 2004.

Anyang' Nyong'o observed and articulated that. There seems to be consensus that ethnic identities existed long before colonialism, and subsequently after independence. There also seems to be agreement that both the state and the political class generally have exploited ethnic identities and exacerbated ethnic divisions for political ends.[150]

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[147] Ibid

[148] Ibid

[149] Gerner,Deborah,J.and Phillip A.Schrodt(2001) 'Analysing the Dynamics of International Mediation Process in the Middle East and the former Yugoslavia' available at http://www.ukans.edu/ last accessed on 6 September 2010

[150] Nyong'o Peter,Anyang'(1989), 'State and Society in Kenya: Disintegration of the Nationalist Coalitions and the Rise of Presidential Authoritarianism,1963-78',*African Affairs*,Vol.88

Internal and external conflict in Africa has always received serious international attention because of two major reasons: first, even after attainment of independence, African states have maintained ties with their former colonial powers (especially Britain and France) which still have varying degrees of vested interests. Second, the proliferation of violence in a country generally creates regional insecurity and instability. These two factors played a significant role in the great interest that the international community took in the Kenyan crisis.

There is no denying that in the ensuing contest, communities have been scarred, their identities wounded, thus making elite greed and community grievance interlock in the political process-with devastating consequences. Kenya has been no exception to this experience, only that it took nearly four decades for it to explode into violent conflict in 2007. he conflict analysis theory focuses on relative deprivation, where the peoples' discontent about unjust deprivation is the primary motivation for political action, and group mobilization, where it is the leaders' calculated mobilization of group resources in response to changing political opportunities. These were evident. The research had earlier argued that relative deprivation will lead to frustration and aggression will soon follow in the form of physical conflict. These aspects explain partly the contents and issues discussed during the mediation period.

3.7 International Mediation

The most common response by the international community to violent conflict anywhere in the world has been mediation. It has been called a continuation of negotiation by other means that involve a third party in facilitating a negotiation process.[151]Indeed, mediation is an extremely common not always successful form of conflict management.

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[151] Ibid

Bercovitch's study of 310 international conflicts between 1945 and 1974 found that in 82 per cent of the cases, there was some form of mediation[152]. Kal Holsti reported results of a study that found mediation occurred in 45 per cent of 94 post- WWII disputes examined.[153] In 70 per cent of the disputes that involved mediation, their outcome was at least partially 'successful.' Bercovitch identified 241 international disputes in the 1945-1990 period, of which 137 (57%) were mediated at least once.[154]

"International mediation is currently a favourite topic in studies in international relations. This is powered by the rise of new liberal internationalism in the post cold War era and its philosophy of Responsibility to Protect, whereby the international community is obliged to save states from descending into chaos. It marks the policy shift in Africa from the principle of non –interference to one of non- indifference".[155] An understanding of mediation as either a process or a product is crucial as it shapes the approaches that mediators use in conflict resolution. Indeed, it can be said that the reason why some mediation processes register sustainable peace, while others only secure a ceasefire, and others fail or undergo an outright collapse, is because of the conceptual approaches that the mediation practitioners employed in the particular conflict situations.

Mediation has been defined by several scholars and it will be important to see their definition and its importance in conflict management. According to Moore, his definition is concerned primarily with the mediated approach to conflict management. Parties who cannot negotiate together effectively may bring a mediator to facilitate the negotiation process. His definition of mediation is: the intervention in a standard negotiation or conflict of an

[152] Bercovitch,Jacob(1997) 'Mediation in in International Conflict' in William Zartman,Iand J.Lewis Rasmussen,*Peacemaking in International Conflicts:Methods and Technics*,Washington:US Institute of Peace Press
[153] Ibid
[154] Ibid
[155] See the Constitutive Act of the African Union, Lame, Toga, ii July 2000 on non –interference and the African Charter on Democracy, Elections and Governance. Addle Ababa. Ethiopia, 30 January 2007 on its general non-indifference theme.

acceptable third Party who has limited or no authoritative decision-making power hut wino

assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues

in dispute.[156] Folberg and Taylor describe mediation as:

> *A process by which the participants, together with the assistance of a neutral person or*
>
> *person, systematically isolate dispute issues in order to develop options, consider*
>
> *alternatives, and reach a consensual settlement that will accommodate their needs. Mediation*
>
> *is a process which emphasizes the participants' own responsibility for making decisions that*
>
> *affect their lives. It is therefore a self-empowering process.[157]*

Dispute is captured in the two definitions of mediation. William synthesizes the above

definitions and defines mediation as.

> *Mediation is a process whereby people choose to come together with the assistance of a*
>
> *nonpartisan and mutually acceptable third party, who assists them to analyze and discuss the*
>
> *causes of differences between them in order to better understand and negotiate ways of fairy*
>
> *dealing with each other. It is a process which recognizes that disputes are shaped by the*
>
> *relationship between the disputants and that assisting disputants to build and manage their*
>
> *relationships with one another is central to any meaningful, sustainable and mutually agreed*
>
> *and acceptable resolution of disputed issues[158].*

Mediation as a conflict resolution tool is often used in intractable conflicts, especially

where there are long – running and deep rooted conflicts. The objectives of the research

warrants that catalysts and trigger causes of post election violence be dealt with since they

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[156] Moore, Christopher(1996) *The Mediation Process:Pratical Strategies for Resolving Conflict*(2nd ed) San Fransisco:Jossey-Bass Publisher
[157] Folberg, Jay and Taylor, Alison(1984)*Mediation: A Comprehensive Guide to Resolving Conflict without Litigation*, San Fransisco:Jossey-Bass

[58] Williams, Rhian (2003) Towards a New Definition of Mediation available at http:// www.apmec.unisa iccessed in 29th August 2010

remotely can be traced from the colonial legacy. Another is because they informed some of the themes of the mediation and the mediation outcome.

3.8 Catalysts and Triggers of Post Election Violence

There were catalysts and triggers that caused the 2007-2008 post election violence. An analysis will show that these factors were structural in orientation. These factors include the electioneering period factor, structural anomalies as a result of failed promises in the level of elites and the constitutional debate. The consideration of these factors was due to their relationship with the root causes of post election violence. Another factor of their consideration is due to the fact that their development was the time near the 2007 General Elections. These catalysts would later shape the theme and issues the mediation process was to address and also its outcome.

3.9 Electioneering Period Factor

The campaign agenda pushed by ODM and PNU were instrumental in highlighting the deep seated grievances that precipitated the post election crisis that gripped Kenya upon the announcement of the incumbent President Mwai Kibaki as the winner on Sunday 30 December 2007. Kibaki's PNU campaigned on the theme of continuity, with the campaign slogan *Kazi Iendelee* (business as usual; continuity). PNU's campaign manifesto lauded the economic growth that the Government had allegedly registered over the past five years of Kibaki's presidency. The manifesto was largely a pledge to continue with the same kind of governance that had been practiced since 2002. ODM, on the other hand, adopted the campaign theme of change (*Kazi ianze;* business unusual; let the work begin), which resonated well with all ethnic groups and regions in the country, except the Mt Kenya Region, central and lower parts of Eastern province, which were PNU and ODM- K

strongholds. ODM pledged to introduce radical changes in governance by enacting a new constitution within six months of the Odinga presidency, and made the Bomas Draft an annex of its manifesto[159]

ODM promised to introduce devolution of economic and political power, in addition to introducing a zero tolerance policy on corruption. The term Majimbo (originally, regionalism or quasi –federalism) was used to refer to devolution. In the end, the theme of devolution as a campaign pledge raised the stakes of the general elections even higher. While ODM promoted devolution of economic and political power within the context of promoting ethnic and regional equity in resource distribution, PNU charged that this was a recipe for balkanization of the country into ethnic blocks.[160] The term *Majimbo* ended up with such a negative connotation that ODM was forced to use the term *ugatuzi* to explain its version of devolution.[161] This debate engulfed the entire election campaign with paid up television and radio advertisements being used to discredit arguments from either side. In a sense, the *Majimbo* debate captured the grievances that communities have had against tendency by past presidents to pursue ethno- hegemonic projects through control of strategic institutions and ministries so as to create ethnic exclusion. These are grievances other ethnic groups have had against Kenyatta, Moi and Kibaki governments with regard to inequitable distribution of resources, and the marginalization of certain communities from the national development agenda.

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[159] See Orange Democratic Movement Manifesto
[160] See Party of National Unity (PNU) Manifesto
[161] Ugatuzi is Swahili word meaning devolution power is devolved from the central government to grass root level

3.10 Structural Anomalies and Failed Elite Agreements

In societies that are in structural conflicts, elite pacts, though largely inadequate, are important devices for managing tensions. When these pacts fail, and elites become factionalized and fragmented, a potentially incendiary environment is created. This is the set of circumstances in which Kenya approached the 2007 general elections. The 2007 General Elections were perhaps the most fought-over elections in the history of modern Kenya. The elections were billed as a two-horse race, consisting of Raila Odinga's Orange Democratic Movement (ODM), and Mwai Kibaki's Party of National Unity PNU.[162] The Orange Democratic Movement-Kenya (ODM-K) was a fringe breakaway faction of the original ODM and was led by Kalonzo Musyoka.

The issues that shaped the 2007 general elections can be traced back remotely to 1963 or immediately to 2002. As discussed above, the country was under the clutches of a structural conflict that expressed itself through the agitation for a new Constitution to revise the 'social contract' long frayed by economic, social and political developments of the last 40 years. Rising poverty and inequality deepened the sense of exclusion and marginalization, the impressive GDP growth rates of the NARC regime notwithstanding.

In the year 2000, the Institute of Economic Affairs (IEA) and the Society for International Development had developed scenarios for Kenya[163] and concluded that the model of political and economic development that the country had pursued since independence had run its full course. They advised that to avoid what they called the El Nino Scenario, which is breakdown of the Kenyan state and society, these needed to be revised and renegotiated through simultaneous economic and institutional reform. These were the undercurrents that raged as the country went into the election.

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[162] Clottey,Peter(2007) Kenya's Opposition Elects Candidates for December Elections www.voanews/archive accessed 17th July 2010
[163] Institute of Economic Affairs(IEA) and Society for International Development(SID) (2000) *Kenya at the Crossroads:Scenario for our Future,Nairobi:*IEA and SID

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The 2002 general elections had ended the 40 year autocratic rule of the Kenya African National Union (KANU) and brought the National Rainbow Coalition (NARC) into power[164]. NARC was a coalition of two principal partners, Kibaki's National Alliance Party of Kenya (NAK) and Odinga's Liberal Democratic Party (LDP).[165] The LDP and NAK partnership was fashioned on a Memorandum of Understanding (MOU) a power sharing agreement that stipulated an equal share of cabinet and Government positions between the two political parties.[166]

It is not within the scope of this research to enumerate examples of structural anomalies as a result of elitist failure to honour the promises they made however the ones discussed are important in that they formed the many sentiments both the elites had and the electorate. They determined partly the behaviour of electorate towards the 2007 election and their behaviour soon after the presidential election results were announced on 30th December 2007.

3.11 Constitutional Debate

The constitution debate is an important aspect since. A constitution is a body of the fundamental rules of the society. It describes the society's core institutional framework and how power is to be shared in the process of governance.[167]A constitution contains the most important rules about government of a country.[168]It sets out the framework and operations of government and makes declarations about the purpose of the state and society.

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[164] Mbai, Odhiambo The Rise and Fall of the Autocratic State in Kenya,The Politics of Transition in Kenya:From KANU to NARC
[165] Ibid
[166] The main elements of the MoU were: Puts, Mwai Kibaki would be nominated as the single NARC presidential candidate. Second, the membership of the Cabinet would be determined on a fifty- fifty power sharing formula between NAK and LDP.
[167] Kibwana, Kivutha "The Fate of The Constitution in Contemporary Africa in Kivutha Kibwana(ed) *Readings in Constitutional Law and Politics in Africa A Case Study of Kenya*(Nairobi: Claripress 1998) pp 38-47
[168] S.de Smith and Brazier, *Constitutional and Administrative Law*, Sixth Edition (London: Penguin 1989) pp 1-14

A country's constitution defines the organs of government and their relationships.[169]From these definitions, the constitution debate becomes a very important factor if the constitution does not deliver the aspirations of the citizens conflict is bound to occur. It is important to note that the constitution partly explains the scenario of 2007-2008 post election violence. The MoU debate and its attendant elite fragmentation were to spill over into the Bomas Constitutional Conference, which undertook review exercise.[170] This was witnessed in the positions that NAK and LDP backed regarding a number of aspects in the Bomas Draft Constitution. These aspects were to be known as the contentious issues. The bone of contention was devolution versus continued centralization, and the design of the Executive, especially Presidential versus Parliamentary system of governance. Secondly, NAK backed centralized authority under a powerful Presidency with a non executive Prime Minister, while LDP backed a less-powerful Presidency with an executive Prime Minister and a Parliamentary system of Government.[171]

At this point, the constitutional politics at play at Bomas also exposed the interests of various communities. This can be illustrated by the fact that, the Central Kenya tribes consisting of the Kikuyu, Meru and the Embu supported a strong presidency. This was widely interpreted to be as a result of one of their own occupying the seat.[172] The Luo, long marginalized from the development agenda by Kenyatta, Moi and Kibaki governments championed a reduction of presidential powers, the creation of a Prime Minister's post and, more significantly, the introduction of a devolved system of Government, which would ensure development at the grassroots.

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[169] Kibwana, Kivutha " The People and the Constitution: Kenya's Experience" C.Maina Peter, J.Oloka-Onyango(eds) In search of Freedom and Prosperity: *Constitutional Reform in East Africa* (Nairobi: Clari Press,1996) pp 340-350

[170] See National Constitutional Conference (2004), The Draft constitution of Kenya 2004, adopted by the National Constitutional Conference on 15 March 2004, Constitution of Kenya Review Commission, Nairobi

[171] In the event, Bomas settled on a parliamentary system of government. See articles 120-145 of the Draft Constitution of Kenya , 2004, adopted by the National Constitutional Conference on 15 March 2004. See Oloo and Sihanya (2006)

[172] The Waki Report blames president Kibaki for receding to his Kikuyu ethnic grounds as soon as he was elected. See Republic of Kenya (2008b)

The 2005 constitutional referendum shaped the politics of Kenya and how the election of 2007 would go. The Referendum was carried out 21 November 2005. The NO (Orange,) campaign, led by LDP and KANU garnered 3.5 million votes against the Kilifi (Banana) campaign's 2.5 million votes. The Draft Constitution was therefore rejected. It was a symbolic victory for LDP, KANU and their supporters who had pushed radical proposals at Bomas[173].

Two weeks after the referendum, President Mwai Kibaki sacked all the ministers allied to LDP who had backed the Orange campaign, marking the second major stage of elite fragmentation. This act moved the nation away from structural conflict and much closer to open violence. The Government had lost on the substance of the 'social contract' and, instead of showing humility, was exhibiting arrogance.

Elite pacts, which would have helped manage the tensions, was thus certified dead. This set the stage and the agenda that to the 2007 general elections as the leaders of the ODM, newly-energized by their victory at the referendum, vowed to carry the same agenda to the 2007 general elections. The Banana campaign, still shocked from an unexpected loss, recoiled even further and strengthened their conservative stance against far reaching reforms.[174]

3.12 Themes and Mediation Outcome

The vortex of issues receipting the concept and practice of mediation revolve around the ripeness of moment; third parties and the notion of leverage and impartiality, or lack thereof; interest mapping; structure of the process; the value of symbolism and labeling and the problem of re entry. An examination of Kenya's mediation process needs to be examined within the context of some of these issues.

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[173] Sihanya
[174] Ibid

Any attempt to mediate a conflict that is unripe will lead to failure.[175] Zartman has argued that parties must be ready for process to begin and that the ripe moment occurs when the parties reach a stage in their conflict when the cost of continuing with the conflict is higher than the cost of negotiation[176].

In Kenya, it is clear that the conflict was ripe for mediation, as parties had reached a mutually hurting stalemate. Although president Kibaki had been sworn in the government could barely control one third of the country, and its legitimacy both internally and internationally was greatly contested and nebulous. ODM on the other hand, could not force Kibaki's resignation. And the casualties of its members from excessive and selective application of force by the police were forcing its hand to the negotiating table[177]. Mediation unlike negotiation needs third parties in the form of mediators. For mediation to be successful, the mediator needs to have leverage and enjoy some significant esteem and respect from the protagonists.

3.13 Process of Mediation

On 23 January 2008, Dr Kofi Annan began the task of bringing the Government and the ODM sides to the dialogue table, the most remarkable step since the talks stalled in the hands of President John Kufuor. Annan had earlier stated that President Kufuor did not appoint him with a task to fail. ODM announced its negotiating team for the Kofi Annan talks.

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[175]Zartman, William I.(1986) ' Ripening Conflict, Ripe Moment, Formula and Mediation', in D.B.Bendahmane and J.W.MacDonald(eds) *Perspectives on Negotiations: Four Case Studies and Interpretations,* Washington DC:Foreign Service Institute

[176] Ibid
[177] Kanyinga

ODM's team was led by Musalia Mudavadi and included William Ruto and Sally Kosgei with Caroli Omondi as the Liaison Officer. On the other hand, the PNU team was led by Martha Karua and included Mutula Kilonzo and Sam Ongeri. The significance of the PNU side, referring to itself in the meditation as Government/PNU, was to earn this side a power base in the negotiations given the considerable lack of legitimate locus to claim victory.

Raila Odinga and Mwai Kibaki issued public statements together on 24 January 2008 on their commitment to the dialogue process midwife by Kofi Annan. On his path, Raila stated that he remained committed to dialogue and reconciliation at all levels of the society.[178]On the other hand, Kibaki stated that: The Government welcomes the eminent African statesmen and woman and we shall have dialogue within the constitutional and legal framework. My party and I are ready for this long journey to restore peace in our land. We are grateful that the mediation team responded swiftly and I pledge that my team and I will spare no effort to resolve this crisis.[179]

The mediation process was formally launched on 29 January 2008 under the name Kenya National Dialogue and Reconciliation with a secretariat in Nairobi. Kibaki and Raila witnessed the launch of the negotiations led by Annan. The launch was held at the County Hall in Nairobi. Both County Hall and Serena Hotel were regarded as political neutral as compared to State House or Harambee House, which would have legitimized Kibaki's swearing in and would have given him control over the process through the bureaucracy that answered to him[180]. The historic power sharing accord between Mwai Kibaki and Raila Odinga was signed on 28th February 2008. In the immediate aftermath of the signing of the historical deal, on March 1 2008, the mediation teams returned too table together. PNU and ODM negotiators agreed on key proposals to seek long-term solutions to the political crisis.

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[178] *Standard(2008)* 24 January 2008(Nairobi) at www.eastandard.net/archives.last accessed on 29th August 2010
[179] *Standard(2008)* 26 January 2008(Nairobi) at www.eastandard.net/archives.last accessed on 29th August 2010
[180] Ibid

These included the TJRC, the Independent Review Commission (IREC). The Commission on Post Election Violence (CIPEV), as well as initiatives on comprehensive constitutional review land reform and poverty reduction[181].The institutions that both the PNU and ODM agreed would play an important role in the mitigation of ethnic conflicts.

3.14 Mediation Outcome and Ethnic Conflict

The international mediation efforts in Kenya following the disputed results of the hotly contested presidential elections were fruitful. The research has argued that anomalous structures have caused conflicts in Kenya since she got her independence from Britain in 1963.Anamolous structures would lead to structural violence which might to result into physical violence as was the case in 2007-2008 post election violence.

The mediation came up with four agendas which came to be known as agendas one, two, three and four. Agenda one underscored significant constitutional pillars of the mediation process: firstly, immediate action to stop violence and restore fundamental rights and liberties. The parties agreed that modalities to implement immediate action aimed at stopping the wave of violence that had gripped the country since 30 December 2007 needed to be identified. The main aim of agenda one was to enhance security and protect the population and their property; restore the respect for the sanctity of human life; and ensure that freedom of expression, media freedom and the right to peaceful assembly were upheld. The aim of agenda one was to create an environment for negotiations out of the political crisis.

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[181] The reform process has started and the two Commissions of Inquiry finished their task the ongoing one is that of Truth Justice and Reconciliation.

3.14.1 Agenda 2

Agenda two underscored the importance of addressing the humanitarian crisis. Under this agenda, modalities would be put in place to ensure that assistance to the affected communities and individuals was delivered more effectively. In addition, it would ensure impartial, effective and expeditious investigation and justiciability of gross and systematic violations of human rights. Besides, the aim of this agenda was to ensure that the process of national healing, reconciliation and restoration commenced immediately[182].

3.14.2 Agenda 3

The parties would negotiate and agree on a solution towards solving the political crisis arising from the disputed presidential electoral results as well as stopping violence. Moreover, the parties agreed that the political- constitutional crisis mainly revolved around the issues of power sharing and the functioning of State institutions, In this regard, it was recognized that resolution of the crisis would require adjustments to the current constitutional, legal and institutional frameworks[183].

3.14.3 Agenda 4

Agenda four captured the long term issues whose roots can be traced from colonial times through 2007.The Agenda included consolidating national cohesion and unity; land reform; tackling poverty and inequality, as well as combating regional development imbalances, particularly promoting equal access to opportunity; tackling unemployment, particularly among the youth; and reform of the public service.

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[182]Kanyinga
[183] Ibid

Others reforms included strengthening anti corruption laws and institutions, reform of public finance and revenue management systems and institutions; and addressing issues of accountability and transparency. Also important in the political economy of mediation was the recognition that a political settlement was about addressing the fundamental root causes of recurrent conflict[184].

The Coalition Government was formed where the post of Prime Minister was formed. This was a political solution for the crisis that had engulfed Kenya. It is not within the scope of this research to go into elaborate details about the formation of the grand coalition however some institutional reforms have taken place after its formation.

3.15 Post Coalition Government Reform Institutions

Institutions have been reformed after the formation of the Grand Coalition government. There have been others which have been created to deal with potential ethnic conflicts. The most important reform after the formation of the Grand Coalition is the passing of a new constitution which has been promulgated into new law. The electoral body that superintended over the disputed 2007 elections has since been replaced by a new electoral body known as the Interim Independent Electoral Commission (IIEC)[185]

As the mediation was going on, it was agreed that historical injustices plaguing Kenya from 1963to 2008 were to be addressed. It was therefore agreed that a Truth Justice and Reconciliation Commission (TJRC) be formed to address injustices done to victims in Kenya from 1963 to 2008.The commission was to be modelled after the TJRC of South Africa[186].

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[184] Ibid

[185] The Interim Independent Electoral Commission was formed in May 2009 to replace the Electoral Commission of Kenya so far it has superintended over three by elections but the highlight of its success is the 4th August referendum which went on very well.

[186] The Truth Justice and Reconciliation Commission was established in 2009 to look into historical injustices in Kenya that happened between 1963 to 2008

A review commission was formed to look into boundary issues. The commission is called Interim Independent Boundary Review Commission (IIBRC) The objectives of the boundary review was to review boundaries for purposes of creating new constituencies for good administration and equitable distribution of resources based on population balance and geographic size.

CHAPTER FOUR

A CRITICAL ANALYSIS OF THE RELATIONSHIP BETWEEN COLONIALISM AND ETHNIC CONFLICT IN POST COLONIAL KENYA

4.0 Introduction

A critical analysis on the relationship between colonialism and ethnic conflicts in Kenya is of great importance for this research. Structural anomalies as a result of British colonial rule cannot be denied. Chapter one formed the basis of the research by describing general causes of ethnic conflict and theories that would inform the research. Chapter two went into specifics of describing and analyzing causes of ethnic conflicts in Kenya. The effects of ethnic conflicts in Kenya were also discussed. Mitigation of ethnic conflict in Kenya was discussed in chapter 3 using the Kofi Annan lead international mediation framework.

Chapter four being a critical analysis of the relationship between colonialism and ethnic conflict in post colonial Kenya is an extension and synthesizes chapters two and three. There are themes in chapter two and three that recur in chapter four and they will be analyzed using the contribution of colonialism in festering ethnic conflict in postcolonial Kenya. The analysis will be done using the 2007-2008 post election violence since it was the most severe and it unravelled deep seated issues that had not come out clearly in other ethnic conflicts which have occurred in Kenya. The issues the chapter will discuss are. Divide and rule, migration labour system and an imperial constitution. Land is another issue that the colonial legacy left and it has haunted Kenya ever since her independence.

Other issues occurring are economic and cultural. The economic analysis buttresses the structural aspect of ethnic conflicts. The research has continually demonstrated that structural anomalies contributed in creating structural violence which finally gave way and physical violence manifested itself in the form of post election violence. It will be important to analyse the cultural aspect which is in the form of cultural stereotyping. Cultural stereotyping played a major role in post election violence since ethnic communities viewed each other as the course of their problems. Myths and legends that have been passed from one generation to another formed opinions and fuelled passions which ended in physical violence as was the case in2007-2008 post election violence.

The constitution is an important document which helps govern a country. On the same vein a constitution can either create an atmosphere for peace or stifling through creating bureaucracy which will in turn create anomalous structures. Anomalous structures as a result of an imperial constitution have been experienced in Kenya. A cry for a new constitution formed though partly grievances which lead to post election violence. Bad governance and economic disenfranchisement can be as a result of an imperial constitution as has been the case in Kenya. This can be traced from the colonial legacy since the Kenyan constitution was negotiated in Britain.

The post-election violence that engulfed Kenya fell short of a civil war, which several independent African countries have experienced as a result of factors ingrained in national political, economic and socio –cultural character. To all pundits of Kenya's democratization and those who had regarded the country as the only 'island of peace and tranquillity' in a politically volatile region, the violence came as a big surprise.

The post election violence brought about what seemed to have been a long simmering volcano only waiting to explode, the question still lingering being when it would explode.

That is it exploded as the year 2007 ended and thus denied Kenyans celebrations of the New year, persisting until the end of February 2008.This underlines a deep –seated problem that Kenya must solve both in the short –term and in the long run to avoid its recurrence.

4.1 Analytical Framework for Post Election Violence

Colonialism has had a bearing on post colonial ethnic conflicts in Kenya. In order for the objectives of the research to be achieved an analytical framework is needed. A framework which identifies sets of exogenous variables that acted through the intermediate variables to influence ethnic conflict in Kenya at the turn of 1990s[187] will be important. The framework posits that post election violence in Kenya was due primarily to intermediate or proximate variables which were influenced by sets of independent variables, some of them of longstanding significance. Future researchers would undertake empirical work on post election violence in attempts to apply empirically robust models.

In study of Guyana, Premdas distinguished between predisposing factors and triggering igniting factors that determined ethnic conflict and development in the country. Predisposing factors include cultural pluralism, lack of cooperation and overarching values and internal communal beliefs of separate sections, which are sometimes exploited to advance ethnic differentiation and even perpetuate ethnic conflict, thereby displacing formerly coexistent neighbouring ethnic groups. Triggering igniting factors include colonial manipulation, introduction of mass democratic politics, rivalry over resources allocation, and imported political institutions adopted at independence.[188]

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[187] Oucho, J.O.(2002) Undercurrents of Ethnic Conflict in Kenya, Leiden, Netherlands: Brill Academic Publishers
[188] Premdas, R.R (1992) Ethnic Conflict and Development: The Case of Guyana. Discussion Paper 30, Geneva: United Nations Research Institute for Social Development(URISD)

As documented in chapter two of this research, the OHCHR identifies four main causes of Kenya's post –election violence; longstanding dispute over land rights; recurrent violence and persistent impunity; pre –existing violation of economic and social rights and vigilante groups[189].

4.2 Colonial Legacy and its Ramifications

Colonial legacy has shaped the behaviour of many ethnic conflicts in post colonial Kenya. The concept of divide and rule, unresolved land issues and conflict prone migration are important in that they are directly related to colonial legacy and had a direct bearing on post election violence.

4.3 Ethnic Boundaries and Administrative Units

The boundaries of ethnic and administrative units have remained conterminous ever since Kenya was colonized. This is the one colonial legacy that has baited the country to the extent it is repugnant to development. Administrative maps of Kenya in 1924, 1929, 1961[190] and even today provide evidence of this trait persisting in Kenya. The apparent bait was the work of the regional boundaries commission which the British Government established in July 1962 to determine provincial boundaries in Kenya.

Based on the boundaries that existed and allegedly, the people's wishes to belong to regions of their choice (methodology of this unclear), the commission divided Kenya into six regions and the Nairobi area.[191] The provinces recommended were Central, Coast, Nairobi, Northern Frontier, Nyanza (included were the present Nyanza and Western Provinces and Kericho District) and Southern[192].

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[189] Office of the High Commissioner of Human Rights report on Post Election Violence in Kenya 2008
[190] Ominde, S. H.(1968) *Land and Population Movements in Kenya*, London: Heinemann
[191] Ibid

Apart from Nairobi and Rift valley Provinces, all other Kenyans provinces hold one dominant ethnic group or culturally similar groups. Apparently mischief dictated the decision of the colonially controlled commission to bequeath to Kenya one of the problems that keeps rearing its ugly head from time to time. This explains why the smaller ethnic groups used *Majimbo* (Kiswahili for 'regions') as a trump card to acquire their territories and thus avoid domination by the larger ethnic groups.

Indeed, its appearance in political exploits immediately before the 1992 multiparty elections never allowed its different interpretation during the Bomas Draft of the Constitution to gather much support in certain quarters. Although the system of conterminous ethnic – administrative units work well in countries such as South Africa and Ghana, it remains Kenya's nightmare one that haunts leaders and prickles the led. It flares up whenever conflict erupts and clearly did so in the post –election violence when certain ethnic groups singled out and attacked other unwanted groups. An aspect that would follow from ethnic boundaries would be migration. Often than not migration would pose a challenge as discussed further. It would be in the form of conflict-prone migration[193].

4.4 Conflict-prone Migration

Another colonial legacy is the conflict prone internal migration system which has pitted migrant labour (and squatters) and migrant settlers, on the one hand, against the host communities on the other, precipitating intermittent conflict. Migration redistributed population from the traditional sector to the modern sector, comprising commercial agricultural areas and urbanizing centres. The vast majority of migrants moved from the poorer areas that the colonial land acquisition did not effect.

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[192] Ibid
[193] Kanyinga

As soon as the white farmers embarked on commercial farming in different parts of the country, with a strong foothold in the Rift Valley and associated highlands, they recruited cheap migrant labour from Nyanza and Western province exclusively to work, and some from Central Kenya who had the double expectation both to work and to acquire land.[194] There emerged stable in-migration streams, which caused rapid urbanization of Rift Valley province, the country's most urbanized region. This type of migration never changed much after independence as the new large scale farmers still required farm labourers from the established sources.[195]

Throughout independence, Kenya's provinces have been sharply divided between five net – out – migration provinces (Central, Eastern, North- Eastern, Nyanza and Western) and three net in- migration provinces (Rift Valley, Nairobi and Coast) unfortunately, migration scholars have neglected the unpredictable mobility of those engaging in all kinds of business; albeit strictly speaking not considered migration in the classical interpretation of the concept[196].

The colonial migrant system also made provision for squatters who doubled as workers and were granted temporary residence for as long as their employment lasted. After independence, Nakuru town dubbed the 'farmers' capital in colonial period became a popular destination for Jomo Kenyatta in his 'working holiday' escapades, during which he allocated chunks of land to his Gikuyu kinsmen who, in his view were the landless deserving freely allocated land. To date, Nakuru District represents one of Kenya's political hotbeds as the Gikuyu and Kalenjin scramble for land, and as different ethnic groups engage in bitter struggles over parliamentary and civic authority seats in Nakuru and its environs.

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[194] Ominde
[195] Oucho, J.O.(1981) Rural-Rural Migration and Population Change: A study of Kericho Tea Estates Complex in Kenya. Unpublished PhD Thesis, University of Nairobi
[196] Ibid

Thus, the ethnic mix due to migration has shaken, rather than solidified, the foundation of national solidarity; whenever violence erupts, it easily takes an ethnic dimension even if ethnicity does not feature in the equation.

4.5 Unresolved Land Issues

Land issues cannot be ignored. The problem of land dates back to colonial administration days. It continued after independence and has been a problem featuring very much when there are ethnic conflicts in Kenya. It was an issue in post election violence and a theme that emerged during the mediation period as a long term issue to be dealt with if ethnic conflicts were to be avoided[197].

The history of the Kenyan land settlement program is riddled with politics, economics, intrigue and deliberate misinterpretation of facts depending on the analyst. When land alienation took place in the colonial period, the indigenous people receded to the 'Africans Trust Land' or the so-called 'reserves', which took on ethnic tags as the Luo reserve, the Gikuyu reserve, the Kamba reserve and so on.[198] There were no Luhya or Kalenjin reserves as these nomenclatures arose in the colonial period to amalgamate different ethnic communities, with some linguistic cum cultural affinity. The land settlement program can be viewed through political patronage and land buying companies, some of which turned out to be highly unscrupulous.

Although Kenya's land settlement programmes was an integral part of the independence package, which provided an opportunity for Kenya to redress land grabbing by British settlers during the colonial period, it precipitated inequality where the rich acquired land indiscriminately at the expense of the landless.

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[197] Oucho
[198] Ibid

Migrants who had been squatters in Rift valley province took advantage of the temporary stay they had been granted by the White settlers to stake claims on land, knowing well that such land actually belonged to the Kalenjin and Maasai[199].

Coastal land was similarly acquired without due regard to the Miji Kenda, who were its rightful claimants. The chief architect of land transfers was Kenya's founding President, Jomo Kenyatta, who took advantage of his unchallenged position to settle anywhere in the country. With carefully planned official itineraries, Kenyatta frequently went on working holiday's in Nakuru and Mombasa – and to no other part of the country – with a singular mission: land allocation to his kinsmen who were supposedly landless and had fought for Kenya's independence under the banner of Mau Mau and, therefore, observed free land[200].

Officially, a dual land settlement policy was adopted- settlements of the landless poor with limited capital and agricultural experience, on the one hand and a willing buyer willing seller' arrangement; the first one involving the poor without much capital and know-how, the other elitist. This dual system generated three types of settlers (a) the poor, unemployed landless persons who were allocated land in the High Density Schemes (b) the middle-income group with some capital, who occupied larger landholdings and (c) the rich, most privileged persons capable of buying more land, mainly in Low Density Schemes, including in the first two.[201]Some farmers formed cooperatives and, thus, bought chunks of land through land-buying companies, which benefited from credit facilities.

Land settlement has been the root cause of social tensions, which triggered political violence targeted at the 'invaders'. Finally, settlement took a regional bias in which the settlers remained in their provinces, with the exception of those from Central and Western provinces who crossed over to Rift Valley Province. Whenever political heat strikes, these in-migrants become victims of violence, looting arson and destruction of property.

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[199] Kanogo, Tabitha, M.J.(1989) *Squatters and the Roots of Mau Mau*, Nairobi: Heinemann
[200] Ibid
[201] Oucho

This has become such a predictable phenomenon that, surprisingly, the Government of Kenya has only taken palliative measures to try and redress it[202].

One question that keeps begging is who owns land in Kenya. The one thing to the credit of Kibaki's first term 2002-2007) is the opening up of democratic space which, among other things, permitted press freedom and investigative journalism that, unlike the Moi regime when the media was heavily gagged, helped put more information in the public domain. Revelations by investigative journalism and information compiled by the MARs Group Kenya regarding who owns land in Kenya underscore how Kenya's political elite and their relatives, and politically well connected friends have grabbed land in Kenya, particularly in Rift Valley Province.

In an exclusive article in the East African Standard, a 'who is who' list of some of those owning land in Kenya was given. Under dubious land transfer arrangements, the list includes all three Kenya's presidents and their family members, and close friends. It also includes former top-brass servants and heads of state corporations who were presidential appointees[203]. In the MARS series, Kamau Ngotho draws attention to 'big money games that run Kenya's politics', noting that the intricate links between land and politics point to the fact that. This is a system that has continuously perpetrated, in successive fashion- socio-economic injustices that have been seamlessly transferred from one power regime to the next.[204,] In Kenya society where newspaper reading, listening to different radio stations including FM stations, and watching TV have become the rule rather than the exception, it would only be a matter of days before Kenyans read, digested and made rational conclusions on how political leaders had duped them and why they, as voters, had to react appropriately by voting out the Kibaki regime for failing them.

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[202] Ibid
[203] Namwaya,O.(2004) 'Who Owns Kenya', East African Standard,1st October
[204] Ngotho, K.(2008) 'Big Money Games that Run Kenya's Politics:Exclusive,'MARS Group Kenya, 14 February

Conversely, ODM had packaged its campaign with particular reference to different categories of voters. Its manifesto pledged redress of historical land injustices, unemployment, inequitable resource sharing and poverty through a radical people tailored constitution transformation (the Bomas Draft of the Constitution), and tackling the land problem as provided for in relevant chapters of the said constitution, for example through devolution and establishment of a National Land Commission[205].

The crux came with the famous but conveniently ignored Report of the Commission of Inquiry into the illegal/Irregular Allocation of Public Land (otherwise known as the Ndung'u Commission), which completed its work in 2004.[206] This report noted, among other things, that land awards were made to 'both Kenyatta and Moi families, and to a raft of former ministries, MP, judges, civil servants and military officers. The recommendation was that the large majority of such awards should be revoked.' [207]

It recognized that land retained a focal point in Kenya's history and was crucially important in the country's independence; that it had been allocated as political reward and for speculation rather than for development purposes; and that, ironically, the colonial system of land allocation by direct grant facilitated government's illegal; and irregular abandonment of public land after independence.[208] Perhaps the very name of the Ndung'u Commission biased responses; it should have avoided the adjectives and just underscored 'land allocation', working with a clear conscience to determine whether or not land was acquired illegally or irregularly.

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[205] Ibid
[206] Government of Kenya(2004) Report of the Commission of Inquiry into Illegal/Irregular Allocation of Public Land(The Ndung'u Report), Nairobi: Government Printer
[207] Southall, R. (2005) "The Ndung'u Report: Land and Graft in Kenya,' *Review of African Economy* 103.
[208] Ibid

4.6 Cultural affinity and stereotyping

Another factor that contributed in fuelling violence is cultural affinity or differences that engendered ethno-cultural animosity and unnecessary stereotyping between ethnic groups, often ending up in ethnic strife, conflict and violence. It has been noted that the 'ethno-conflict theory'- incorporating social, political and economic structures, religion, language and folk psychology, though not sources of conflict – identifies variables within a cultural system that with time can both cause conflict and contribute to conflict resolution.[209] In Kenya, different key players in cultural stereotyping included vernacular Fm radio stations, which relayed news and played offensive music aimed at enemy groups; the yellow press, which circulated alarmist information; and politicians from particular communities, whose inflammatory language against other communities lit the fires of confrontation.

Toward the 2007 general elections, Kenya had implicitly become divided into ethno cultural zones: the GEMA zone in Mount Kenya region, the Kalenjin enclave in Rift valley province, the Luhya zone in western province with the exception of a part of Bukusu areas, the Luo and Gusii enclaves in Nyanza, the Muslim backyard in Mombasa and so on. Not surprisingly, PNU did not waste any resources in much of Nyanza and Western provinces and in equal measure, ODM made exceptionally few visits to the Mount Kenya region and Ukambani. It was a matter of 'our region for us only as its owners' and Kenya for all Kenyans' to struggle for.

4.7 Economic Factors

Economic factors play an important role since economic grievances played a major role in fuelling passions for physical conflict after the disputed presidential elections. The grievances put forward by economic factors are.

[209] Centre for Conflict Resolution(2000) Distance Learning Course: New Developments in Conflict Resolution, Part 3 http:www.bradford.ac.uk

Increased youth unemployment, high cost of living and increase levels of poverty. Regional inequalities and economic results due to partisan governance form a basis for argument of economic factors in explanation ethnic conflict in Kenya. The electioneering period of 2007 general elections was to some extent anchored on responding to economic factors which plagued the country. Despite attaining exceptionally good education, Kenyan youth have been reeling from unemployment and poverty. The problem is traceable back to the mid 1980s when the country began expanding, university education, which failed to absorb the growing band of secondary school leavers produced in the independence era. Incriminate expansion of secondary and tertiary education without concomitant creation of employment opportunities defeated the very purpose of education in the country.

Promising such youth employment, credit facilities and other goodies as happened in the 2002 electioneering by NARC, without ever fulfilling the promises was, therefore one of the greatest shortcomings of Kibaki's first term. Pledging to complete the stalled revolution, ODM no doubt became the party of choice for and by the youth; a party whose failure to capture leadership on fraudulent grounds never went down well with the youth. That the youth revolted was a predictable response.

4.8 Regional Inequalities

Kenya's imperial presidency had usurped the three arms of political governance, namely the legislature, the executive and the judiciary. During the Moi regime, the presidency played a triple role of having the prerogative to direct legislative, executive and judicial matters of the country. In his inaugural speech as President under the NARC government, Mwai Kibaki gave Kenyans the year- end message that the country would accede to the rule of law and that his presidency would desist from 'roadside announcements'.

But no sooner did the New Year dawn than the president embarked on roadside announcements and continued to play the triple role of being the de factor head of three arms of governance. He appointed the cabinet without recourse to those who had made NARC victory possible; continued with the ethnic nepotism formula to appoint top-brass civil servants and heads of state corporations, some of the appointees long past retirement age; and, on the recommendations of the Ringera Commission, his new government dismissed judges who had served Kenya for decades, allegedly for being corrupt and incompetent but who have never been prosecuted up to now. Kenyans believe this move was meant to make the judges scapegoats to let the President appoint judges who would support his rule at any price.

Ethnic nepotism characterized appointments in the public service. When NARC assumed the reigns of power in 2003, it announced that meritocracy would guide all appointments in Kenya. This never happened and, in fact, ethnic nepotism worsened after the November 2005 referendum when all appointments were confined to the Mount Kenya region. It is in the NARC regime that those aged 60 years or more dominated top-level appointments and ensured that younger, better qualified and more energetic Kenyans were kept at bay, never to be seen closer to the corridors of power. That the older government; they might still be keeping close to their treasure, which could be exposed once their appointments are terminated.

Invocation of the 'theory of ethnic nepotism' in Kanyinga's analysis of public appointments confirms consistency of ethnic nepotism. Jomo Kenyatta's Cabinet appointments favoured the Gikuyu. Moi followed suit, even appointing people who were unqualified for the position they encountered, leaving the appointees with simple options, namely embezzlement of public funds and corruption in high places. Daniel Arap Moi regime began with some modicum of equity in 1979, appeased the Gikuyu in 1982, and Gikuyu and

Luo in 1985 and 1987, and thereafter favoured the Kalenjin. the Luhya and the Kamba in 1994 and 1998.[210] Appointments before and after the Grand Coalition Government provides evidence of ethnicized political, civil service and state corporation appointments reminiscing Jomo Kenyatta's appointments in April 1974. Key institutions, among them the Cabinet, security chiefs and state corporations, including financial institutions are headed by Kibaki's appointees from the Mount Kenya region; appointees because, in Kenya, those are presidential appointments, unlike true democracies where some vetting of candidates is done[211].

4.9 Partisan Governance

All political regimes in the country have entrenched certain biases and prejudices of the past, which the general public, civil society organizations and the donor community have urged the regimes to redress. Successive Kenya regimes have established commissions to investigate particular issues of national importance, but their findings are rarely made public or their recommendations seriously considered. Nairobi and Central Kenya and Rift Valley during the time of President Moi have had the lion's share of Kenya's development, judging by various indices of regional disparity[212]. Regional inequality makes provinces drift further apart, creating even greater animosity. In the eyes of highly motivated voters, an ODM victory would redress regional inequalities and usher non-partisan governance, concomitant with regionalism.

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[210] Kanyinga, K.(2006) 'Governance Institutions and Inequality in Kenya', in *Readings on Inequality in Kenya*,Nairobi:Society for International Development

[211] Kanyinga
[212] Ibid

4.10 Imperial Constitution

The imperial constitution adopted at the Lancaster House Conference in London was a founding constitution from which Kenya has not deviated markedly. It has retained an imperial presidency often considered above the law – an institution that, with impunity, usurped the powers of the country's legislative, executive and judicial institutions. After Kenya African National Union (KANU) convinced Kenya African Democratic Union (KADU) to disband and join the government ranks and the Kenya Peoples Union (KPU) was proscribed in 1969, Kenya became a one -party state from 1969 to 1991. As president Moi gained a firm grip of leadership, his government changed the constitution in June 1982, thereby converting Kenya into a de jure one party state from 1982 to 1991.[213]

The tide of multiparty politics forced the regime to change the constitution again in 1992, ushering in an era of multiparty politics in which shreds of the imperial constitution still existed. Thus, periodic mutilation of the imperial constitution was meant to suit the powers that be and was hardly in the interest of the electorate. That constitution gave Kenya a deceptively smooth transition for independent governance and therefore, the misguided perception that the country was a bastion of peace in a politically volatile region.

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[213] Widner, Jennifer(1992) The Rise of a Party State: From 'Harambee 'to 'Nyayo'

CHAPTER FIVE

CONCLUSION AND SUMMARY

5.1 Chapter Summaries

Chapter one was the introduction of the study. The background of the study was dealt with in chapter one. The research's problem statement was dealt with in chapter one. It is from the problem statement that the fact that colonialism has contributed in fostering ethnic conflicts in post colonial Africa was highlighted. The objectives that were to guide the research were also stated in chapter one.

The relevant literature was reviewed in chapter one whereby the structural aspect of ethnic conflict came out clearly. The methodology unto which this research rests was also documented in chapter one. Another important segment of chapter one is the conceptual frame work several concepts which make the conceptual framework were explored. These include frustration aggression theory and human needs theory. Structuralism came out clearly and was supported by discussions in subsequent chapters.

Chapter two was the overview of ethnic conflicts in Kenya. The chapter had two sections one section dealt with some causes of ethnic conflict in Kenya. The other section dealt with the ramifications of ethnic conflicts in Kenya. Colonial administration legacy, land resources, leadership style in post independence Kenya was examined. Ethnicity and patronage as a cause of ethnic conflict was discussed. The Majimbo debate was also considered. This is due to the fact that a grievance for devolution was a major theme in the electioneering period of 2007 general elections.

Every conflict has an impact and ethnic conflicts in Kenya are no exception. Displacement, social impact, economic consequences, property damage, political consequences and economics of insecurity and state planning were discussed in the light of structural violence.

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There have been many ethnic conflicts in Kenya since the advent of multi party politics in 1991.Palliative measures have been taken without going into elaborate details of dealing with long term issues that would make the conflicts recur .Due to this ineffectiveness of dealing with conflict there have been ethnic conflicts in every election year. The worst was the post election violence of 2007-2008.The conflict attracted the attention of the international community whereby mediation efforts were led by former UN Secretary General Kofi Annan.

Chapter three of the research dealt with mitigation of ethnic conflicts in Kenya. Mitigation of ethnic conflicts in Kenya was seen in the lenses of the international mediation efforts since the mediation set pace for future reforms which would prevent ethnic conflicts in Kenya. The chapter was divided in two sections. One section dealt with immediate grievances that lead to the 2007-2008 post election violence. The other section dealt with the mediation from its process to its outcome.

Chapter four dealt with a critical analysis of the role of colonialism in Kenya and ethnic conflicts in her post independence history. The analysis was done within the frame work that related colonialism and its ramifications in relation to 2007-2008 post election violence. Themes emerging from other chapters and could apply to the analysis were considered. A perfect example of such a theme is the unresolved land problem which has haunted the Kenya government since independence. Another important aspect of culture emerged in the analysis. Stereotyping a mental posture that views members of other ethnic communities as the worst and one's ethnic group as good and superior emerged in the analysis. An imperial constitution according to the analysis has contributed to structural violence it was dealt in chapter four since it forms a direct linkage from colonial times due to its negotiation in Lancaster.

The elusive search of a new constitution that would deal with structural issues dominated debate prior to the 2007 General Elections. It was therefore imperative to deal with it in chapter four.

5.2 Recommendations

It has emerged from the research that most of the causes of ethnic conflicts in Kenya are structural. Scramble for scarce resources is a theme recurring in the research albeit in different manifestations. Land is featuring prominently as a cause of ethnic conflict. It is therefore the contention of the researcher that land issue as a long term issue should be divorced from the executive and an independent non partisan body deal with land issues. With the new constitution having been promulgated and land issues are dealt with justly it is waited to be seen how the stakeholders will handle the long term issue of land.

Stereo typing and its ramifications have had a negative effect in Kenya. Different ethnic groups have demonised each other and in turn animosity has breed. Several measures can be taken to reverse the situation. Through trust and confidence tours, ethnic groups that have been hostile to each other can learn to trust and to live harmoniously with each other. This can be achieved when a certain community decides to visit another community for a period of time where they will participate and learn about each other. A perfect example is last year's visit of the Kikuyu community of Kieni constituency in Nyeri to Bondo in Siaya and vice versa. In this children should be taught to value their own culture and heritage without being tribal in their orientation and thinking.

The school should introduce the subject of culture albeit not too technical for children whereby children will learn about different ethnic communities without poisoning their mind. Subjects like those should be taught from elementary school all through the university.

The education system should be such that secondary schools have a national outlook in that one is not confined only in their home district or province for secondary education. Should it be possible Kiswahili should be used as an instructional language in teaching subjects that have otherwise been taught in English. Intertribal sports competition with an aim of interaction should be encouraged. This would ease tension and suspicion since different ethnic groups will be free and confident with each other. Intermarriage is also an important way of building confidence and it should be encouraged. Impunity is a theme that came out as a grievance. It should be dealt with through the strengthening institutions of justice where no one is above the law.

Strengthening of the institution of the citizenry will be a good step towards the right direction. The recognition that citizens are important will make the leaders careful in their engagements with them. Devolution of power and resources is important since it will address the problem of inequality and there will be an equal distribution of resources. When resources are channelled down into devolved units of the country there will be opportunity for people to utilize and maximize their potential hence they will not be deprived of basic essentials of food water and shelter.

5.3 Limitation of the Study

The study did not utilize primary data to corroborate secondary data. The utilization of interviews and field data collection would have enriched the research whereby the emerging issues on colonialism and ethnic conflict in post colonial Africa would have been gotten directly from stakeholders and victims of ethnic conflict.

5.4 Area of Further Study

More research should be done on the impact of colonialism and the brunt it bore on the colonized people. An ethnographic research dealing with long term issues brought by colonialism with a potential of causing ethnic conflicts should be done. An interdisciplinary approach should be adopted while dealing with ethnic conflict management. The underutilized discipline of theology should be used while training peace builders who will manage ethnic conflicts.

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