Crisis Decision Making in East African Community Member Countries: A Case Study of 2007-8 Kenya Crisis

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DECLARATION

Student's Declaration

I declare that this research thesis proposal is my original work and that it has not been presented in any other university or institution for academic credit.

Franklin M. Mabeya   **Reg. No.: R50/62961/2010**

Signed: ....   Date: .15./.11./.2012....

Supervisor's Declaration

This research project proposal is submitted for examination with my approval as University supervisor.

Prof. Makumi Mwagiru

Professor of Diplomacy and International Conflict Management

Signed: ....   Date: ...17.|11.|12............

DEDICATION

I dedicate this research to my late mother, you were an inspiration and a role model to me. It hurts that you may not witness this but am sure you are proud of your *Motangi* from above.

ACKNOWLEDGEMENT

ABSTRACT

This study observes the nature of crisis decisions that were made during the Kenyan 2007-8 crisis. The volatility of the East African sub region and the prevalence of crisis and conflicts has necessitated a further inquiry as to examine international crisis decision making processes and structures within states and non state entities. It is notable that crisis especially political crises mostly require states and governments to make certain decisions that are aimed at resolving the crises and that, non state entities such as the EAC have a limited mandate or jurisdiction to intervene unless such crises are referred to them by the state(s) in the crisis.

This research will also endeavor to analyze EAC and Kenya's crisis decision making processes and structures while focusing more on their efficacy and ability to resolve crises. The research was based on library books, journals, internet and official publications from EAC for secondary data. Primary data on crisis decision making in EAC and Kenyan government, was collected using questionnaires and interviews with policy makers in the relevant ministries of Foreign affairs, EAC and Internal security and officials from EAC secretariat. The research concluded that there was indeed a clear crisis decision making process and procedure in Kenya during crisis and indeed a crisis decision making process and procedure in EAC but its limited during political crises due to the principle of sovereignty and non-interference enshrined in the EAC treaty.

The absence of that coordination in EAC on political crises was found to be retarding economic progress and political federation. A proposal was made to establish a clear body that deals with early warning and response mechanism to avert escalation of crises to violent levels.

LIST OF ABBREVIATIONS

AU — African Union

CEWARN — Conflict Early Warning and Response Networks

CCDSIR — Cabinet Committee on Defence, Security and International Relations

EAC — East African Community

EACSO — East Africa Common Service Organization

EAHC — East Africa High Commission

EACJ — East Africa Court of Justice

EALA — East African Legislative Assembly

ECK — Electoral commission of Kenya

ECOWAS — Economic Community of West African States

IEBC — Independent Electoral and Boundaries Commission

LRA — Lord's Resistant Army

MFA — Ministry of Foreign Affairs

NSC — National Security Council

NSAC — National Security Advisory Council

OAU — Organization of African Unity

OOP — Office of the President

ODM — Orange Democratic Movement

PNU — Party of National Unity

UK — United Kingdom

UN	United Nations
UNSC	United Nation Security Council
US	United States
USA	United States of America

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

Crises and their management are omni-present in human society, they occur on many levels other than the national and international ones.[1] More so, there is an increasing number and complexity of crises situations in the international arena and more so Africa in particular. International crises are dangerous episodes that can be destabilizing not only to the actors directly involved but also to the entire International system[2]. As Quinn and Asal notes, crises can present overwhelming challenges to established institutions and belief systems and change forever the distribution of power within International system or in a regional or Sub-regional system.[3]The events of the six weeks leading to World War I illustrate what may be one of the most costly examples of a mismanaged international crisis; the events constituted series of critical incidents that may well be a lesson for decision makers in crisis situations in what not to perform.[4]

As Bell notes that crises and conflicts between human groups (States or non-state entities) is not readily going to be organized or reasoned or resolved out of international relations. The propensity to conflict and crisis must be accepted as a continuing fact of human life.[5] This has precipitated the need of a proactive stance within the international community and individual member states especially through regional and sub-regional arrangements to developing mechanisms for crisis prevention, management and resolution. Significant efforts have been made by Africa's regional and sub-regional organizations and their member states to develop

[1] Hermann C F *'International Crises: Insights from Behavioral Research'* The Free Press, New York 1972 p269.
[2] Kelman, H *'International Crisis Behaviour: A social- Psychological Analysis'* New York, Winston Inc. 1965 p19.
[3] Asal,V et al, *'Mediating International Crises; Cross- National and Experimental Perspectives'*; Journal of Conflict Resolution, Vol. 47, No. 3 (2003) p280.
[4] Bell, C. *The Conventions of Crisis: A case study in Diplomatic management'* Oxford University Press, Oxford 1971 p6.
[5] Ibid p6.

mechanisms and adapt their structures in order to respond to crisis and conflict situations in the region. Many African conflicts and crises have roots in domestic politics. However, all these conflicts have a regional context and a domino effect, since; a conflict or crisis starting in one specific area may soon engulf the entire region because most African crises and conflicts spill over easily, thus making regional and sub-regional approach to resolution of conflicts and crises management imperative[6].

The Kenyan 2007-2008 crisis presented the regional organizations with a challenge on their sturdiness and efficacy in management of crisis before it turns to a violent conflict. As Mwagiru notes Kenya witnessed an electoral conflict soon after the elections which was sparked off with the announcement of the Presidential results that declared Incumbent president Mwai Kibaki of Party of National Unity (PNU) as the winner against his close challenger Hon. Raila Odinga of Orange Democratic Movement (ODM).[7] Mwagiru notes that within the first six weeks of the crisis over one thousand people had been killed and hundreds of thousands of people internally displaced.[8] As a response African Union (AU) and United Nations (UN) used their good offices to intervene in the crisis. The United States, United Kingdom, European Union (EU) and world powers and International Organizations supported the AU intervention. However the crisis raised some issues regarding the intervention in the conflict by sub-regional organizations especially the EAC.

1.2 Statement of the Research Problem

Kenya's political crisis in the aftermath of the contentious 2007 elections tested the solidarity, efficacy and sturdiness of Kenya's mechanisms and institutions tasked with

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[6] Zeleza,T.P and Nhema, A. '*The Resolution of African Conflicts: the management of conflict resolution*' Ohio University Press, Athens, 2008. p7.
[7] Mwagiru, M. '*The Water's Edge: Mediation of Electoral Conflicts in Kenya*' Institute of Diplomacy and International studies, Nairobi 2008 p27.
[8] Ibid p28.

management of crises and resolution of disputes. Whenever crisis occurs in a sub-regional organization such as EAC, members of that Sub-regional Organization are the ones who are affected in the event that the crisis is not quickly resolved or if the crisis turns to be violent. The Kenyan 2007-8crisis posed a great challenge to the government and exposed its crisis decision making mechanisms. Because events become crises as a result of being perceived as non-routine, unstable, less understood, and time-urgent, they require discretionary decision making, which is a leadership activity.

EAC partner states such as Kenya should have clear mechanisms and structures to respond to crises as soon as they are detected so as to ensure peace, stability and development of the sub-region. Poor response and a lack of crisis management mechanisms by EAC's partner states saw the crisis reach violent levels, lives were lost, economic activities not just of Kenya but also of the neighbouring countries such as the land locked countries of Uganda, Rwanda and Democratic Republic of Congo were affected. In this regard a crisis that was mainly a Kenyan crisis affected members of the sub-region.

Poor crisis decision making may prolong the crisis which may lead to escalation of violence. Despite Kenya's gradual recovery from the crisis, the EAC is still a sub- regional organization characterized by profound intra and inter-state conflicts and crises among its partner states. The key guiding question to this research is why Kenya's crisis decision making authorities unsuccessfully resolved in the 2007-8 Kenyan crisis?

1.3 Research Objectives

The objectives of this study are to:

- To examine out international crisis decision making processes

- Analyze EAC's and Kenya's crisis decision making process and structure.

- Investigate EAC's and Kenya's crisis decisions in 2007-2008 Kenya crisis.

1.4 Literature Review

1.4.1 International Crisis

It is virtually impossible to open a newspaper or watch the television news today without seeing some problem or issue described as a crisis. Policymakers and academics are equally fond of the term because of its evocative and provocative connotations. However, the widespread use (or overuse) of the term suggests that a rigorous specification is necessary if the notion is to generate anything other than confusion. Stern notes that a crisis situation is experienced by someone or something: an individual, a group, an organization, a society, or a state.[9] Hermann has attempted to give a salient definition of Crisis as illustrated in the statement below;

> "Specifically, a crisis is a situation that (1) threatens high priority goals of the decision unit, (2) restricts the amount of time available before the decision is transformed, and (3) surprises the members of the decision unit by its occurrence."[10]

Several preliminary comments and criticisms about this definition are in order. First of all, it should be noted that this conceptualization derives from subjective perceptions of the involved decision-makers. According to Hermann, the analyst's task is to "interpret the situation as it is perceived by the decision makers"[11]. In an early reformulation of this definition, Kelman notes how Holsti replaced Hermann's object of threat (high priority goals) with the more precise formulation "important values".[12] In a later reformulation, other scholars have further refined, deepened, and narrowed several components of the definition:

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[9] Stern E,K 'Crisis Decision Making: A Cognitive Institutional Approach' University of Stockholm Press, Sweden, 1999 p10.
[10] Herman, C F 'International Crises: Insights from Behavioral Research' The Free Press, New York 1972 p 177.
[11] Herman, C F '*International Crises: Insights from Behavioral Research*' The Free Press, New York 1972 p 177.
[12] Kelman, H '*International Crisis Behaviour: A social- Psychological Analysis*' New York, Winston Inc. 1965 p110.

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Viewed from the perspective of a state, Stern notes that a crisis is a situation with three necessary and sufficient conditions, deriving from a change in its external or internal environment. All three are perceptions held by the highest level decision-makers: (1) a threat to basic values, with a simultaneous or subsequent awareness of (2) a finite time for response, and of the (3) high probability of involvement in military hostilities.[13] The above definition discards Hermann's surprise and or Holsti's un-anticipation criteria. The scholars chose to eliminate surprise on the grounds that it was difficult to operationalize, noting that Hermann himself subsequently distanced himself from this aspect of the definition. However, as Stern notes, that even if one rejects this criterion on pragmatic grounds and as an unnecessarily limiting condition, one should keep in mind that to the extent that a particular crisis problem is not anticipated, and thus there is a relatively low level of psychological and organizational planning and preparedness, a correspondingly greater degree of improvisation will be required in making crisis decisions.[14]

Stern however, concurs with Hermann, that alternatively crisis situations may simultaneously threaten actors bound up in a bilateral relationship or a system (a coherent and relatively integrated network of relationships) such as a regional sub-system or the international system at large.[15] The systemic approach according to most scholars, describes how a crisis taking place between a two or more states within a given international system, fits to that system and is affected by it. Frei also concurs with Hermann by arguing that a crisis situation prevails whenever an international conflict reaches a level of hostility at which the use of large scale

[13] Stern E,K 'Crisis Decision Making: A Cognitive Institutional Approach' University of Stockholm Press, Sweden, 1999 p10.
[14] Ibid p11.
[15] Kelman, H 'International Crisis Behaviour: A social- Psychological Analysis' New York, Winston Inc. 1965 p110.

force seems to be imminent or highly probable to the decision makers concerned or has already occurred.[16]

On the other hand, Hermann's notion about a decision- maker approach is from a single-state perspective, that an international crisis exists only when the decision makers perceives it to be so. In this approach it is the decision maker's subjective view of the world that really counts, and not objective reality. Hermann argues that those analysts who have studied crisis using decision making framework display no more agreement regarding the definition of crisis than do their counterparts who have applied the systemic approach.[17] He further stipulates a definition of crisis as a situation that threatens high priority goals of the decision making unit, restricts the amount of time available for response before the decision is transformed and one that surprises the members of the decision making unit by its occurrence.[18]

A crisis can therefore be defined from the decision maker approach, to be a major threat to system survival with little time to respond, involving an ill-structured situation, and where resources are inadequate to cope with the situation.[19] Although a crisis calls into question the survival of a system, it can lead to either positive or negative organizational outcomes depending on the decisions or responses taken.

Scholars and researchers alike have posited a variety of behaviors that will occur within organizations faced with crisis. Mishra and Staw agree that the threat-rigidity effect hypothesizes that in response to crisis, communication complexity is reduced, power and influence become centralized, and concern for efficiency increases, leading to conservation of resources and greater

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[16]Frei, D. '*International Crises and Crisis management- An East West Symposium*' England Saxon House 1978 p6.
[17] Hermann, C. '*International crises: Insights from Behavioral Research*' The Free Press, New York, 1972 p13.
[18] Ibid p15.
[19] Kelman, H '*International Crisis Behaviour: A social- Psychological Analysis*' New York, Winston Inc. 1965 p110.

behavioral rigidity in organizations.[20] Individuals may also underestimate the extent to which their own behavior contributes negatively to an organizational crisis, thus reducing their flexibility of response. Frei argues that in making a proper decision during a crisis long-term strategic choices must determine the more technical measures taken during a crisis period and that a comprehensive scheme under which all resources are combined in such a way to make the maximum contribution to the achievement of its goals.[21]

1.4.2 Decision Making

When organizational theorists speak of organizational decision making they refer to the decision making process that occur at all levels and in all units of an organizations. According to theorists, decision making refers to the process that occurs at all levels and in all units of an organization. Hatch has noted that in most traditional organizations, top management focuses on strategic decisions, middle level management emphasize decisions and coordination among the units and lower level management are responsible for decisions about day to day operation activities within the assigned units.[22]

Several conceptions have evolved concerning ways in which individuals, groups, organizations, nations and international systems make decisions.[23] According to Snyder, the classic conception of decision making theory has its origins in economic theory and was influential in business and public administration for a long time. It assumed a decision- maker as a rational person who knew all possible alternatives, understood the possible consequences of each of these alternatives, and had arrived at a clear hierarchy of preferences among them.

[20] Mishra, A 'Organizational responses to Crisis: the Centrality of trust' Newbury Park, CA: Sage. 1996. 261-287. p 261.

[21] Frei, D. 'International Crises and Crisis management- An East West Symposium' England Saxon House 1978 p66.

[22] Hatch, M. 'Organizational theory: Modern Symbolic and Post Modern perspectives' London, Oxford University Press 1977 p272.

[23] Snyder C. Decision Making in International Politics' New York, Winston Inc. 1965 p437.

Hatch has similar views as Snyder and notes that traditional economists assume that the rational model drives decision making in organizations. According to him, the rational model in decision making begins with definition of a problem and the collection and analysis of relevant information that serves as the frame for the decision making activity.[24] The next step under this model is to generate and evaluate as many alternatives as possible, considering the likelihood of both positive and negative consequences of the decision made. This is followed by selection from among the alternatives on the basis of criteria that have been worked out in advance and are related to the objectives of the organization.

However, this approach which was popular in the eighteenth and nineteenth century has been severely criticized by twentieth century scholars and students. For instance, Hermann criticizes the logical and psychological tenacity aspect of this conception of decision making. He argues that logically, the possible creation or discovery of an additional alternative cannot be excluded and; psychologically, a decision-maker is incapable of performing the immense mental activities required by the assumptions of economic man.[25]Simon agrees with Hermann by identifying and questioning the assumptions of the rational model. He points out that the rational model assumes that decision makers have knowledge of their alternatives and of the consequences of implementing those alternatives. On the basis of Simon's comparison of actual decision making activities with the ideal set forth in the rational decision making model, he argues that attempts to be rational in organizations are limited by imperfect and incomplete information, the complexity of the problems, human processing capacity, the time available for decision making process and the conflicting preferences of decision makers. To further disagree with this conception of decision making Simon gives an apt description by stating that,

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[24] Hatch, M. *'Organizational theory: Modern Symbolic and Post Modern perspectives'* London, Oxford University Press 1977 p272.
[25] ibid p438.

'Our world is a world of limited, serial information processors dealing with complexity that, for all practical purposes, is infinite in comparison with their information gathering and computing powers. It is a world peopled by creatures of bounded rationality'.[26]

To substitute for this conception of decision making which he refers to maximizing behavior, Simon proposed a satisficing behavior conception.[27] His understanding of decision making is that it is an activity that considers alternatives sequentially until one that seems good enough to meet one's requirements is found and then adopted.

In contrast to the rational man model, the satisficing model introduced to the modern world the notion that interests or pressures are decisive factors in decision making. It emphasizes decision making as a social process rather than an individual intellectual process and identifies mechanisms of group and inter group activity that tend toward decision.[28] Misra defines a political process as a mutual modification of images through the process of feedback and communication[29]. According to him, different types of organizations are available for performing the political function in a social system. These range along a continuum that measures the degree to which feedback mechanisms report non-leader responses to leader stimuli, which may then be altered in light of the new messages.

Misra builds on Boulding thinking and sets forth seven functional categories for the analysis of any decision.[30] The categories correspond to chronological stages through which decision makers proceed in making and executing a choice. These chronological stages or functions are firstly, Information (which entails problem identification and search) Recommendation

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[26]Kelman, H 'International Crisis Behavior: A social- Psychological Analysis' New York, Winston Inc. 1965 pp 437.

[26] Ibid p438.

[27]Snyder R, Bruck H. et al, 'Decision Making as an approach to the study of international politics' New York, Free Press 1962 p221.

[28]Kelman, H. 'International Crisis Behavior: A social- Psychological Analysis' New York, Winston Inc. 1965 p437.

[28] Ibid p442.

[29]Misra, A. 'Organizational responses to Crisis: the Centrality of trust' Newbury Park, CA: Sage. 1996. 261-287. p261.

[30] Ibid p263.

(Proposed alternatives), Prescription (sanctioned selection of alternatives), invocation (general enforcement), application (specific enforcement), appraisal (review) and termination (conclusion of decision).[31] McDougal argues that this conception has had a decisive influence in judicial decision making, including international law[32].

Kelman, suggests an alternative way of conceiving of policy-making in terms of a typology of decision of decisions or policy processes.[33] According to this model, a universal process is not postulated; rather numerous processes are proposed to encompass a wide and inclusive range of phenomena. He further argues that one of the virtues of a typology is that it readily suggests hypothetical links between each of the types and such factors as the conditions under which this particular type of process will be employed, the relation of process to system, and the consequences for policy outcomes if the particular process is employed.

From this literature, there is a consensus and agreement among scholars and researchers alike that international decision making broad as it is as an object of study, is not an equivalent to the whole of international relations. Whether decision making is the same as or more than foreign policy making or perhaps comparative foreign policy making is a recurring question.

Kelman argues that in decision making, selection of choices has to be made even when decision makers have no choice about dealing with problems, problems must be interpreted, categorized and defined.[34] He gives the example of the Korean invasion of South Korea in 1950-the United States could have interpreted it as Russian inspired and could have read the intentions

[31] Snyder R, Bruck H. et al, 'Decision Making as an Approach to the Study of International Politics' New York, Free Press 1962 p221.
[32] ibid p242.
[33] Mishra, A 'Organizational responses to Crisis: the Centrality of trust' Newbury Park, CA: Sage. 1996. 261-287. p 261.
[34] Ibid 1988 p12.

of the Beijing government in several ways – United States could not avoid some response some response to the invasion.[35]

Contemporary scholars are have also posited about the need to have a dynamic model of organizational decision making. It involves more than one model of decision making process that occurs within any organization and can even occur at the same time. According to Hatch this can be envisioned by imagining all of the decisions being made throughout an organization viewed from the organizational level of analysis.[36] The dynamic model argues that, despite the decision model taken, a dynamic view sees all the models of decision making process as a means of working through uncertainty and ambiguity in the act of creating and re-creating organizations.

Hatch argues that the dynamic model perspective links ambiguity and uncertainty to disagreements over goals and methods and that as decision makers work through uncertainty in their methods, organizational decision making process shift from different decision making models.[37] Thus, the use of more than one model of decision making in an organization is likely to be on-going. Hatch notes that this dynamic view forms a grand narrative of decision making in the sense that all forms of decision making are embraced within a single contingency framework. It further reinforces the ideal of rationality association with institutional norms and thus participates in managerial hegemony.[38]

[35]Kelman, H. 'International Behavior: A Social- Psychological Analysis' Winston Inc. New York. 1965 p 438.

[36]Hatch, M. 'Organizational theory: Modern Symbolic and Post Modern perspectives' London, Oxford University Press 1977 p279.

[37]Hatch, M. 'Organizational theory: Modern Symbolic and Post Modern perspectives' London, Oxford University Press 1977 p277.

[38]Ibid p285.

1.4.3 Crisis Decision Making in EAC

Kenya's political crisis in the aftermath of the contentious 2007 elections tested the solidarity, efficacy and sturdiness of regional and sub-regional mechanisms tasked with conflict resolution in Africa and in particular within the East Africa sub-region. Kenya is a member of two Sub-Regional organizations namely East African Community (EAC) and despite years of elaborate attempts to build diverse institutions for conflict early warning, conflict prevention and management within the EAC, the Sub-regional organization at the time seemed ill prepared or totally unprepared for the crisis that engulfed its leading member state, Kenya. Mwagiru notes that the idea of using Regional Organizations in conflict management in their regions is anchored on the idea that that these organizations are able to fractionate conflicts better, they have a better understanding of the background of the conflict and thus are more effective managers.[39]

The East African Community (EAC) as a sub-regional organization comprises of five member countries Namely; Kenya Uganda and Tanzania, Rwanda and Burundi. The EAC traces its origins back to the colonial times as the East African Protectorate. The initiative to integrate East African was started by the British Colonialists prior to the 1960.[40]Oyugi notes that the colonial administration argued that successful development of the region could best be achieved through integration. However, soon after independence EAC member countries had a bone of contention whether to accept it in totality what the British had established regarding integration or to adjust them according to the national and to the national and regional needs.[41]

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[39]Mwagiru, M. '*The Water's Edge: Mediation of Electoral Conflicts in Kenya*' Institute of Diplomacy and International studies, Nairobi 2008 p27.
[40]Oyugi W. '*Politics and Administration in East Africa*' Nairobi, East African Publishers, 1994 p245.
[41]Mwaseba, J.J. '*Proposed Political Federation of EAC: Benefits to Tanzania*' Carsile Military University, PA, (2010)

The EAC was established in 1967 after the signing of the EAC treaty of cooperation. Oyugi notes that the treaty dealt mainly with economic activities in the region and that political issues were casually mentioned, thus EAC member countries had a desire for the wider unity of Africa and resolved to cooperate with other African countries in economic, political and cultural fields.[42] However the main objective of EAC as was created was to strengthen and regulate the Industrial, commercial and other relations of the member states and it was designed to achieve acceptable distribution of benefits of cooperation between member states. The treaty also conferred a legal personality on EAC as a sub-regional organization; hence the EAC could enter into agreements or contracts with other international entities on behalf of member states.

EAC member countries, as earlier posited by Mwagiru, should be alive to the systemic nature of conflicts within the region which is anchored on the notion that a conflict occurring in one member country has a definite spill over to other countries within the region. It is out of this notion that EAC should respond to crises and conflicts as soon as they occur. The EAC has a decision making structure that is enshrined in the EAC treaty. Article 9 (1) of the treaty provides for the establishment of the organs and institutions of the community, with the highest decision making organ being the Summit.[43]

During the Kenya crisis a leading role of EAC as sub- regional organizations in managing the Kenyan 2007-8 electoral crisis is not evident. Mwagiru notes that stakes may be too high for the sub-regional organizations and such organizations may not have the capacity to deal with primarily internal conflicts, and that they lack material and personnel resources to manage the conflicts effectively.[44] As Mwagiru further notes, Orange Democratic Movement (ODM) turned

[42] Oyugi W. 'Politics and Administration in East Africa' Nairobi, East African Publishers, 1994 p245 p267
[43] Kenya, 'Treaty for East African Community' Government Printer, 2010.
[44] Mwagiru, M. 'The Water's Edge: Mediation of Electoral Conflicts in Kenya' Institute of Diplomacy and International studies, Nairobi 2008 p24.

down the possibility of having a EAC led process in the management of the crisis by noting a statement by Mr. Odinga that, 'He (Mr. Odinga) did not trust the leaders in East Africa after it was suggested that perhaps the EAC could be a possible mediator.'[45]

Mwagiru, has also noted in his analysis of the 2007-2008 Kenyan crisis, that EAC did not respond to the crisis at all, and further notes that the partner state leaders who are essentially the top decision makers in the EAC as an organizations chose to remain silent except President Museveni of Uganda.[46] President JakayaKikwete of Tanzania later participated in the mediation process, a role he played as the newly elected chairman of the African Union (AU) and not as a member of EAC.

He further notes that President Museveni who was the then chairman of EAC attempted a mediation process during the crisis and actually got in touch with President Kibaki, Hon. Raila Odinga and Tanzania's President Kikwete with a possibility of the EAC's help to reach solution. However, President Museveni's attempt to mediate in the Kenyan Crisis was not viewed as EAC's led process but rather an individual effort. Mwagiru writes,

> 'As a commentator noted about Museveni's mediation efforts, there is a clear reason why he wanted to mediate in the Kenyan conflict, apart from the fact that he was the chairman of EAC, Museveni had been trying to reinvent himself, ever since damaging his reputation by pushing for constitutional amendments in Uganda that placed him in the path of president for life.'[47]

Despite the EAC's lackluster response to the Crisis that engulfed its leading member state, it is worth to note that the EAC was actively represented at the elections observer bodies by the East African Community Observer Mission (EACOM). According to Mwagiru the EACOM

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[45]Mwaseba, J.J. *'Proposed Political Federation of EAC: Benefits to Tanzania'* Carsile Military University, PA, (2010)

[46]Mwagiru, M. *'The Water's Edge: Mediation of Electoral Conflicts in Kenya'* Institute of Diplomacy and International studies, Nairobi 2008   p26.

[47]Mwagiru, M. *'The Water's Edge: Mediation of Electoral Conflicts in Kenya'* Institute of Diplomacy and International studies, Nairobi 2008   p29.

issued a report regarding the electoral process and cited the delay in the announcement of the results and mismanagement of the tallying process as some of the factors the factors that critically undermined the credibility of the final stages of the electoral process.[48]

1.5 Theoretical Framework

The study is anchored on two main theories one from international crisis management namely, organizational decision making theory, and the other from systems theory. The theoretical basis of organizational decision making model is a key component in International crisis management. The main proponents of this theory are Hermann and Brady. According to them the model rests not upon the effects of crisis but rather on the opportunities and changes crisis situations bring to the decision makers in an organization.[49]According to organizational decision making model, participation in the decision regarding the treatment of an international crisis is limited to a small group of individuals. Hermann and Brady note that the model is alive to the assumption that individuals charged with decision making in contemporary nations are embedded in large, hierarchically structured organizations; A concept that will be studied in the analysis of the hierarchical and structural of EAC as an organization. However, the theory has assumptions that on the idea that International crises are defined by those in top leadership of organizations and governments as extremely important issues.

As Hermann and Brady notes,
'In an international crisis, participation in decision making as to the treatment of the situation will primarily be limited to a small group of individuals from the highest level of governments,'[50]

The highest decision making organ in EAC is the Summit which comprised of the five Heads of States and Governments from the partner states. Organizational decision making model

[48]Hatch, M. *'Organizational Theory: Modern Symbolic and Post Modern perspectives'* London, Oxford University Press 1977 p29.

[49] Herman, C,F 'International Crises: Insights from Behavioral Research' The Free Press, New York 1972 p 286.
[50]Ibid 269.

holds the view that crisis decisions are concentrated in the hands of small number of government leaders, thus crisis decision making can be contrasted with normal decision making- in which a large number of individuals at various levels are involved although this is not the purpose of this research. Hatch agrees with Herman by arguing that, since most of the participants in the decision making unit are high ranking officials in the Organization, they have authority to bypass established procedures, authorize innovations in operations and otherwise establish new and innovative procedures that seem appropriate in the immediate crisis situation.

The systems theory is also significant in this research study. The theory is based on the notion that a crisis that happens in one area will transgress borders and will spill over to neighboring countries. An idea Mwagiru refers to as interconnection of a conflict with other conflicts in a region.[51] He further argues that in systems theory, the world has a linear organization with patterned interactions in which behavior has a rhyme and reason. The systemic analysis of crises is important in this research because the 2007-2008 Kenyan crisis also transgressed its borders through the systemic level and also in the internationalization of conflicts to its neighbors within the East African Community and beyond.

1.6 Hypothesis

1. There is international crisis decision making process and procedures

2. EAC and Kenya government has a Crisis decision process and procedure

3. EAC and Kenya government did not make any crisis decisions regarding the 2007-8 Kenya crisis.

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[51] Mwagiru, M. *'Conflicts in Africa: theory Processes and Institutions of Management'* Institute of Diplomacy and International Studies, University of Nairobi, Nairobi, 2006 p71.

1.7 Research methodology

Both primary sources and secondary sources of data will constitute the main sources of this research study. Library research and primary data will constitute the source of data investigation. Consequently, the library research is essentially documentary hinging majority of the sources on secondary sources of information.

Primary sources of data will be collected from questionnaires and interviews from the EAC decision making organs, the Kenyan Ministry of East African Community and other relevant agencies. Therefore primary sources of data will be collected, coded and organized into themes and then analyzed.

The secondary sources of information include; books, articles, journals, magazines, newspapers, treaties, public documents, reports, periodicals and other relevant materials.

In doing the so, this research project will mainly focus on qualitative skills, although quantitative skills may be applied. The study will carry out two focused group discussions of one for a group of community and a second for justice and peace and development coordinators in EAC. Structured questionnaire will be administered to the EAC secretariat offices in Nairobi and Kisumu and the Ministry of EAC in Kenya. Key informants to the study will be the EAC secretariat, Permanent Secretary in the Ministry of EAC in Kenya, while a structured questionnaire will be administered to relevant people at the ministry of Foreign affairs.

1.8 Sampling Procedure and Sample Size

The quality of any research is influenced by the appropriateness of methodology, instrumentation and suitability of the sampling strategy that has been adopted[52]. A combination of random, stratified and purposive sampling procedures will be used to select participants from whom information will be sought on crisis decision making. Purposive sampling will be used to

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[52] Manion*et al* (2001) *Research Methods in Education*. Routledge Falmer: London.

select the EAC secretariat, the Ministry of EAC in Kenya and technical/programme officers while stratified sampling technique will be used to stratify county representatives, development coordinators and justice and peace coordinators from the EAC offices found in Kenya.

1.9 Chapter Outline

Chapter One: This is chapter mainly entails Introduction to the Study. This section presents the back ground of the study, Literature, Objectives, Hypothesis, and Justification of the study.

Chapter Two: The chapter will endeavor to dwell on the major theme of the study. The chapter will assess Crises within the EAC member countries, the participation and role of EAC in Crisis management.

Chapter Three: This chapter will entail a discussion of Decision Making in EAC and Crisis Decision Making in Kenya, particularly in relation to its' participation in regional crises. The chapter will identify the efficacy, challenges and strengths of EAC's and Kenya's decision making structure and its response to crisis once they are detected.

Chapter Four: The Chapter will involve critical analysis of Kenya's Crisis decision making regarding the Kenyan 2007-2008 crisis. The focus will mainly be on the salient crisis decision making process and procedure within Kenya and EAC that were made during the Kenyan 2007 crisis.

Chapter Five: The Chapter will entail a summary, conclusion and recommendation of the study. It will seek to establish the gains, failures and opportunities of crisis decision making processes as sub-regional organization and offer suggestions on areas of future research.

CHAPTER TWO

CRISES IN THE EAST AFRICAN COMMUNITY

2.1 Introduction

Hermann's definition of decision-making crisis stands out as a seminal contribution to the development of this research thesis: According to Hermann, Specifically, a crisis is a situation that (1) threatens high priority goals of the decision unit, (2) restricts the amount of time available before the decision is transformed, and (3) surprises the members of the decision unit by its occurrence.[1] Several preliminary comments about this definition are in order. First of all, it should be noted that this conceptualization derives from subjective perceptions of the involved decision makers. Stern agrees with Hermann by arguing that, the analyst's task is to "interpret the situation as it is perceived by the decision makers". In an early reformulation of this definition, Holsti replaced Hermann's object of threat high priority goals with the more precise formulation important values.[2]

In a later reformulation, scholars further refined, deepened, and narrowed several components of the definition: Viewed from the perspective of a state, a crisis is a situation with three necessary and sufficient conditions, deriving from a change in its external or internal environment. All three are perceptions held by the highest level decision-makers: (1) a threat to basic values, with a simultaneous or subsequent awareness of (2) afinite time for response, and of the (3) high probability of involvement in military hostilities[3]

[1] Stern E,K 'Crisis Decision Making: A Cognitive Institutional Approach' University of Stockholm Press, Sweden, 1999 p25.
[2] Holsti, O. 'Crisis Escalation War.' London, McGill-Queen's University Press (1972) p102.
[3] Hatch, M. 'Organizational Theory: Modern Symbolic and Post Modern perspectives' London, Oxford University Press 1977 p33.

According to some authors like Hermann and Stern, argue that basic values encompass two clusters of values: "core values" and "high priority values".[4] Core values are closely associated with the state itself, irrespective of the particular government in power – such as "survival of a state and its population, the avoidance of grave damage through war". High priority values "derive from ideological or material interests as defined by decision-makers at the time of a specific crisis".[5] These latter values may include decision-makers' concern for their reputations and their ability to remain in power. Thus political considerations as seen as a potential object of threat and thus a source of crisis stress for decision-makers.

Stern notes that Hermann's definition, while it was created with the state and possibly international organizations in mind, is clearly applicable to other types of organizations, such as provincial, state (as in a federal system), or city governments, as explicitly stated in his writings.[6] A number of other scholars have asserted that non-governmental organizations like corporations and non-profit organizations can legitimately be conceived of as potentially crisis prone.

During crisis times the assessment of political influence and power in complex processes of crisis decision-making is an important, but also a difficult, issue.[7] It is important because the phenomena of influence and power are elementary aspects of political and social life and therefore among the main themes of current social sciences; it is difficult because influence and

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[4]Stern E,K 'Crisis Decision Making: A Cognitive Institutional Approach' University of Stockholm Press, Sweden, 1999 p25.
[5]Herman, C,F 'International Crises: Insights from Behavioral Research' The Free Press, New York 1972 pp 290
[6]Stern E,K 'Crisis Decision Making: A Cognitive Institutional Approach' University of Stockholm Press, Sweden, 1999 p25.
[7]Hatch, M. 'Organizational Theory: Modern Symbolic and Post Modern perspectives' London, Oxford University Press 1977 p277.

power are essentially contested concepts and, moreover, quite hard to measure objectively, particularly so in complex decision-making.[8]

2.2 Crisis Management

Crises have been and will always be with us. This observation follows from two lines of reasoning. The first argument, based on extensive empirical research, tells us that crises are the normal outcome of a coincidental mix of widely available ingredients. Indeed, accidents, environmental hazards, and sloppy management are themselves normal.[9] The second line of reasoning, which builds on conventional wisdom in the fields of public administration, policy studies, and political science, reminds us that governments do not like to invest in safety for a variety of reasons. What we do know is that crises occur when the normal processes in a given social system are disturbed.

According to Dayton, Crisis researchers of many kinds have identified a range of factors that can cause such disruptions, often categorizing them by the level of the system at which they occur.[10] He further argues that, Individual factors are generally categorized at the micro-level. In most if not all crises, human errors appear to play a crucial role. Humans err, and they do so in many ways. Researchers continue to develop remedies for human error and may well succeed in limiting the impacts of blunders and mistakes, but it seems unlikely that such error can be eliminated altogether. If human error is inevitable, we should ask under what conditions it will cause a crisis.[11]

At the meso-level of inquiry, the focus is on organizational factors and processes that may play a role in causing crises. Price argues that, the crucial question here is whether organizations

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[8]Stern E,K 'Crisis Decision Making: A Cognitive Institutional Approach' University of Stockholm Press, Sweden, 1999 p25.
[9]Ibid p35.
[10]Dayton, B.'Managing Crisis in the Twenty First Century' International Studies Review (2004) 6, 165-194.
[11] Dayton, B. 'Managing Crisis in the Twenty First Century' International Studies Review (2004) 6, 165-194.

can compensate for both the human limitations and environmental factors that facilitate crises.[12]

We can distinguish, on one side of this issue, a group of researchers who argue that most organizations are unable to prevent human errors or alleviate the consequences of human failure. Quite the contrary, they argue that organizations tend to bring crisis; Through a combination of sloppy management and an inherent blind spot for recognizing when significant changes are happening (for better or worse), organizations contribute to crises in the making. In effect, as Turner has taught us, the rationally organized bureaucracy that prominent feature of modern society can quite efficiently translate human errors into crisis outcomes.[13] This combination of normal human errors and normal organizational forms makes for "normal" crises.

At the macro-level of analysis, theorists argue for other powerful causes that seem to make crises more or less inevitable and unavoidable features of modern society.[14] One of the most persuasive authors in this vein, Perrow, who contends that large technical systems will sooner or later produce a disaster as the result of sheer potential (for instance, nuclear energy), technical complexity (few people can understand what goes on inside a nuclear power plant), and tight coupling (one malfunction leads to another).[15] Others like Sagan, emphasize that environmental pressures lead organizations to emphasize efficiency and output targets over safety goals.

Crisis managers, experience a crisis as a situation in which a threat to the system's basic structures or values must be dealt with urgently and under conditions of uncertainty or, as Dror says, of inconceivability.[16] The threat of crisis can be the threat of death or damage, but it also often refers to invisible and intangible perils that can destroy a community. A crisis brings

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[12] Price, J.T. 'Behavior Modes: Towards a Theory of Decision making' Journal of Politics, Vol. 37 No. 2 (1975) p 417-435.

[13] Dayton, B. 'Managing Crisis in the Twenty First Century' International Studies Review (2004) 6, p165-194.

[14] Ibid.

[15] Langely, A. et al, 'Opening up Decision Making: The view from the Black Stool' Organizational Science, Vol.6, No 3 (1995) pp260-279.

[16] Dayton, B. 'Managing Crisis in the Twenty First Century' International Studies Review (2004) 6, p165.

uncertainty with regard to the specific nature of the threat, peoples' responses, and the dynamics of the situation, possible solutions, and future consequences. Crises usually induce a sense of urgency among those with the responsibility for managing them. It is, of course, the perceptions of decision makers, rather than some set of predefined conditions, that count.[17]

Responding to crisis is a serious challenge because a crisis demands critical decisions that must be made in awkward circumstances. Moreover, crises generate barriers to high-quality decision-making processes. Indeed, common problems multiply exponentially. According to Dayton, Crisis managers must solve complex dilemmas without the information they require, in fluctuating organizational settings marked by bureau politics, and under conditions of severe stress[18]. If we consider the dilemmas that emerge during crises, crisis management may well be considered an impossible job.

For instance, crisis managers must decide during the initial phase of a crisis whether they are dealing with "the real thing" or with a signal of crises to come. From limited and fragmented information, they have to consider whether they are dealing with the full story or only the beginning of the story.[19] Bruce has posited to illustrate that this dilemma has consequences for the allocation of resources: Should all resources be committed to what appears to be the crisis or should we wait until we have a more complete picture of the situation?[20] This dilemma becomes even sharper during wars and incidents of terrorism that are marked by disinformation campaigns, surprise attacks, and a variety of venues.[21]

[17]Langely, A. et al, 'Opening up Decision Making: The view from the Black Stool' Organizational Science, Vol.6, No 3 (1995) p260-279 p166.
[18] Ibid p188.
[19] Dayton, B. 'Managing Crisis in the Twenty First Century' International Studies Review (2004) 6, pp 177
[20]Dayton, B. 'Managing Crisis in the Twenty First Century' International Studies Review (2004) 6, pp 185
[21] Price, J.T. 'Behavior Modes: Towards a Theory of Decision making' Journal of Politics, vol. 37 No. 2 (1975) p417-435.

Furthermore, Bruce has argued that, crisis managers must wrestle with the organization of crisis decision making.[22] Crises exert upward pressure on routine decision-making structures. Through centralization in the hands of a small group of people, formal and often arduously slow decision-making routines may be effectively circumvented. Typical examples are found in the democratic countries that provide government leaders with far-reaching powers in case of crisis. Even though centralization has proven to be an enduring feature of most crises, situations do occur during every crisis in which forms of decentralization are allowed or even encouraged.[23] It may be necessary to let lower-level authorities decide. There may be strategic considerations behind the (temporary) delegation of decision-making authority.[24] However, the iron law of crisis holds central authorities responsible for the outcome regardless of how hard they may try to shift blame to lower levels.

2.3 Role of EAC in Crisis Management

Regional and Sub-Regional organisations such as EAC play many different roles in social, economic and political developments within and at times outside their region especially in new and emerging democracies. These roles-and their impact-become particularly interesting during situations that develop into 'crises.[25]

As Frei notes, the so called 'Post-war period' has experienced more than one hundred wars and it is just a tip of the iceberg of the crisis ridden contemporary international system.[26] In essence the international system is made up of a highly and sensitive network of political and economic interdependence, hence, any local crisis inevitably has its effect on the whole system.[27]

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[22] Dayton, B. 'Managing Crisis in the Twenty First Century' International Studies Review (2004) 6, pp 185
[23] Ibid p189.
[24] Price, J.T. 'Behavior Modes: Towards a Theory of Decision making' Journal of Politics, vol. 37 No. 2 (1975) p417.
[25] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Havard University Press (1967)
[26] Frei, D. 'International Crises and Crisis Management – An East-West Symposium, England, Saxon House (1978).
[27] Ibid p125.

It is for this reason that regional and sub-regional organizations should be designed to nip crises at the bud as soon as they are detected so as to ensure stability and economic development of the region.

The increasing number and complexity of crisis situation in Africa and the declining role of the distant international organizations and international community has led to many Regional and sub-regional organizations to take a more proactive stance in their attempt to find solutions to their own problems. As Mulu notes, significant efforts have been made by African regional and sub-regional organizations and their member states to develop mechanisms and adapt their structures in order to be able to respond to crisis situations.[28] However, the intention of this research project is to analyze the structural, logistical, operational and financial capabilities of EAC as a sub-regional organization in its ability to respond to crises situations within the sub-region.

Scholars such as Zeleza, Oyugi and Mulu, are in agreement that regional and sub-regional organizations in Africa without exception of EAC were created to respond to the economic and social development needs of their member states.[29] Actually from the EAC treaty to 1967 it is worth to note that it is on the basis of economic integration that the treaty was signed. None of the sub-regional organizations had the vocation to deal with internal or interstate conflicts and no serious attempts were made to include this in their mandates until the 1990's.[30]

The EAC as a sub-regional organization has provisions in its treaty that call for peaceful settlement of disputes and good neighborliness among its partner states. Article 5 (3) (f) states

[28]Mulu, F. 'The Role of Regional Organizations in conflict Management: Igad and the Sudanese Civil War' Catholic University of East Africa publication, 2006 p10.
[29]Mugomba A, Regional Organizations and African Underdevelopment: The Collapse of the EAC.' Journal of Africa.Modern Studies, vol. 16 NO. 2 (1978) p. 261-272
[30]Katembo, B. 'Pan Africanism and East Africa Integration: The East African Community Model' Journal of Pan-African studies, Vol. 2. No. 4 (2008) p105.

that the objective of the community shall be the promotion of peace, security and stability within, and good neighborliness among, the partner states.[31] In Article 6 which outlines the fundamental principles of the Community states that;

> The fundamental principle that shall govern the achievement of the objectives of the community by the partner states shall include (1) peaceful coexistence and good neighborliness and (2) peaceful settlement of disputes among others. Whereas the treaty provides clauses in its treaty that call for peaceful settlement of disputes, the treaty is silent on how disputes will be solved and by which organ on the Community.[32]

However, it is worth to note that great strides are being made to ensure that the EAC as a sub-regional organization is well prepared to deal with crises as soon as they are detected within the region. First, there are protocols that are in formulation stage in the individual partner states dealing with conflict early warning mechanisms, there is also a protocol on provision of stand by eminent persons who will be help the sub-regional organization deal with disputes as soon as they are detected.

2.4 Crises in EAC

The EAC as an African sub-region is not devoid of crises and conflicts. It is a sub-regional organization with some partner states still reeling from the effects of violent and deadly conflicts and crises. As Sindiga notes, Rwanda and Burundi were admitted into the community on the grounds of promoting peace in their countries and within the region.[33] By agreeing to join the EAC, Rwanda and Burundi were seen as transferring their problems to the larger and bigger community.

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[31] Ibid p122.
[32] Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010).
[33] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Havard University Press (1967) p75.

2.4.1 Crises in Uganda

Nearly most of the EAC countries are faced with situations that if not addressed could trigger animosity and disturb negative peace in the region. The Secretary General of the EAC recently expressed his concern over the proliferation of kingdoms and chiefdoms in Uganda and the concerted calls for *'majimboism'*(regionalism) in Kenya; conditions that do not augur well for a regional political federation.[34]*majimboism* used in narrow sense entails ethnic purity and exclusivity with regard to access to resources and citizenship rights within ethnic territory; in extreme form this may lead to ethnic cleansing.[35]

Uganda evolved through different paths from the time of its independence to the present. Like many other African states, Uganda passed through monopoly politics to multiparty democracy. Uganda once embraced a "no party politics." Instead "movement" became an alternative system to political parties.[36]Thus activities of political parties were banned. The movement was taken to be non-partisan, all-inclusive and broad-based type of political system. This was the characteristic of Ugandan politics from mid 1980s to late 2005. Multiparty democracy was officially restored in Uganda in 2005.[37]

However, Ugandan politics seems to not have been largely dominated by tribalism. What is peculiar to Ugandan politics is the restoration of kingdoms.[38] Whether the restoration of kingdoms is a sound political calculation or miscalculation will be judged by the passage of time. Another problem facing Uganda is the ongoing war in the northern part of the country. The war has been going on for the last two decades. The government forces are fighting the rebel group

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[34] Treaty of EAC (2008).
[35]Mwaseba, J.J. *'Proposed Political Federation of EAC: Benefits to Tanzania'* Carsile Military University, PA, (2010) p102.
[36] Ibid p22.
[37] Nye, J. *'Pan Africanism and East African Community Integration'* Massachusetts, Havard University Press (1967)
[38]Katembo, B. *'Pan Africanism and East Africa Integration: The East African Community Model'* Journal of Pan-African studies, Vol. 2. No. 4 (2008) p105.

Lord's Resistance Army (LRA), led by Joseph Kony, which seeks to remove the current government from power and establish a theocratic one based on the christian bible and the ten Commandments.[39] The war in northern Uganda has retarded democracy and development for the people of Uganda. It is also a challenge to peace, security and stability in Uganda and within the region.

2.4.2 Rwanda- Burundi Crisis

Burundi and Rwanda are the other members of the East African Community. The two countries have been in civil wars and conflict from the dawn of their independence.[40] They are ethnically divided between Hutus and Tutsis as their major ethnic groups, and the Batwa minority. Statistically, Hutus are the majority of the three ethnic groups in both countries; they are estimated at 80% of the population while Tutsis and Batwa make up 18 and 2 % respectively.[41] Politically these countries are organized along tribal lines and this has been the major cause of ethnic conflict featuring Hutus and Tutsis from the early years of their independence.[42] This ethnic division can be traced back to the period of external influences from 1880s.Following the end civil war in Burundi and 1994 genocide in Rwanda, these countries have embarked on rebuilding their countries in all aspects of life from social cohesion to economic development.[43] Both governments of Burundi and Rwanda are working hard to redress this perennial challenge.

Competition for resources, especially land, is one of the basic sources of political conflict for the two ethnic groups over the years. During the colonial period, Tutsis were placed well above

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[39] Ibid p140.

[40] Mwaseba, J.J. '*Proposed Political Federation of EAC: Benefits to Tanzania*' Carsile Military University, PA, (2010). P.119.

[41] Ibid p119.

[42] Mnjama, N '*Records Management And The Migingo Island Saga*' *Department of Information Studies*, University of Botswana (2012).

[43] Katembo, B. '*Pan Africanism and East Africa Integration: The East African Community Model*' Journal of Pan-African studies, Vol. 2. No. 4 (2008) p105.

the Hutus and Batwa; in the words of Gatwa "the Batutsi were chosen by the new rulers, colonialists and the missionaries to promote western civilization founded on Christianity. The other groups, the Bahutu and Batwa, constituted a mass of commoners relegated to the status of second-class citizens.

The colonialists introduced this ideology of racial division to organize and exploit the people of Rwanda. Prior to independence, Hutus in Rwanda overthrew the ruling Tutsi king in 1959 and many Tutsis fled into exile in neighboring countries. The Tutsis after many years in exile reorganized and launched attacks on Rwandan government led by Hutus in 1990. The four year civil war culminated in the genocide of almost 800,000 of Tutsis and moderate Hutus.[44] Currently, the Rwandese Patriotic Front (RPF) government is in power and is largely led by Tutsis. Hence Rwanda is now transitioning to democracy.

2.4.3 The Kenya-Uganda Migingo island crisis

Boundary disputes have been and will continue to be common feature in Africa. Some of the boundaries emanate from the arbitrary nature in which boundaries were fixed as well as lack of well documented materials indicating the exact boundaries.[45] Border disputes have been defined by Kornprobst as "a conflict between two states arising from the claim of at least one of these states to a part of the territory or, in extreme cases, to the entire territory that is administered by the other state".[46] Prescott suggests that disputes may be classified into the following categories: (a) territorial disputes arising from one country claiming adjoining land across the boundary because of some special quality that area possesses. (b) positional disputes relating to some defect in the definition of the boundary. This type of dispute may be over the

[44]Katembo, B. 'Pan Africanism and East Africa Integration: The East African Community Model' Journal of Pan-African studies, Vol. 2. No. 4 (2008) p105.
[45]Mnjama, N 'Records Management And The Migingo Island Saga' Department of Information Studies, University of Botswana (2012).
[46] Ibid 125.

interpretation of terms used in defining the boundary at the stage of allocation, delimitation or demarcation. (c) Resource disputes occurring when the boundary intersects some unitary resource, such as a lake or oil field, and the two neighbors disagreeing on how the resource should be exploited. (d) Functional boundary disputes occurring when one country perceives that it is being adversely affected by rules and regulations being applied by its neighbor along the boundary and especially at crossing points.[47]

Kornprobst argues that border "disputes are a common feature of African politics."[48] Realizing that border disputes were bound to arise in Africa due to arbitrary way which African states had inherited from their colonial masters, the heads of state of the then newly formed Organization of African Unity (OAU) in 1964 passed a resolution that bound all Member States pledge themselves to respect the borders existing on their achievement of national independence. It is clear why African governments agreed to uphold colonial boundaries.[49] Many of the African countries were already embroiled in border disputes and failure to uphold the borders vague as they were might have resulted in many more claims and counter claims over territorial disputes.

African Union Constitutive Act (2000) requires that member states "respect of borders existing on achievement of independence."[50] While many African states are committed to this principle, historical records show that border disputes have been common in East Africa. In 1979, Ugandan dictator Idi Amin invaded Tanzania claiming that Ugandan territory extended deep inside Tanzania up to Kagera River. In 1974, he had angered Kenya by claiming that in the colonial era the Ugandan territory extended up to Naivasha. Border dispute in the East African

[47]Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010).
[48]Mnjama, N 'Records Management and the Migingo Island Saga' Department of Information Studies, University of Botswana (2012).
[49]African Union Pre-Amble of the treaty.
[50]Mnjama, N 'Records Management and the Migingo Island Saga' Department of Information Studies, University of Botswana (2012).

region can be traced back to colonial period when boundaries were fixed without due regard to the needs of local communities. In many instances tribes were divided between two states. It was also normal boundary adjustments to be made during colonial era to suit administrative arrangements. Up until 1926, Western Kenya and parts of the Rift Valley were in Uganda, but the Kenya Colony and Protectorate (Boundaries) Order in Council of 1926 declared these areas to be part of Kenya. [51] The current dispute between Kenya and Uganda is over the ownership of the Migingo, a small island in Lake Victoria, measuring less than one acre. The island is located 5.4 nautical miles (10km) off Kenya's Sori-Bay in Karungu division, Migori District. [52] It must be noted that Kenya occupies six percent of the lake, Uganda 43 percent and Tanzania owns 51%[53]. The island itself is inhabited by about 1,000 people with approximately 80% of them being Kenyan fishermen[54].

The major reason why the island has a higher population of Kenyans than Ugandans is due to the Kenyan hinterland than to either Uganda or Tanzania. Mnjuna postulates that the dispute over Migingo Island can be compared to the border dispute between Nigeria and Cameroon. He states that "Parallels could be drawn with theNigeria-Cameroon conflict over Bakassi Peninsular in which the two countries fought a short war a few years ago.[55] According to him, because many Nigerian fishermen had settled in the area outnumbering Cameroonians, Nigeria mistook occupancy and proximity for ownership. In the end, the International Court of Justice ruled that the island actually belonged to Cameroon. But the real fight was over the rich oil reserves believed to lie in the peninsular". Mnjama came to the conclusion that "Migingo might therefore

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[51] Ibid 15
[52] Ibid pp 18
[53] Ibid pp 18
[54] Mnjama, N 'Records Management And The Migingo Island Saga' Department of Information Studies, University of Botswana (2012)
[55] Ibid pp 16
Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA. (2010

easily be East Africa's Bakassi, the only difference being that the stakes are not over huge oil reserves but over fish in fact declining fish stocks"[56]The Migingo border dispute crisis became worse in early 2009 when Kenyan living in the island were required to buy special fishing permits from Ugandan authorities.[57] This resulted into a diplomatic row between the two East Africa states fueled by remarks made by the Ugandan President Yoweri Museveni while addressing students at the University of Dar-es Salaam claiming that while the island was in Kenya, the waters surrounding it were in Uganda and that Luos (a Kenyan community that forms the majority of Migingo Island's inhabitants) would not be permitted to fish in Ugandan territory.[58]

It can therefore be argued that the Migingo Island dispute is to a very large extent a dispute over resources utilization. On 2 June 2009, Kenya and Uganda appointed a team of experts to undertake a physical demarcation of the Lake Victoria border using the Kenya Colony and Protectorate (Boundaries) Order in Council of 1926 and the Constitution of Uganda (1955) Second Schedule- Boundary of Uganda Article (5) as the basis of their work .[59] The exercise came to a halt when in early July of 2009, the surveyors from Kenya and Uganda differed on technicalities especially on the mode of erecting new boundary pillars and the perimeters to help in determining scientifically the westernmost points as described in the 1926 Order in Council. The Kenyan surveyors continued with the survey work and although their findings have not been officially released, it is believed that Migingo Island lies 510 meters east of the Kenya –Uganda

[56]Mnjama, N '*Records Management and the Migingo Island Saga*' Department of Information Studies, University of Botswana (2012). P.62

[57] Ibid p63.

[58]Mnjama, N '*Records Management and the Migingo Island Saga*' Department of Information Studies, University of Botswana (2012). P69.

[59]Mwaseba, J.J. '*Proposed Political Federation of EAC: Benefits to Tanzania*' Carsile Military University, PA, (2010)

border[60]. This shows the need to corroborate evidence contained in maps with the physical survey. A diplomatic solution to the problem was found in August 2011 when Kenya and Uganda reached an accord over the rocky island in which the Kenya Police Force and the Uganda Police Force agreed to collectively patrol the islands and have the two flags hoisted on the island.[61]

The EAC secretariat on Lake Victoria Basin Authority based in Kisumu and Kenya's Ministry of East African Community, have intimidated that the EAC made an effort to resolve the crisis. Lake Victoria Basin Authority which is an organ of EAC is concerned with the shared resources of Lake Victoria, environmental issues within the lake and conservation of the five water towers. The Authority has no mandate on territorial disputes though it has a mandate to ensure peace and security within the region. The role of the community is diminished as regards to the Migingo crisis. The EAC argues that it indicated to their two partner countries Kenya and Uganda to resolve the crisis amicably and peacefully. Kenya's Ministry of EAC is categorical that the issue was better resolve bilaterally than through the community. It is notable that both countries endeavored to use their bilateral relations to solve the issue than use the EAC as an avenue for solving the crisis.[62] Regardless of the bilateral engagements over the Migingo crisis, the dispute has not been resolved and it is believed that bilateral engagements are ongoing although the EAC has no active role in the bilateral talks.

2.4.4 Custom Union and trade crisis in EAC

A long-term goal of the EAC was to establish an East African common market in order to promote, strengthen, and regulate common industrial and commercial developments. The

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[60] Ibid p1 12.
[61] Mnjama, N *Records Management And The Migingo Island Saga* Department of Information Studies, University of Botswana (2012)
[62] Mnjama, N *Records Management and the Migingo Island Saga* Department of Information Studies, University of Botswana (2012) p125.

economic benefits of cooperative and regulated development and trade were to be equally shared by the three partner states. It was observed that "the 1967 Treaty was a forward-looking, comprehensive and courageous document of political wisdom and statesmanlike vision.

The government of Uganda in contravention of the EAC treaty on Customs Union and Common Market stage decided to ban beef imports from Kenya.[63] Trade among the EAC block is governed by the treaty and whenever a partner state does not fulfill their part of the bargain by implementing the recommendations of the protocols signed, may hinder the integration process. The issue of Uganda's ban on Kenya's beef imports has been addressed bilaterally through the countries Ministry of Foreign Affairs (MFA) but not through the EAC mechanisms.

2.4.5 Rwanda - DRC Crisis

The crisis between Rwanda and Democratic Republic of Congo is unique in its own nature. It involves a partner state of EAC and a country that is not a partner of EAC. If the crisis is left to escalate to violent levels, It is likely to affect the entire East African region, hence the need for proactive intervention into the crisis.[64] EAC's sectoral committee on political affairs met in Rwanda Kigali, but the issue of the crisis in Rwanda and East of DRC was not discussed at all. As Njoka notes, what was discussed was how EAC would facilitate meetings between Rwanda and DRC but the real issues in the crisis were never discussed or addressed at all.[65] This is largely due to the provisions in the treaty that state that partner states have to refer or seek help from the community. EAC cannot act on its own volition in intervening in a crisis but rather has to wait until partner states refer crisis issues to them.

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[63] Interview with Mr. Tarus Director of Economic Affairs Ministry of East African Community
[64] Mnjama, N 'Records Management and the Migingo Island Saga' Department of Information Studies, University of Botswana (2012) p125
[65] Interview with Mr. Njoka Director Political Affairs Ministry of East African Community Kenya

2.5 CEWARN and Provision for Eminent Persons in EAC

Though from the definition of crisis, it is sudden and surprises the decision makers' efforts have to be made to detect some of the crisis long before they reach violent levels. A decision making crisis is a situation, deriving from a change in the external or internal environment of a collectivity, characterized by three necessary and sufficient perceptions on the part of the responsible decision-makers is a threat to basic values, urgency and uncertainty.[66]

However, crisis can be detected through early warning mechanisms. The EAC as regional community has embarked on establishing Early Warning Mechanisms for Crisis and conflict detection within the sub-region.[67] This is done with the finalization of the protocol on inter-state security within the EAC. The ultimate of this inter-state security is the Defense pact which is also in formulation stage.[68] This illustrates that the EAC is making strides in an attempt not only to ensure regional security but also putting in place mechanisms to solve the crisis as soon as they are detected.

The EAC CEWARN protocol has been signed and each partner state has been mandated to open a CEWARN center within their countries. These provisions are in the implementation state by all EAC partner states. Also the idea of having a standby committee of eminent persons to help solve crises within the sub-region has been proposed and this is in the formulation stage and discussions are currently going on among the partner states. The protocol on provision of eminent personalities has not been signed yet, but is in the formulation stage.

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[66] Hermann C F *'International Crises: Insights from Behavioral Research'* The Free Press, New York 1972 p26
[67] Interview with Mr. Ole Njoka- Director Political affairs, Ministry of East African Community –Kenya.
[68] Mnjama, N *'Records Management and the Migingo Island Saga'* Department of Information Studies, University of Botswana (2012) p125

CHAPTER THREE

DECISION MAKING IN EAST AFRICAN COMMUNITY

3.1 Introduction

In Africa, the establishment of regional integration is not new. Experiments with it occurred across the continent in West, South, and East Africa throughout the colonial period. Economic integration has been its main emphasis. In East Africa, regional integration dates to the time of British colonialism.[1] Mnjama has noted British colonial interest in east Africa began in the 1890s with a set of motives outlined by Katembo, as: securing control of the Nile headwaters as a conduit for protection of British position in Egypt and the Suez canal, monitoring of pre-World War I era German imperial plans in the region and opening up the Kenyan hinterland via rail transport to introduce lucrative large-scale farming.[2] The purpose was to exploit resources in the region and to protect the source of Nile River against rival imperial powers.[3]

The EAC customs union, as the first formal regional economic integration, between Kenya and Uganda was formed before the conclusion of the World War I, and Tanganyika, a former German colony assigned to Britain under the League of Nations mandate territory assigned to Britain, joined in the late 1920s after becoming part of British East Africa.[4] Britain formed the East African Community as a form of regional integration despite opposition from Ugandan local leaders. In 1948, the British formed the East African High Commission (EAHC) to oversee common services initiatives for the East African region. Such services were harbors, railways,

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[1] Mugomba, A. *'Regional Organizations and Africa Underdevelopment'* Journal of African Morders studies, Vol. 16, No. 2 (2001) p261.
[2] Mnjama, N. *'Records management and the Migingo Island saga'* The Journal of Conflict Resolution, Vol. 48, No.14 (2009) p15.
[3] Thornton, P, *'Regional Organization in Conflict Management'* Annals of the American academy of political and social science, vol. 51 No. 18 (1999) p132.
[4] Ibid p20.

airways, postal and customs union, common currency and the University of East Africa. The EAHC was replaced in 1961 by the East Africa Common Services Organization (EACSO). EACSO was charged with the management of integration services in almost the same they were managed by EAHC.[5]

The British attempt to integrate the East African region set a foundation, though not an objective, for future integration by the independent East African states.[6] The difference between the two was the basic political motive. Whereas the British integration of the region served the political economy of imperialism, which was exploitative in nature, the objective of future independent East African states was the opposite of this.

3.2 Origin and Development of EAC

The EAC traces its origin to the colonial times as the East African protectorate. The initiative to integrate East Africa was started by the British colonial prior to the 1960's.[7] The colonial administration then argued that successful development of the region could best be achieved through the process of integration. However, as Oyugi notes, soon after independence EAC member countries had a bone of contention whether to accept in totality what the British had established regarding integration or to adjust them according to the national and regional needs.[8]

The EAC was established after the signing of the EAC treaty of cooperation. The treaty at the time dealt mainly with economic activities within the sub-region and that political issues were ignored or casually mentioned. The main objective of EAC treaty of 1967 was to strengthen

[5] Mugomba, A. 'Regional Organizations and Africa Underdevelopment' Journal of African Morders studies, Vol. 16, No. 2 (2001) p261.
[6] Thornton, P, 'Regional Organization in Conflict Management' Annals of the American academy of political and social science, vol. 51 No. 18 (1999) p132
[7] Ibid p75.
[8] Oyugi, W. 'Conflict in Kenya: A Periodic Phenomenon' Nairobi, East African Publishers, (2002). P66.

and regulate the industrial, commercial and other relations of the member states and it was designed to achieve acceptable distribution of benefits of economic cooperation between the states.[9] The EAC treaty is very important as it not only confers a legal personality to the EAC as a sub-regional organization but it also spells out the decision making structure of the organization.

3.2.1 The Collapse of EAC in 1977

According to Katembo, the East African Community (1967-1977) crumbled from the administrative failure of its leadership to resolve the collective impact of six major, on-going issues, lack of political will to completely federate, insufficient information distribution and confederation concept buy-in amongst tri-state rank and file citizenry, inequitable fiscal distribution of gains, inter-territorial imbalances in trade, currency system disharmony, and constitutional impediments[10].The factors for the collapse of EAC can be summarized into three main categories namely political, economic and institutional.

Politically, the three states were pursuing divergent paths with the resulting tensions immeasurably intensified by the assumption of power in Uganda of Idi Amin Dada.[11] The tensions affected trade within the region and also led to the decline of foreign investment. Moreover, the East African Authority which was the supreme body was not able to meet anymore from 1971 when Amin seized power in Uganda. Personality relationships had also accounted for the decline of the EAC for example, presidents of Tanzania and Uganda could not sit together since Tanzania denounced the coup in Uganda that brought to power Idi Amin.[12]

[9] Katembo, B. 'Pan Africanism and East Africa Integration: The East African Community Model' Journal of Pan-African studies, Vol. 2. No. 4 (2008) p107.
[10] Ibid p115.
[11] Mugomba, A. 'Regional Organizations and Africa Underdevelopment' Journal of African Morders studies, Vol. 16, No. 2 (2001) p261.
[12] Ibid p120.

Economically, forces of economic nationalism took over. Each of the member states effectively withdrew from the common currency, each introducing its own currency along with a central bank.[13] This de-harmonized customs duties between the member states. The result of this economic nationalism was a decline in intra-East Africa trade levels, imbalances in inter-state remittance, and loss of foreign private investment over perceptions/concerns about economic instability.

Apart from the political and economic factors, institutional shortcomings played a major role in the collapse of the Community. East African Ministerial Committees and Councils were at the center of these shortcomings.[14] Meetings took too long to reach decisions. Many other decisions were ignored or otherwise left unimplemented. As a result, individual member states found themselves intervening directly in the daily operations of what was intended to be an autonomous institution with a distinct legal personality.

Another important factor was the ideological differences between partner states. Kenya was developing a free market economy and much of its resources went toward capital improvements. Tanzania, on the other hand, was developing a planned socialist economy since independence and much of its resources were directed toward welfare programs. Each country, respectively, felt it was bearing an unfair economic burden within the Community, a feeling that other members were not contributing enough to regional development than what one did. The problems between Tanzania and Kenya were exacerbated by Uganda's nationalization of the commercial assets of Ugandans of Asian origin.[15]

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[13] Nye, J. *'Pan Afrficanism and East African Community Integration'* Massachusetts, Havard University Press (1967) p50.
[14] Ibid p55.
[15] Katembo, B. *'Regionalism and East Africa Integration: The East African Community Model'* Journal of Pan-African studies, Vol. 2. No. 4 (2008) p145.

The demise of the 10-year old organization culminated in June 1977 when the partner states withheld approval for the general fund services budget for the year beginning July 1, 1977.[16] Therefore, the EAC collapsed due to political and ideological differences, perceived and real inequalities in the benefits each state was getting from the Community and weakness of the foundation on which the Community was built. That marked the end of the long-term envisioned goal and purpose of establishing a common market to promote, strengthen, and regulate sustainable common commercial and industrial developments.[17]

3.2.2 The New EAC

The new East African Community was born in 2001 and the treaty for its establishment was signed in November 1999.[18] The founding members of the new EAC are Kenya, Uganda, and Tanzania. Burundi and Rwanda joined the Community in 2003. With the acceptance of its newest members, Rwanda and Burundi, the bloc's population increased from 90 million to around 115 million people.[19] The principal purpose of the establishment of EAC is to strengthen regional co-operation and development through economic, cultural and political integration of the partner states.

The foundation for the revival of the EAC came from the Mediation Agreement of 1984. The agreement was aimed at the division of assets and liabilities of the defunct EAC.[20] The agreement was the result of seven years of intense negotiations on how assets and liabilities were to be divided between the former partner states. In the Mediation Agreement there is a provision stating: "The States agree to explore and identify further areas for future co-operation and to

[16] Mugomba, A. 'Regional Organizations and Africa Underdevelopment' Journal of African Morders studies, Vol. 16, No. 2 (2001) p261.
[17] Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010) p9.
[18] Ibid p16.
[19] Katembo, B. 'Regionalism and East Africa Integration: The East African Community Model' Journal of Pan-African studies, Vol. 2. No. 4 (2008) p14.
[20] Mugomba p270.

work out concrete arrangements for such co-operation.'[21] Whether it was the ingeniousness of the mediator for inserting the provision, or the willingness of the presidents of each of the member states, to revisit integration, is debatable for the political relationships that existed between former partner states at that time were still marred by mistrust. The signing of the 1999 Treaty was preceded by a series of consultative meetings between the heads of state of Kenya, Uganda, and Tanzania.

The EAC has eight objectives which are as follows: improve the standard of living and quality of life of the people of East Africa, ensure balanced, orderly, consistent and fair development in East Africa, ensure reasonable and proper use of natural resources taking into account safety and sustainability of the environment, promote the active participation and benefit of the people in development, enable the business community and the general public to play a leading role, strengthen and improve the role of women in development; (7) promote peace, security and stability in East Africa, and promote other initiatives aimed at a successful community.[22]

The EAC Treaty has been viewed as unique in Africa and perhaps in the world because its objectives are premised on the development of policies and programs specifically aimed at widening and deepening cooperation among the three (now five) partner states in the political, economic, social and cultural fields.[23] More importantly, membership to the Community is conditional. The partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the

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[21] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Havard University Press (1967) p50.
[22] Katembo, B. *'Regionalism and East Africa Integration: The East African Community Model'* Journal of Pan-African studies, Vol. 2. No. 4 (2008) p14.
[23] Mugomba p272.

maintenance of universally accepted standards of human rights.[24]Membership is based on adhering to these standards.

The ultimate aim of the EAC is to establish a regional political integration which will be achieved through a gradual process involving the integration of major economic systems. These economic systems are a Customs Union, Common Market, Monetary Union and, eventually, Political Federation. The launching of each of these stages shall be regulated by a special treaty, a Protocol to be adopted at an unspecified time.[25]The protocol for establishing the Customs Union was signed by the heads of states in March 2004 and came into force on January 1, 2005. The establishment of a Common Market will ensure the free movement of labor, goods, services, capital and the right to establishment and residence at a time to be determined by the Council. The EAC is organized into the Summit of Heads of State and Government[26]; the Council of Ministers[29]; the Co-ordination Committee of Permanent Secretaries, the East African Court of Justice, the East African Legislative Assembly, and the Secretariat.[27] Each of these organs has distinct functions. The Summit of Heads of State and Government is responsible for giving general direction and impetus to the attainment of the Community objectives. The Council of Ministers consists of ministers responsible for regional co-operation of each member state and such other Ministers of the member states. The Council is the policy organ of the Community; it promotes monitors and keeps under regular review the implementation of the programs of the Community and ensures the proper functioning of the regional organization.[28]

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[24] Katembo, B. 'Regionalism and East Africa Integration: The East African Community Model' Journal of Pan-African studies, Vol. 2. No. 4 (2008) p14.
[25] Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010) p9.
[26]Thornton, P, 'Regional Organization in Conflict Management' Annals of the American academy of political and social science, vol. 51 No. 18 (1999) p132 .
[27] Mogomba p41.
[28] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Havard University Press (1967) p33.

The Secretariat is the executive organ of the EAC. It is headed by the Secretary General (on rotational basis). S/he is assisted by two deputies including the Offices of the Counsel to the Community. The co-ordination committee consists of the Permanent Secretaries responsible for regional co-operation in each member state.[29] The committee is responsible to the Council of Ministers and it also coordinates activities carried out by the Sectoral Committees. The Committees are responsible for preparation of comprehensive implementation programs, priority setting of various sectors and implementation monitoring.[30] While the East African Court of Justice is charged with the interpretation and application of the Treaty on Common Market issues, the East African Legislative Assembly is the legislative organ of the Community. One of the functions of the Legislative Assembly is to debate and approve the budget of the Community. Among its members are the five Ministers responsible for regional co-operation, the Secretary General and the Counsel to the EAC.

3.3 EAC Decision Making Structures and Process in EAC

Decision making in the EAC is enshrined in the EAC treaty which provides for the decision making structure of the EAC.[31] The treaty provides for the existence of the Summit, the Council, the Co-coordinating committee, the Sectoral committee, the East African Court of Justice, the Legislative Assembly, the Secretariat and such other organs as ma be established by the summit.[32] During crisis is hard to convene a meeting since the individual state has to seek help from the partner states. All decisions in the EAC are made within the above organs with the Summit being the top decision making organ. By definition, crises decision making involves

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[29] Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010) p9.
[30] Mugomba
[31] Interview with Mr. Sindiga, Director Economic Affairs Ministry of East African Community Kenya
[32] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Havard University Press (1967) p45.

situations where · cherished national, organizational, and personal values are at stake. Furthermore, such events often cast a long shadow in the sense that they may profoundly affect political perceptions and choices for years or decades to come. Hence political issues are far more complex to be solved by the EAC since the community is anchored on a lot of mistrust and suspicion throughout its existence.[33]

The decision making organs and structure of EAC as enshrined in the treaty- which is the principle legal document that guides the community, identifies the Summit as the highest decision making organ.[34] The summit is composed of the Heads of State and Government of the partner member states. The summit gives general direction and impetus to the regional integration and development process. EAC has a provision in the treaty for the functions of the summit as to review the state of peace, security and good governance within the community and progress achieved towards the establishment of a political federation of the partner states.[35]

The meeting of summit is also enshrined in the treaty which provides that the summit should meet at least once a year and may hold extraordinary meetings at the request of any partner of the summit.[36] However, crisis may occur at any time and that the summit may not be able to convene a meeting in order to make a crisis decision because the individual partner state has to request for the meeting. Decisions within all the structures of EAC are made through consensus and that if a partner state of the summit does not agree with a decision made by other partner states, he or she may object that decision and hence no decision will have been reached or made.[37]

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[33] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Havard University Press (1967) p64.

[34] Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010) p19.

[35] Treaty of the East African Community (2005)

[36] Ibid

[37] Interview with Mr. Sindiga- Director Economic Affairs- Ministry of East African Community-Kenya.

Under the summit is the EAC council of Ministers; The council of ministers is the policy organ of the community and it consists of the ministers responsible for East African Community affairs in each partner state as each partner state shall determine. It is also provided in the treaty that each partner state shall designate a Ministry which will be responsible for promoting, monitoring and keeping under regular review the implementation of the programs of the community and ensuring the proper functional of the regional organization. The council is responsible to their particular head of state which constitute the summit. However due to the magnitude and nature of the 2007-8 Kenyan crisis which an incumbent president was involved, it was difficult for the council of ministers to meet and deliberate on the crisis.

Then there is the coordination committee: consists of permanent secretaries responsible for East African Community in each partner state and such other permanent secretaries as the partners states shall determine. The committee is responsible to the Council of Ministers and it also coordinates activities carried out by the Sectoral Committees which are responsible for preparation of comprehensive implementation programs, priority setting of various sectors and implementation monitoring.[38] The sectoral committee is mainly comprised of the experts and technical advisors who report to the coordination committee, do prepare comprehensive implementation programmes, setting out priorities and monitor their implementation.[39] They are mainly responsible for preparation of comprehensive implementation programs, priority setting of various sectors and implementation monitoring.

The Secretariat is the executive organ of the EAC. It is headed by the Secretary General (on rotational basis).[40] S/he is assisted by two deputies including the Offices of the Counsel to the

[38] Mugomba p71.
[39] Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010) p 9.
[40] Ibid p34.

Community. The secretariat is responsible for the day to day affairs of the regional and integration and development process of the community.

3.4 The East African Court of Justice

The East African court of Justice (EACJ) is established under the treaty. Its sole purpose is to administer justice and ensure the adherence to law in the interpretation and application of and compliance with the treaty for the establishment of the EAC.[41] The EACJ if utilized properly can be an avenue for solving the various disputes that EAC partner states face. It is however worth to note that the EAC court of Justice is actively involved in the integration process though it has a limited mandate and jurisdiction.[42] For instance, as noted from the treaty the EAC court of Justice has no mandate on Human Rights issues and Crimes against Humanity.[43] The limited jurisdiction of the East African Court of Justice has hampered the courts ability to handle some of the crises that community encounters. Discussions are however ongoing on the expanded role and mandate of the East Africa court of Justice.[44] The other decision making organ of EAC is the East African Legislative Assembly (EALA). This is the legislative arm of the community. The main of the functions of the Legislative Assembly is to debate and approve the budget of the Community.

However, treaty as was designed shows little or no effort to provide for a mechanism for crisis management in the event that it occurs.[45] The EAC just like any other regional and sub-regional organizations draws its mandate from Article 33 of the UN charter which has deliberately delegated and resorted to the use of regional and sub-regional organizations to fulfill

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[41] Interiview with Mr Gaitho- Legal officer Ministry of East African Community Kenya
[42] Interview with Mrs Oloo- Director Legal Affairs at the Ministry of EAC-Kenya.
[43] ibid
[44] Interview with Mr. Njoka Director Political affairs Ministry of EAC –Kenya.
[45] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Harvard University Press (1967) p74.

efforts of peaceful settlement of conflicts and crises.[46] However, the practical contribution of these regional and sub-regional organizations to crises management has not been sufficient as yet, although some of them have made certain efforts in this respect.

The EAC treaty under its objectives enshrined in the treaty clearly stipulates that the EAC shall endeavor to promote peace, security and stability within, and good neighborliness among partner states. The treaty is also clear that the fundamental principle of the community shall be peaceful settlement of disputes and crises.[47]

3.5 Decision Making in Kenya

Decision making in Kenya is historical as it is heavily borrowed from the colonial administrative which had adopted oppressive tendencies to rule the Kenya colony.[48] In 1963, in tandem with achieving independence, Kenya adopted its first national constitution. Formed with the assistance of Kenya's former colonizers, Kenya's first constitution was fashioned mostly upon the British system of governance and ultimately centralized government power to serve the needs of a small political elite. Several elements of Kenya's original constitution were seriously flawed, in particular decision making structures and the powers of the president. In addition, subsequent amendments concentrated executive power within the office of the president, which led to the establishment of an imperial presidency and a de jure one-party system.

3.5.1 The Executive

Although Kenya's original constitution was initially designed to promote a part democratic, part socialist government system in which the authority of the three branches of government (executive, legislative and judicial) was clearly drawn, each with its own decision making

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[46] Oyugi p45.
[47] Treaty of the East African Community
[48] Genovese, M. *'Presidents and Crisis; Developing a crisis management system in Africa'* Journal of World Peace, vol.4 No. 2 (1987) p81.

structures. In the decades after its passing, presidential authority grew relentlessly, as each subsequent president mainly Kenyatta and Moi sought to tighten his control and increase his influence.[49] Unfortunately, this occurred at the expense of the other branches of government, which instead of serving as a check upon executive power, served only to facilitate its abuse.

When Kenya's constitution was first formed in 1963, executive power was shared amongst two posts: a prime minister and an executive governorship, or governor-general (a British subject acting on behalf of the Queen of England, who still exercised executive powers).[50] In addition, the constitution called for a multi-layered legislative structure in the form of a bicameral parliament. However, in 1964, after Kenya was officially declared an independent state, then Prime Minister Jomo Kenyatta, dissatisfied with a restrictive executive, lobbied parliament to amend the constitution to abolish both the governorship and the post of Prime Minister and replace them with a single presidency.[51]

The president as the head of the Executive arm of government was in total control of all the other branches of government. He was the ultimate decision maker and his decisions would not be questioned by anyone or any institution, even when such decisions amounted to gross misconduct or in contravention of the constitution.

3.4.2 The Cabinet

The Kenyan cabinet is composed of the president who chairs cabinet meetings, Vice President, Cabinet Ministers.[52] However the composition of the current cabinet is peculiar has it

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[49] Kagwanja, P, Southhal, R, 'Introduction: Kenya- A democracy in Retreat? ' Journal of contemporary African Studies, Vol.27 No. 3(2009) p259.
[50] Ibid p562.
[51] Roberts, M. 'Conflict analysis of the 2007 post election violence in Kenya' Journal of contemporary African Studies, Vol. 18 No. 23 (2008).
[52] Interview with Mr. Kiteme Director of Cabinet Affairs Government of Kenya.

is anchored on the National accord. Under the National accord the Prime-Minister and his two Deputy Prime-Ministers are part of the cabinet.

The Executive authority is vested in the cabinet which is the highest decision making organ in government. Kiteme a director at the Cabinet Secretariat notes that the state is a highly structured institution and that it has a decision making structures from the local level to the National level.[53]

National crises are handled at the Nation level by the cabinet while local crises are handled down at the local level by the various decision units.

3.5 Challenges of Crisis Decision Making In the EAC

The EAC is made up of five countries that are at times suspicious of each other. The lessons of failure from the collapse of the first EAC body still linger and hence the community can be said to be still fragile. Under the EAC treaty, in article 3 decisions shall be made by way of consensus, and that, any partner country of EAC can object a proposal or decision tabled by other member state and such a proposal would not be deliberated on or passed until the objection is withdrawn.[54] With such provisions of the treaty in force and the fact that all member states cannot always agree on all important issues especially in crises times, consensus on most issues can never be reached.

Thus decision making in EAC becomes difficult during crisis times because it is not often easy to reach a consensus and important decisions will be shelved.[55] EAC partner states attained political independence against mostly a common colonial background but the basic colonial policy frameworks were different thereby accounting for some fundamental differences that

[53] Interview with Mr. Kiteme Director Cabinet Affairs Government of Kenya.
[54] Interview with Mr. Njoka Director Political Affairs Ministry of East African Community in Kenya.
[55] Oyugi, W. 'Politics and Administration in East Africa Nairobi', East African Publishers, (1994) p66.

emerged soon after independence some of which still exist to date.[56] The disparities in the level of development within the region has also hampered the development of the community and has fueled suspicion among the partner states- this has strained the relationship of the partner states thus making it difficult to manage crisis within the region.

Most of the crisis that take place within the EAC are systemic in nature in that whereas they are happening in one place there is a likelihood of a spill-over effect and it is highly likely that some member countries may take different sides in the same crises thus making it more complex. This tends to affect decision making within EAC, as Oyugi notes, decision making in EAC during crisis is difficult due to the systemic nature of crises within the sub-region.[57] The highest organ of the EAC is the Heads of State summit which comprises of the Heads of states and Government. The treaty stipulates that their decisions shall be made by consensus. However it has been postulated that it is difficult to reach consensus especially during crisis and this may lead to decision being shelved by the community.

The difficulties encountered by EAC in its attempt to solve some of the crises that are found within the sub-region stem from the fact that the mandate of the EAC to intervene in intra-state and inter-state conflicts is limited.[58] The clause on sovereignty and non-interference has hampered the community's response to crises and other issues that may affect its partner states. Compared to other sub-regional organizations such as the Economic Community for West African States (ECOWAS) which has a broad mandate in terms of military action and conflict intervention, EAC treaty does not have a clear mandate.[59]

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[56]Oyugi, W. 'Politics and Administration in East Africa Nairobi', East African Publishers, (1994).
[57]Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010) p115.
[58] Mugomba p75.
[59] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Harvard University Press (1967) p74.

The existence of a decision making process and procedure within the EAC is evident in this study and some of that process and procedure is enshrined in the treaty. The treaty is the sole legal document that proposes a governance and decision making procedure for EAC. With the sovereignty clause in the treaty and lessons from the failure of first EAC, it was important to ensure that all parties equally participate in the decision making process in EAC. Decisions of the summit and council respectively shall be by way of consensus.[60] In convening meetings all members must be in attendance and agree on all the issues to be discussed for the decisions reached to be binding[61].

This makes it more difficult for the community to make any decision in crisis times as per the EAC treaty decisions of the community are to be made by way of consensus. According to the treaty it provides that any partner country of EAC could object a proposal tabled by another partner state of EAC and such a proposal would not be deliberated on or passed until the objection is withdrawn.[62] Therefore, with such provisions in force an in lieu to the fact that all partner states cannot always agree on all important issues especially in crisis times, consensus on most issues can never be reached.

The functions of the EAC in terms of crisis management are also hampered by principle of sovereignty and non-interference in internal affairs of partner states.[63] The idea of non-interference is further affected by rivalry between neighboring states. For instance there is an economic rivalry between Kenya and Tanzania which has fueled a lot of suspicion among the Tanzanians regarding the functions and progress of the EAC. In this case, where there is a crisis

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[60] Treaty of EAC (2005).
[61] Mwaseba, J.J. 'Proposed Political Federation of EAC: Benefits to Tanzania' Carsile Military University, PA, (2010) p 9.
[62] Ibid p 10
[63] Nye, J. 'Pan Africanism and East African Community Integration' Massachusetts, Harvard University Press (1967) p74. p121.

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or conflict among the partner states, the other partner states seek to benefit more out of the crisis of their neighbor.[64]

The treaty provides for the decision making organs in the EAC, with the Summit being the highest decision making organ and whose composition is found in Article 10 (i) which states that the summit shall consist of the heads of state or government of the partner states.[65] Hence, whenever a crisis arises that involves a partner head of state or government, the summit is often in an awkward position of making a logical decision or even attempting to intervene in the crisis. Therefore, EAC as any other sub-regional organization often operate under conditions that potentially impair their effectiveness.[66] With the above challenges as discussed above, EAC was faced with such a challenge during the Kenyan 2007-8 crises, where Kenya being regarded as the hegemony was involved in the crisis.

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[64] Interview with Mr. Njoka Director Political Affairs Ministry of East African Community in Kenya.
[65] Treaty of the Establishment of the East African Community (2005).
[66] Interview with Mr. Njoka Director Political Affairs Ministry of East African Community in Kenya.

CHAPTER FOUR

CRISIS DECISION MAKING DURING THE 2007-8 KENYAN CRISIS

4.1 Introduction

The 'Kenyan 2007-8 crisis' as used in the context of this research thesis refers to the political and humanitarian catastrophe that engulfed the country after president, Mwai Kibaki, was controversially declared by the Electoral Commission of Kenya (ECK) as the winner of the country's closely contested election and sworn in for a second five-year term on 30 December. As Kagwanja and Southall notes, soon after the announcement and eventual swearing in of the president at dusk, violence erupted in strongholds of the Orange Democratic Movement (ODM) headed by Raila Odinga, mainly in Nairobi, Nyanza and the Rift Valley as Odinga and his supporters protested that they had been robbed of victory.[1] The ensuing electoral dispute quickly metamorphosed into a deadly orgy of 'ethnic' slaughter, rape and plunder reminiscent of the 1994 Rwandan genocide.[2]

The political crisis brought the country to the brink of civil war. The officially declared victory of the presidential election by the incumbent President Mwai Kibaki was disputed by the opposition, civil society and domestic and international observers alike.[3] As Southall notes, the severity of this crisis unfolded in a span of hours between tallying Day, to eventual announcement of the results.[4] The magnitude of the trauma and structural violence that took place in Kenya after the fourth multi-party general election took both Kenyans and the international community, alike, by surprise. In retrospect, the violence that occurred could not

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[1] Kagwanja and Southall R, '*Introduction: Kenya – A Democracy in retreat?*' Journal of Contemporary African Studies, 27:3 p260.
[2] Ibid p261.
[3] Sievers, A. Peters M. '*Kenya's 2007 General Election and its Aftershocks*'. African Spectrum, Vol. 43, No.1 Horn of Africa (2008) pp133-144.
[4] Kagwanja and Southall R, p268.

only have been predicted, it could most likely have been prevented. Mwagiru conquers with several other scholars by noting that, in a rather surprising move the international community stood united, did not endorse the presidential election results and put strong pressure on Kenya's political leaders to solve the crisis.[5]This is also evident as the power-sharing formula, brokered by former UN Secretary General Kofi Annan in late February 2008, would not have been possible without this united stand by the international community.

Large-scale violence erupted after the official declaration of Kibaki' s victory on the evening of 30th December 2007. Much of the crisis quickly took an ethnic dimension between communities that had voted overwhelmingly for Odinga (the Luo, Kalenjin) and those that had voted for Kibaki (the Kikuyu, Embu, Meru). Long-standing conflicts over land and social injustice fuelled the violence.[6] According to different estimates, at least 1,000, but perhaps more than 1,500 people were killed altogether, mainly in the Rift Valley, Nyanza Province and Nairobi. At least 350,000 people (but probably a much higher number) were evicted from their homes, mostly in the Rift Valley.[7] The immediate crisis only came to an end after former UN Secretary-General Kofi Annan succeeded in brokering a power-sharing deal between Kibaki and Odinga on February 28th, 2008.

4.2 The Genesis of 2007-8 Kenyan Crisis

The elections on 27th December 2007 proceeded largely in an orderly and peaceful manner. The voters' turnout was visibly high, reaching about 70% according to the ECK's

[5]Mwagiru, M. *'The Water's Edge: Mediation of Electoral Conflicts in Kenya'* Institute of Diplomacy and International studies, Nairobi 2008 p 27.
[6]Modi R. *'The Kenyan crisis: Post December 2007 Elections'* Center for African Studies, University of Mumbai, Vol. 23 (2008) p12.
[7]Mwaseba, J.J. *'Proposed Political Federation of EAC: Benefits to Tanzania'* Carsile Military University, PA, (2010) p29.

(Electoral Commission of Kenya's) official figures.[8] From the following day onwards, the Kenyan media began to publish results of individual constituencies; some of these figures had been declared officially, while others were based merely on information gathered by journalists at constituency tallying centers throughout the country, and thus unconfirmed and not entirely consistent.[9]

Still, two major trends appeared obvious: Odinga led in the presidential polls, and more than a dozen political heavyweights in President Kibaki's cabinet had lost their parliamentary seats. Both trends seemed to confirm that a substantial majority of the electorate had voted for the 'change' represented by the ODM. However, as more and more results from Kibaki strongholds in Central Province were coming in on December 29th, Odinga's majority began to dwindle.[10]

As Kiteme notes, it is Uneasiness about the delay in the announcement of results that sparked the crisis and it became widespread as time went by; the first street protests (for instance, in Nairobi and Mombasa), accompanied by sporadic violence (in Western Kenya), already erupted on December 29th.[11] Towards the evening of that day, confusion reigned at the ECK's headquarter in Nairobi, where officials and party agents tried to sort out disputed results, debating the validity of returns from dozens of constituencies. Towards the evening of December 30th the ECK announced a narrow victory for Kibaki, with 4.58 million votes as against 4.35 million for Odinga. Musyoka (the ODM-Kenya) became third with 0.88 million votes.[12] The results were strongly regionalized, with Kibaki dominating in Central Kenya, Odinga in the West

[8] Modi R. *'The Kenyan crisis: Post December 2007 Elections'* Center for African Studies, University of Mumbai, Vol. 23 (2008) p12.
[9] Ibid p20.
[10] Roberts, M. p455.
[11] Interview with Mr. Kiteme – Director Cabinet Affairs Republic of Kenya.
[12] Roberts, M. p459.

and the Rift Valley, and Musyoka in the Ukambani region in Eastern Province.[13] One hour later Kibaki was sworn in, with only selected media admitted to the ceremony at State House. Two days later, with the country up in flames, even ECK chairman Samuel Kivuitu told journalists that he was not any longer sure who had actually won the elections.[14] While even most international observers regarded the presidential election results as - at least - highly questionable, citing various examples from constituencies where results had 'obviously' been manipulated, the ODM decided it would not go to court over the results, declaring it had no confidence in Kenya's judicial system.[15]

The crisis saw a gradual decline in the state's monopoly of legitimate force and a consequent generalized level of violence not always within its control. The crisis was compounded further by deliberately weak institutions, mostly overridden by a highly personalized and centralized presidency, Judiciary and Security Institutions that could and did not exercise the autonomy or checks and balances normally associated with democracies.

4.2.1 The 2007 Campaigns and Political parties

In 2007, the allies of 2002 contested against each other, while Uhuru Kenyatta, the runner-up of 2002, joined the Kibaki camp, thereby uniting the Kikuyu bloc. In 2007, Odinga was presidential candidate for the ODM, Kibaki for the newly-founded Party of National Unity (PNU), and Kalonzo Musyoka, from the Ukambani region of Eastern Province, stood for the ODM-Kenya.[16] While both the ODM and the PNU appeared as broad ethno-regional coalitions,

[13]Trail, R. *Is Power-sharing the answer in Kenya?* ' Journal Contemporary African studies, No.457 (2008) p36
Trail, R. *Is Power-sharing the answer in Kenya?* ' Journal Contemporary African studies, No.457 2008 pp36[14]
[15] Roberts M. p52.
[16]Kagwanja, P. Southhall R. 'Introduction: Kenya – A Democracy in retreat?' Journal of Contemporary African Studies, 27:3 p:259-277

the ODM had a much stronger leadership team, as its regional representatives held far more grassroots popularity than the PNU leaders from these regions. [17]

The most significant issue of the campaign was the debate about the system of governance. For the first time since independence, an election campaign presented the electorate with a clear policy choice: between the current centralized form of government (the PNU) and a devolved or federal system (the ODM).[18] This difference had already dominated debates about the 2005 referendum. In 2007, however, the debate took a populist turn that paved the way for the ethnic violence after the elections. [19]Both sides spoke of 'Majimbo', a term with problematic historical connotations, in order to describe the ODM position on devolution. The term 'Majimbo' had been used during the ethnic cleansings in the 1990s. Employing it in the 2007 campaigns, both sides played with the aspirations and fears of Kenyans and thus fuelled the ethno-political tension around issues of land and resource distribution.

As Tarus notes, the ODM could only win by making a case for Majimbo. With not many votes to garner in Central and Eastern Provinces, the unpopularity of the concept in those regions hardly affected the ODM's overall election prospects. In other places, however, Majimbo was highly popular: In the North Eastern Province and especially along the Coast, where much of Kenya's foreign currency income isgenerated by tourism, with little of its profit being reinvested locally, Majimbo was popular because of the neglect experienced under all governments since independence; people expected Majimbo to provide a bigger share of the national cake, i.e. infrastructure, health and educational facilities.[20]

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[17] Ibid
[18] Trail, R. 'Is Power-sharing the answer in Kenya?' Journal Contemporary African studies, No.457 2008 p36
[19]Sievers, A. Peters M. 'Kenya's 2007 General Election and its Aftershocks'. African Spectrum, Vol. 43, No.1 Horn of Africa (2008) p133-144.
[20] Interview with Mr. Tarus – Director Economic Affairs Ministry of Foreign Affairs.

As Sievers and Peters note, In the Rift Valle, Majimbo meant the option to reverse the land distribution created after independence; many Kalenjin understood it as an invitation to conclude the business left unfinished in the 1990s.[21] The PNU reinforced such perceptions of the Majimbo issue as it spelt out the possible consequences. PNU politicians warned that the Kikuyu and other minorities would be expelled from the Rift Valley, should the ODM win the elections. Much of the Kalenjin electorate could not agree more (with the PNU) on this point.

4.2.2 Crisis before the elections

In the weeks before the elections, hate leaflets and text messages circulated widely in the Rift Valley. Political contestants on both sides accentuated and exploited the Majimbo theme and thereby even further polarized a country already deeply divided along ethno-political lines.

According to Kiteme, the argument here is that: in these political parties, violence was diffused, could be ignited easily, but not controlled, and was not; institutions outside the presidency normally associated with vetting a contested election were not viewed as being sufficiently neutral to do so and did not; and the nature of Kenya politics dictated that both leaders and followers to seek politics as a do or die zero-sum game, which is what the elections became.[22] Actually, Kariuki notes, that had the election not been so close, these same factors may have been held in check for a while. Nevertheless, they were dangerous and looming problems.[23]

Several institutions seemed weak during the 2007 Kenyan crisis, and as Mr. Mwangi notes, the political crisis exposed the extent of their shortcomings. Starting with the example of the ECK, he outlines the origins of its numerous shortfalls, by revisiting the beginnings the

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[21]Sievers, A. Peters M. 'Kenya's 2007 General Election and its Aftershocks'. African Spectrum, Vol. 43, No.1 Horn of Africa (2008) p133-144.
[22] Interview with Mr. Kiteme Director Cabinet Affairs Government of Kenya.
[23] Interview with Mr. Kariuki – Administrative Secretary IEBC.

electoral commission and its composition and reveals the stakes that permeate Kenyan politics. The failure by the commission to guarantee free and fair elections will leave its mark, not so much on the institution's credibility, which went to its lowest level.

Oloo also pinpoints the merely theoretical independence of the judiciary that has been perverted by political schemes and strategies.[24] The elections brought in new faces, most of whom are young, and will perhaps be able to provide a breath of fresh air into Kenyan politics.[25] However, the question that lingers is the institutional framework within which they were to work under some of which evolve from a very tainted and dark past.

4.3 Crisis Decision Making Institutions during the 2007-8 Kenyan Crisis

The 2007-8 Kenyan crisis, exhibited a crisis that requires several institutions to function in collaboration and at their best in order to manage a crisis from reaching violent levels. However, the Kenyan crisis presents a unique experience in which, the occupant of the presidency is a party to a crisis and that part of the threat.[26] This therefore requires the ability of other institutions to help and restore normalcy. In the Kenyan case the Judiciary, the Electoral Commission of Kenya and the Security Institutions were vital in managing the crisis and make decisions that would have helped quell the violence. It has been observed that most of these institutions were all working for the Executive and with little autonomy and independence, which greatly affected their work. Most of these institutions had a laid down procedure on how to reach a decision but interference from the executive arm of government is evident.[27]

[24] Interview with Mrs. Oloo Director Legal Affairs State Law Office.
[25] Interview with Mrs Oloo Director Legal affairs at Ministry of Foreign Affairs Government of Kenya
[26] Interview with Mr. Kiteme Director Cabinet Affairs government of Kenya
[27] Interview with Mr.Njoka Director Politcal Affairs Ministry of East African Community Kenya

4.3.1 Decision Making in Electoral Commission of Kenya (ECK)

In 2007, the term of office of 22 ECK commissioners expired before the election date and one of the issues that arose was whether President Kibaki would renew their terms to ensure preparations for elections and the voting exercise were handled by experienced people.[28] Many of those who had assumed new commissioners would be appointed expressed concern over whether the IPPG arrangements would be respected.[29] However, on 12th January, despite mounting pressure from members of the Orange Democratic Movement (ODM) for the letter and spirit of the agreement to be respected, MwaiKibaki drew battle lines by unilaterally replacing commissioners with new appointees. In October, with less than two months to the elections, the terms of more commissioners expired, and M. Kibaki replaced Gabriel Mukele as ECK Vice Chairman on the 12th. Still without consulting at all with the opposition, he went further to appoint five new commissioners on the 27th, and renewed the terms of two others.[30] The only concession he made was to re-appoint Kivuitu chairman of the Commission on 2nd December. Indeed, the ODM led by R. Odinga had intensified pressure, saying that free and fair elections would only be guaranteed by retaining Kivuitu as the ECK chairman.[31] The majority of the commissioners were by all standards inexperienced, since only three of them (S. Kivuitu, K. Muttuand Tumwa) had presided over an election before.

Of particular concern was that whereas the commissioners appointed to preside over the 2007 election had all been appointed or reappointed by President Kibaki, the Commission could be suspected of working in his favour. Some of the appointments, considered as partisan, raised questions about the independence of several commissioners from the executive. For instance, K.

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[28] Kagwanja, P , Southall, R p269.
[29] Sievers, A. Peters M. 'Kenya's 2007 General Election and its Aftershocks'. African Spectrum, Vol. 43, No.1 Horn of Africa (2008) pp.133-144.
[30] Ibid
[31] Kagwanja, P. Southhall R. p277.

Muttu was a former lawyer of the Kibaki family, while MuturiKigano had been M. Kibaki's personal lawyer at one time and Pamela Mwikali Tutui was married to a PNU candidate for the Kajiado Central parliamentary seat.[32] The renewal of Muttu's contract and his elevation to Vice-Chairman's position at a time when G. Mukele was being retired raised doubts over the criteria followed in renewing or not renewing some commissioners' terms of office. The letter and spirit of the IPPG agreement ahead of the 1997 elections had been to establish an electoral commission that would represent both the government and the opposition, in order to guarantee its independence and to give it.

4.3.2 Decision making in the Judiciary during the 2007-8 Kenyan crisis

After the swearing-in of a president, the law stipulates that decision to hold a fresh election can only emanate from a High Court ruling. Nevertheless, R. Odinga, who contested the legitimacy of M. Kibaki's election, refused to file any petition in court, questioning the little of independence of the judicial system. Sindiga notes Kivuitu's confession that: "I arrived later at State House to deliver thecertificate and found the Chief Justice there, ready to swear in Kibaki", which implied that the Chief Justice ready swear in President Kibaki even before the official announcement of his re-election, also raises a lot of questions on the autonomy of this arm of government.[33] In legal and neutral principle, proceedings before the courts are also political insofar as judges make their decisions within a specific political context.

However, the judiciary in Kenya has always faced accusations of being close to the executive power and being extremely corrupt.[34] After the 2002 transition, one of the stated objectives of the Kibaki government had been to put an end to the judicial system's bad image, which it considered as an obstacle to its efficiency. President Kibaki begun by replacing Chief

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[32] Trail, R. *'Is Power-sharing the answer in Kenya?'* Journal Contemporary African studies, No.457 2008 pp32
[33] Interview with Sindiga – Director Economic Affairs Ministry of EAC
[34] Trail, R. *'Is Power-sharing the answer in Kenya?'* Journal Contemporary African studies, No.457 2008 pp36

Justice Bernard Chunga, who was accused of abuse of office, by Evan Gicheru, Furthermore, the Government appointed a Committee on integrity and fight against corruption within the judiciary in Kenya.[35] The judiciary depends on cases that are brought to them and they cannot institute a case unless the parties in crisis decide to seek the indulgence of the courts, However, due to lack of faith in the judiciary and the perception that the judiciary would favor the incumbent president, the opposition led by Raila Odinga did not seek any legal redress with the judiciary.[36]

4.3.3 The Executive as a party to the crisis itself

The executive under the Incumbent President Kibaki was a major party into the crisis. President Kibaki's controversial reelection, declaration as winner and swearing in as president was being contested by the opposition, national and international agencies.[37] The president claimed that he was the duly elected president and those who disagree should seek redress in the courts. In this regard the president was sending a clear message that he was the duly elected president of Kenya.

4.4 Decision making during the Kenyan crisis

The management of the crisis was mainly done by the government although as Kiteme notes other non-state actors were involved especially International organizations.[38] Since it is the only authority with the mandate to enforce rule of law and ensure enhanced security within the country. The authority of the executive as a branch of government is vested in the cabinet, hence the cabinet is the highest decision making unit. The president only acts as the chairman of

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[35] Interview with Kiteme- Director Administration Cabinet affairs.
[36] Mwagiru p27.
[37] Interview withaJ Mr. Mogaka Regional Commissioner Nyanza Central.
[38] Interview with Mr. Kiteme – Director Cabinet Affairs Republic of Kenya.

cabinet meetings and is bound by cabinet decisions. Kiteme notes that cabinet has to ratify all decision made by the president that had not been decided by the entire cabinet.[39]

4.4.1 Cabinet and crisis decision making

The cabinet is composed of the president who also serves as the chairman and cabinet ministers. It is the highest decision making organ in Kenya's decision making structure and hence members of the executive including the president are bound by decisions that have been passed by the cabinet. According to Mogaka, cabinet deals with issues referred to it by ministries and mostly deals with policy decisions. He notes that the 2007-8 Kenyan crisis was referred to the cabinet by the then Internal security minister Mr. John Michuki.[40] He notes that the cabinet deals with security issues that of national proportion and that the electoral violence that rocked the country fitted that bill. A cabinet memo was prepared by the internal security ministry that briefed cabinet on the actual situation on the ground and the need to have a quick solution to the situation before it deteriorated.

4.4.2 Cabinet and Crisis decision making

As Kiteme notes, Cabinet meetings are held fortnightly under normal circumstances on Thursdays. In this cabinet meeting he notes further that the agenda in normal cabinet meetings is routine policy issues and other national important matters.[41]

Issues that are not of national importance the cabinet has a cabinet sub-committee which meets and deliberates and makes decisions on such issues. However, Issues of national importance such as security, as the case of the 2007-8 Kenyan crisis, full cabinet meets and makes a decision on that matter.

[39] Ibid.
[40] Interview with Mr. Mogaka – Former Regional Commissioner Nyanza Central and District Commissioner.
[41] Interview with Mr. Kiteme – Director Cabinet Affairs Republic of Kenya.

Mr. Mogaka notes that the cabinet met on several occasions during the 2007-8 electoral crisis and made certain decisions. For instance there decisions were made to the effect of deploying the military in the worst affected areas such as Naivasha and along Nairobi-Nakuru highway.[42]

4.4.3 National Security Advisory Council and National Security Council

These institutions serve the purpose of advising the cabinet on key security issues.

It is evident that there exists an international crisis decision making process and procedure within government institutions and that decision making is made from bottom up.[43] From this perspective, the underlying argument is that crisis is bound to occur at different levels of society and institutions at the local levels will handle those that are within that level. Crisis that is of higher magnitude will be handled at a higher level, the Kenyan 2007-8 crisis was at the level of national and international level hence it was handled at the national and internal level.[44]

Secondly this research validates the idea that Kenya has a crisis decision making process and structure and indeed Kenya through the executive branch of government made decisions regarding the Kenyan crisis.

Objectives of the research

This research undertook to examine and analyze international crisis decision making processes and structures and to investigate crisis decisions made during the Kenyan 2007-8 crisis by EAC and Kenya as an EAC partner state. Accordingly, this research established that both Kenya as a state and EAC as a sub regional organization have a crisis decision making structures and procedures that have been developed over a period of time. These decision making processes and structures are anchored on the Kenyan Constitution and the EAC treaty. The EAC treaty and

[42] Interview with Mr. Mogaka – Former Regional Commissioner Nyanza Central and District Commissioner.
[43] Interview with Mr. Mogaka Former Regional Commisioner and District Commissioner.
[44] Interview with Mr. Kiteme Director Cabinet Affairs Republic of Kenya.

Kenyan constitution both call for and provide mechanisms for peaceful resolution of disputes and conflicts.

It was also established that both the EAC and Kenya as an EAC partner state was greatly concerned with the events of the 2007-8 Kenyan crisis and that deliberate decisions were made to try and contain the crisis. However, the EAC as a sub-regional organization did not have the capability to intervene in the crisis mainly due to the nature of the Kenyan 2007-8 crisis which was mainly a political crisis. The EAC leadership from the sectoral committee to the heads of states summit did not meet at any given time to discuss the crisis. It was established that it is only the EAC secretariat through the secretary general that called for peaceful resolution of the crisis.

However, the Kenya's key decision making organs met in an attempt to solve the crisis. The cabinet which is the highest decision making organ met on several occasions to discuss the crisis. Due to the political nature of the crisis and the political composition and vested interests of the cabinet an objective decision could not be realized, hence the need for an AU led intervention led by former UN secretary general Kofi Annan.

It therefore goes without saying that the hypothesis 'EAC and Kenya has a crisis making procedure' is correct due to the presence of a decision making structures in EAC and Kenya as enshrined in the treaty and constitution respectively. Also the alternative hypothesis that 'EAC and Kenya did not successfully make any crisis decisions' is also correct, this is because neither of the decision made helped solve the crisis. EAC and Kenya therefore need to establish a clear decision making body that deals with mainly political crises, which is devoid of political interference. A reformed judiciary and an expanded mandate of EACJ will go a long way in solving political crises within the EAC.

CHAPTER FIVE

CONCLUSION

This study was undertaken to analyse EAC member countries decision making process and structure. The problem was on the nature of the decision making process and procedure that exists in regard to the Kenyan 2007-8 crisis and its efficacy in solving political crises. The need to know arose from the fact that a political crisis such as the Kenyan 2007-8 crisis is entirely different from other economic crises that EAC has been dealing with in regard to the establishment of the common market protocol. The stakes are normally high in a political crisis such as this because legitimacy of the incumbent president was in question, Cabinet which was to be chaired by the President who was a party to the crisis itself. However, crisis calls for decision makers to make hard choices within a limited time and thus there has to be clear mechanisms that can resolve political crises as soon as they are detected or as soon as they occur.

To achieve the objectives set for this research, a literature review was conducted, which focused on primary and secondary data in the field of international studies and regional organizations in particular EAC. Decision making theory was chosen as the theory this study is based. The study was based on secondary information from existing literature. Primary information was also sought from personnel of repute career civil servants in EAC, Ministry of EAC, MFA, Cabinet office in Kenya and OOP. Unfortunately, not all the targeted sources responded, but interviews were very useful because the researcher was able to pose both close-ended and open-ended questions and seek clarification where necessary.

The study was heavily enriched by the numerous crises experienced in the EAC member countries and Kenya in particular. The highlight of those crises is the 2007-8 post election crisis between the incumbent president Mwai Kibaki and Opposition leader Raila Odinga. It is

interesting how a country of diverse ethnicities seized to used the elections especially presidential elections to unify them but rather divide them along ethnic lines. Intervening and resolving a presidential election crisis is a complex decision-making process that connects the national objectives and personal objectives while putting the interest of the people in mind and with the ways and means of achieving those ends. Crisis decision making process, in both theory and successful practice consists of fundamental, interconnected, and sequential decisions that define and shape strategy at each level of a decision making unit. It is about decision making units making such decision that are based on the long term interest of the society and not making short term based decisions.

To fully comprehend this decision-making process, one must view it on two levels. On the first level, the process concerns very broad and long-term issues of national strategy issues that transcend current events. For example, at the broadest level, a state's most fundamental objective is generally to preserve its sovereignty. To do so, and to achieve other fundamental, long-term national objectives, the decisions in the strategy process must be effectively addressed.

As Wright writes crises can present overwhelming challenges to established institutions and belief systems and change forever the distribution of power within International system or in a regional or Sub-regional system.[1] The EAC region has undergone a series number of crises some of which have threatened fundamental values of the region and has often called to mind the efficacy of crisis decision making. Kenya as a member of EAC has seen crises in its almost fifty year existence and the 2007-8 crises was one of the most serious with very dire consequences that threatened the country to fall into a state of failure.

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[1]Bell, C. *"The Conventions of Crisis: A Study in Diplomatic Management."* Oxford University Press, Oxford, (1971)pp 190.

During crises it has been noted in this research project that it is an opportunity for decision making for those in authority. It has been noted that Kenya indeed has a decision making process and structure which endeavors to make certain decisions in times of crises. In deed during the Kenyan 2007-8 crisis decisions were made by the highest decision making organs which is the cabinet. However management of the entire crises did not clearly depict an outright control of the crises.

Some of the crisis decision making failures of the cabinet are anchored on the former constitution where members of cabinet had to swore their allegiance to the President of the republic of Kenya, hence whenever a crisis that involves the president happens it becomes hard for members of the cabinet to go against the wishes of the president. This is evident in a case where the cabinet only endorses or makes decisions that are favorable to the Pressident. However, with the new constitution this has changed and members of cabinet are now swearing their allegiance to the constitution and the people of Kenya.

The composition of cabinet has been also looked in the new structure so as not to be entirely dependent of politicians, who during a political crisis may not make an objective crisis decision. The composition of cabinet has been changed so as to include not politicians who in times of political crisis will make crisis decisions. The contrary argument here is that, Decision making in government is mainly a political issue even when the issue itself is non-political. The argument here is that governments are run by politicians and that cabinet itself is a composition of politicians.

The Judiciary is also a key player in crisis times and therefore it is important to restore the integrity and public confidence of the public in the judiciary. During the Kenyan 2007-8 crisis, the Judiciary was deemed as corrupt and tended to bear allegiance to the incumbent.

However, the ongoing judicial reforms especially the appointment of a chief Justice through a competitive and open process has served well to restore public confidence in the Judiciary. This is important in the sense that future electoral conflicts can be solved amicably through the courts in a judicial process.

From this research thesis it is evident that crisis decision making is not a preserve one single institution but rather several institutions within the state and non state actors working in collaboration to ensure that crises are managed amicably as soon as they are detected. The Kenyan case has shown the importance of governments within the EAC to ensure that they have clear crisis decision making structures and that frequent update of information through information gathering is important in ensuring crisis decision makers make informed decisions during a crisis.

In conclusion, the objectives of the study were fully realised. EAC has a decision making process and structure although it is not properly formulated to address the various political crises that may occur within the sub-region, is the finding. However, the fact that the Kenyan 2007-8 crisis was successfully mediated by an AU led process is because of the way AU able to use its mandate and influence in the international system. EAC can borrow lessons from the success of AU in the Kenyan 2007-8 crisis and endeavour to improve in its ability to contain any political crises that may occur among its member states. This will ensure peace and tranquillity exists within EAC member countries and can enhance its main objective of political federation.

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