

**PEACE-BUILDING IN DIVIDED SOCIETIES: A COMPARATIVE STUDY OF
KENYA AND RWANDA, 1994-2010**

BY

KAKENYA LEBOO

R52/82079/2012

**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN
INTERNATIONAL CONFLICT MANAGEMENT TO THE INSTITUTE OF
DIPLOMACY AND INTERNATIONAL STUDIES (IDIS), UNIVERSITY OF
NAIROBI.**

SEPTEMBER, 2014

DECLARATION

This Research Project is my original work and has not been presented for the award of a degree in any other University.

Sign

Date

.....

.....

KAKENYA LEBOO

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

Sign

Date

.....

.....

DR. IBRAHIM FARAH

DEDICATION

I dedicate this project to my family, there is no doubt in my mind that without their continued support, endless patience and counsel I could not have completed this journey.

ACKNOWLEDGEMENTS

This thesis was only possible with the assistance and support of many people in university staff, family members and friends. First, I thank my supervisor Dr. Ibrahim Farah for his guidance and thorough advice on the topic and for helping me to focus the direction of this thesis, many excellent suggestions, and his ruthless insistence on cutting excessive detail.

Special thanks to my friends who generously gave their time and shared their experiences and expertise with me. In particular, I am grateful to those who facilitated my research in local villages, and to the Transitional Justice Working Group who welcomed me to the team and allowed me to participate in, and observe their work. I would like to sincerely thank the Board and Management of the Authority for providing an enabling environment and for the support and encouragement offered to staff to pursue further education.

To my friends and fellow post graduate students, thank you for your camaraderie, helpful discussions, and comic relief. The program was one of the most important formative experiences in my life and most of all; I give thanks to the Almighty God who gave me strength and good health while doing this.

Kakenya Leboo

R52/82079/2012

LIST OF ABBREVIATIONS

CDR - Coalition pour la Defense de la Republique

CSOs - Civil Society Organizations

FRY- Federal Republic of Yugoslavia

ICTY- International Criminal Tribunal for the former Yugoslavia

KANU - Kenya African National Union

MOU - Memorandum of Understanding

MPs - Members of Parliament

NARC - National Rainbow Coalition

OAU - Organization of African Unity

ODM - Orange Democratic Movement

PNU - Party of National Unity

RPF - Rwandan Patriotic Front

TJ - transitional justice

UN - United Nations

UNAMIR - United Nations Assistance Mission for Rwanda

UNHCR - United Nations High Commissioner for Refugees

TABLE OF CONTENTS

DECLARATION.....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENTS	iv
LIST OF ABBREVIATIONS	v
TABLE OF CONTENTS	vi
ABSTRACT.....	xi

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction.....	1
1.2 Statement of the Research Problem	3
1.3 Objectives of the Study	5
1.4 Literature Review	6
1.4.1 The Concept of Peacebuilding	6
1.4.2 Divided Societies	10
1.4.3 Kenya’s Post-election Violence	11
1.4.4 Genocide in Rwanda	14

1.4.5 Literature Gap	17
1.4.6 Justification of the Study	17
1.5 Theoretical Framework	19
1.6 Hypotheses	20
1.7 Research Methodology.....	21
1.8 Chapter Outline	23

CHAPTER TWO

BACKGROUND TO CONFLICTS IN KENYA AND RWANDA

2.1 Introduction	24
2.2 Classification of Conflicts in Kenya	25
2.2.1 Conflicts within Pastoral Communities	25
2.2.2 Conflicts between Pastoral and Agricultural Communities	28
2.2.3 The Refugee Problem	30
2.2.4 Ethnic Clashes.....	31
2.3 Stakeholders in Post-election Violence.....	34
2.3.1 Political Parties and Tribes	34
2.3.2 International Community	34

2.3.3 Land and Government.....	35
2.4 Responding to Conflict and Restoring Peace.....	37
2.4.1 The Role of the Government: Formal Response.....	37
2.4.2 Informal Grassroots Peace Building Initiatives	40
2.5 Classification of Conflicts in Rwanda.....	41
2.5.1 Ethnic Conflict and Ethnic Hatred.....	41
2.5.2 Ecological Pressure	43
2.5.3 The Arusha Accords: Multiparty System of Government	45
2.6 Conclusion.....	47

CHAPTER THREE

PEACE-BUILDING IN DIVIDED SOCIETIES: A COMPARATIVE STUDY OF KENYA AND RWANDA, 1994 - 2010

3.1 Introduction.....	48
3.2 Peace-Building in Divided Societies: An overview.....	48
3.3 <i>Gacaca</i> Courts in Rwanda	50
3.4 Power sharing in Kenya	53
3.5 The Concept of Justice and Reconciliation and Effectiveness.....	57

3.6 The Role of Civil Society.....	65
3.7 Challenges.....	68
3.8 Conclusion.....	69

CHAPTER FOUR

PEACEBUILDING IN DIVIDED SOCIETIES: A CRITICAL ANALYSIS

4.0 Introduction.....	71
4.1 Emerging Issues.....	72
4.1.1 The Concept of Truth, Justice and Reconciliation.....	72
4.1.2 Internationalization of Peace-building in Divided Societies.....	82
4.1.3 The Role of Civil Societies.....	83
4.1.4 Other Issues.....	85
4.2 Conclusion.....	90

CHAPTER FIVE

CONCLUSION

5.1 Summary.....	92
5.2 Key Findings.....	93
5.3 Recommendations.....	94

BIBLIOGRAPHY	98
APPENDICES.....	106
Appendix I: Interview Guide	106

ABSTRACT

There is a growing acknowledgement that ending the world's violent conflicts and wars and creating peace cannot only be achieved by Track I diplomatic efforts. New governments of the war-torn societies face the challenges of rebuilding the state while at the same time they need to address the causes of the civil conflict in such a way that will preclude a future return to violence. Rwanda and Kenya offers a typical example of a society torn apart by ethnic violent conflict. The genocide of 1994 and 2007/2008 post-election violence in Kenya destroyed relationships between Rwandans and Kenyans along ethnic line respectively, who yet continue to live next to each other. In this regard efforts to restore the relationships of country men and women becomes worthwhile to undertake for a progressive country. It is against this background that this study sought to conduct a comparative analysis of Kenya and Rwanda to assess the effectiveness of efforts in both countries to restore sustainable peace. The overall objective of the study was to assess peace-building in divided societies. The study was a comparative analysis of Kenya and Rwanda. The study was guided by the following hypotheses: Justice and reconciliation enhances peace-building in divided societies and that civil society engagement is effective in peace-building in divided societies. This study was based on Burton's human needs theory of conflict resolution which operates on the premise that a pre-condition for the resolution of conflict is that fundamental human needs be met and Lederach's theories on conflict transformation which explains the differences between social justice activists and conflict resolution practitioners along with a tension that often exists between the two. The study found that that justice and reconciliation remains key to securing a peaceful future in Kenya and Rwanda and in preventing the use of past injustices as the seed for renewed conflict. It is also established that acknowledgment is a key pillar of reconciliation. It also revealed that civil society has the ability to contribute to peacebuilding and facilitate the conditions necessary for building a sustainable peace. The study recommended that the government fully implement the TJRC report recommendations as well as other unimplemented recommendations from commissions of inquiry relating to reconciliation among others.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

There is a growing acknowledgement that ending the world's violent conflicts and wars and creating peace cannot only be achieved by Track I diplomatic efforts. Handling of international as well as internal armed conflicts and wars were long treated as top-led affairs where the leaders of the conflict parties, often with help from external actors such as other governments and the United Nations (UN), were to sit down at a negotiation table to end the violence. Peace was then assumed to "trickle-down" to the rest of the population¹.

With the proliferation of armed conflicts in the 1990s, and the rising complexity of peace building efforts confronting the international community, the attention of donors and peacebuilding practitioners has increasingly turned to the potential role to be played by justice and reconciliation commissions as well as the civil society.² Also new governments of the war-torn societies face the challenges of rebuilding the state while at the same time they need to address the causes of the civil conflict in such a way that will preclude a future return to violence. Frequently, the post-conflict peacebuilding strategies concentrate on the short-term political and economic stabilization, leaving out the social components of the state recovery for a later stage of the process.

Galtung defines peacebuilding as strategies designed to promote a secure and stable lasting peace in which the basic human needs of the population are met and violent

¹ Lederach, John Paul *Building Peace – Sustainable Reconciliation in Divided Societies* (Washington: United States Institute of Peace, 1997)

² Rebecca Spence, "Post-Conflict Peacebuilding" (2001) 145.

conflicts do not recur³. Galtung also incorporates the goals of both negative peace (absence of physical violence) and positive peace (absence of structural violence). According to Spence, peacebuilding includes those activities and processes that: focus on the root causes of the conflict, rather than just the effects; support the rebuilding and rehabilitation of all sectors of the war-torn society; encourage and support interaction between all sectors of society in order to repair damaged relations and start the process of restoring dignity and trust; recognize the specifics of each post conflict situation; encourage and support the participation of indigenous resources in the design, implementation and sustainment of activities and processes; and promote processes that will endure after the initial emergency recovery phase has passed⁴.

Many countries in the post-conflict stage are still divided and struggling. Even if the conflict has been deemed by international bodies as “resolved”, the people on the ground are still reeling from conflict that is not temporal, but is generational, historical, and cultural in some cases. Ethnicity, as Horowitz argues, embodies an element of emotional intensity that can be readily aroused when the group’s interests are thought to be at stake⁵. Therefore, ethnically diverse societies carry various degrees of conflict potential. According to Spence, “the process of peacebuilding calls for new attitudes and practices: ones that are flexible, consultative and collaborative and that operate from a contextual understanding of the root causes of conflict⁶. For divided societies, Lijphart contends that

³ Johan Galtung. “Violence, Peace and Peace Research”, *Journal of Peace Research* (1969). 167-191.

⁴ Rebecca Spence. “Post-Conflict Peacebuilding: Who Determines the Peace?” in Bronwyn Evans-Kent & Roland Bleiker (eds) *Rethinking Humanitarianism Conference Proceedings*, 24-26 September 2001. (St Lucia: University of Queensland),(2001): 137-8.

⁵ Donald L. Horowitz, (1985) *Ethnic Groups in Conflict*, (Los Angeles: University of California Press), p. 59.

⁶ Rebecca Spence, “Post-Conflict Peacebuilding”, (2001) 145.

“majority rule is not only undemocratic but also dangerous.” Although majoritarian rule is often a product of the democratic process, the resulting majoritarian institutions can lead to minorities being continually excluded from power and discriminated against⁷.

Although there has been a massive rise in peacebuilding initiatives aimed at strengthening justice and reconciliation commissions as well as the civil society, these initiatives have not been accompanied by a systematic research agenda. As a result, little is known about the effectiveness of justice and reconciliation and the role of civil society in peacebuilding in a divided society, including their potential contribution to reducing violence, ending armed conflict and building a sustainable peace thereafter.

1.2 Statement of the Research Problem

As peacebuilding is difficult to define it is as well even more difficult to achieve in practice⁸. As a result, there is a growing interest in how to build sustainable peace in the world by preventing countries from relapsing into internal violent conflict. Therefore, in the struggle to end violent conflict and achieve peace in a divided society, peacebuilding is performed by a wide range of actors, ranging from governments, business leaders and the media, to religious leaders, development aid organizations and grassroots organizations. All have important roles to play and can contribute to building peace in different ways in divided societies.

⁷ Lijphart A., (2002) “The Wave of Power-Sharing Democracy,” in *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, ed. Andrew Reynolds (Oxford: Oxford University Press) 39.

⁸ Elisabeth M. Cousens, (2001) “Introduction” in Elisabeth M. Cousens & Chetan Kumar (eds), *Peacebuilding as Politics: Cultivating Peace in Fragile Societies* (Boulder, Colorado: Lynne Rienner, 2001) 1-20.

Post-genocide Rwanda and post-election conflict Kenya continues to grapple with a desperate need for the restoration of relationships across the divides—genocide survivors and former genocide perpetrators and post-election victims and former election violence perpetrators as well as their respective family members, in the context of deeper poverty. In this regard, both Uvin⁹ and Zorbas¹⁰ argue that if poverty, inequality, exclusion and prejudice fed into the dynamics of post-genocide and post-election, it follows that reconciliation has, as a necessary foundation, the notions of economic development, equality, participation, tolerance, human rights and the rule of law. For Havers¹¹, the restoration of interpersonal relationships of people affected by communal violence remains complex and difficult to achieve although there might have been a broad institutional mechanism in place to facilitate peacebuilding and humanitarian support.

Civil society is widely assumed to be an important actor for peacebuilding. It is considered an important player in reducing violence, and in facilitating the conditions necessary for building a sustainable peace. However, little focus has been given towards building and strengthening civil society, especially in countries experiencing or emerging from situations of armed conflict. Further, despite the understanding of the potential of civil society in peacebuilding, little systematic research has been undertaken to empirically support this assumption.

⁹ Uvin Peter (1998). *Aiding Violence: The Development Enterprise in Rwanda*. West Hartford, CT: Kumarian Press.

¹⁰ Zorbas Eugenia, “reconciliation in Post-Genocide Rwanda”. *In African Journal of Legal Studies* 1, no.1, (2004)30-52.

¹¹ Havers Julian (2006). *Cooperating for Peace: Post-conflict recovery through self help*. Paper prepared for the International Conference on ‘Cooperatives and the Pursuit of Peace’, Victoria, BC. Available at: http://www.peace.coop/main/wp-content/uploads/2006/08/Julian_Havers_Full.pdf

The restoration of relationships between conflicting parties, in the aftermath of a violent conflict, remains one of the major challenges worth taking up in post-conflict peacebuilding. In this regard, Rwanda and Kenya offers a typical example of a society torn apart by ethnic violent conflict. The genocide of 1994 and 2007/2008 post-election violence in Kenya destroyed relationships between Rwandans and Kenyans along ethnic line respectively, who yet continue to live next to each other. In this regard efforts to restore the relationships of country men and women becomes worthwhile to undertake for a progressive country. It is against this background that this study sought to conduct a comparative analysis of Kenya and Rwanda to assess the effectiveness of efforts in both countries to restore sustainable peace.

1.3 Objectives of the Study

The overall objective of the study is to assess peace-building in divided societies. The study was a comparative analysis of Kenya and Rwanda. The following are the specific objectives that guided the study:

- i. To assess the effectiveness of justice and reconciliation in peace-building in divided societies
- ii. To examine the role of civil society engagement in peace-building in divided societies in Kenya and Rwanda
- iii. To analyze challenges of peace-building in divided societies in Kenya and Rwanda

1.4 Literature Review

The literature review is organized in four parts: The first part examines the aspect of peacebuilding and the expected benefits. The second part explores the concept of divided Societies. The third and the fourth section examines peace-building in Kenya and Rwanda respectively.

1.4.1 The Concept of Peacebuilding

The term peacebuilding is often attributed to Johan Galtung, who coined the term in his ‘Three approaches to peace: peacekeeping, peacemaking, and peacebuilding’ (1975). Galtung argued that in addition to peacekeeping and peacemaking, ‘structures must be found that remove causes of wars and offer alternatives to war in situations where wars might occur.’¹² This can be seen as the basis of today’s notion of peacebuilding as an endeavour to create a condition of stable (or sometimes called durable) peace – which was originally defined by Kenneth Boulding in 1978 as ‘a situation in which the probability of war is so small that it does not really enter into the calculations of any of the people involved’¹³. Peacebuilding aims to transform society into stable peace by addressing root causes of conflict and promoting indigenous capacities to deal with societal problems in peaceful ways. While the concept was around in scholarly debates for over a decade, it only came into widespread use after the publication of the Agenda

¹² Johan Galtung. “Violence, Peace and Peace Research”, *Journal of Peace Research* (1969). 167-191.

¹³ K.E. Boulding, *Stable Peace* (Austin 1987) 13.

for Peace (1992) by Boutros Boutros-Ghali, then Secretary-General of the United Nations¹⁴.

Paffenholz¹⁵ explains that the understanding of peacebuilding in the 1992 report was rather narrow as it concentrated on post-conflict peacebuilding to prevent a return to physical violence. In 1997, Lederach¹⁶ introduced his notion of peacebuilding and sustainable peace in *Building Peace – Sustainable Reconciliation in Divided Societies*, with a focus on social relations and reconciliation as means to attain sustainable peace in war-torn societies. He advocates a long-term and holistic perspective, and contributed to a change in direction from a concentration on external to internal actors in peacebuilding. His work laid the foundation for a broader and more inclusive understanding of peacebuilding.

However, as Barnett et al.¹⁷ point out in *Peacebuilding: What is in a Name?* Peacebuilding is still approached and interpreted in different ways by different actors. Barnett et al. look at intergovernmental bodies and donor governments' peacebuilding focuses, highlighting that some put more emphasis on security and military activities such as demobilization processes and demining, while others emphasize socio-economic development, and yet others focus on the political dimension of increased democratization, institution building and respect for human rights, etc. What becomes

¹⁴ *An agenda for peace. Preventive diplomacy, peacemaking and peace-keeping*. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council (New York 1992).

¹⁵ Paffenholz, Thania (2010a) "Civil society and Peacebuilding". In: Paffenholz (ed.) (2010) *Civil Society and Peacebuilding – a critical assessment*. Colorado and London: Rienner.

¹⁶ Lederach, John Paul (1997) *Building Peace – Sustainable Reconciliation in Divided Societies*. Washington: United States Institute of Peace.

¹⁷ Barnett, Michael; Kim, Hunjoon; O'Donnell, Madalene; Sitea, Laura (2007). "Peacebuilding: What is in a Name?" *Global Governance*, Vol. 13, No. 1, pp. 35-58.

clear is that peacebuilding is a contested concept with various interpretations, leading to different strategies and practices of different peacebuilding actors.

Knight¹⁸ defines peacebuilding as a “complex and multidimensional exercise that encompasses tasks ranging from the disarming of warring factions to the rebuilding of political, economic, judicial and civil society institutions”. Therefore peacebuilding seeks to prevent, reduce, transform, and help people to recover from violence in all forms, it also empowers people to foster relationships at all levels that sustain them and their environment.”

Peacebuilding is essentially different from the traditional conflict resolution strategies of peacemaking and peacekeeping. Peacemaking aims to end violent conflict through diplomatic efforts intended to promote non-violent dialogue, and ultimately a peace agreement. Conventional forms of peacekeeping usually involve (military) intervention by a third party, aimed at separating fighting parties and facilitating non-military initiatives. Peacebuilding goes beyond such forms of problem solving, mediation and conflict management, and addresses the core problems that underlie conflict, often called the “root causes”. Peacebuilding presumes that in order to go from an unstable peace to a durable peace it is necessary to change the way society operates, and the patterns of interaction of the involved parties¹⁹. If relations between societal groups have led to warfare, it seems fairly naïve to presume that mutual confidence will automatically restore as soon as the crisis is nearing its end and violence has ended. It is far more likely

¹⁸ Knight, Andy W. (2003) “Evaluating recent trends in peacebuilding research”. *International Relations of the Asia-Pacific*. Vol. 3 (2003), pp. 241-264.

¹⁹ Maiese, Michelle. ‘Peacebuilding’, *Beyond Intractability* (<http://www.beyondintractability.org/essay/peacebuilding> 20/03/2014).

that the end of hostilities finds the adversaries and the society more divided than before violent conflict²⁰.

On top of the core issues, the armed conflict keeps generating contentious conflict over responsibility for killings, violence and security, refugees, relief operations, failed peace efforts, and the safety and welfare of civilians. It is for these reasons that the chances of a conflict breaking out are always highest in countries that have experienced conflict in the recent past. Various estimates suggest that the risk of recurrence within the first five years after a conflict has ended is between 20 and 50 per cent²¹. Long-term peacebuilding efforts aim to move parties away from confrontation and violence, and towards political and economic participation and peaceful relationships²².

The underlying, or root causes are what make many conflicts intractable. Often these causes are deeply entrenched in society and closely interwoven into the everyday life of the adversaries. Each conflict is unique, and the root causes are different for every conflict situation, but there is one common denominator to intractable conflicts: they are based on long-lasting and deep structural divisions in society²³. It is therefore not surprising that the most intractable conflicts often are national, ethnic or identity-based conflicts, in which one group has historically possessed most of the socio-economical assets and political power at the expense of the other(s). These causes are embedded in

²⁰ Oberschall A., (2007) *Conflict and peacebuilding in divided societies. Responses to ethnic violence* (New York) 185 - 187.

²¹ Chetail V., (2009) ed., *Post-conflict peacebuilding: a lexicon* (Oxford) 7.

²² Maiese, 'Peacebuilding'.

²³ Hauss, C., (2010). 'Addressing Underlying Causes of Conflict', *Beyond Intractability* (http://www.beyondintractability.org/essay/addressing_underlying_causes)

history, and the resentments they spawn can come from events that occurred decades or even centuries ago.

1.4.2 Divided Societies

Oberschall²⁴, noted that “most states are multiethnic,” and defined a divided society as one in which “the relationships of the dominant group to ethnic minorities are hostile rather than cooperative”. Horowitz²⁵ characterizes a divided society as having a “segmented organizational structure that applies to the structure of economic organization, as it does to political organization”. These insights point to a definition of divided societies as those in which identity divisions are structurally reinforced through imbalances of power and economic and political differentiation. Lederach²⁶ argues that the intrastate nature of many contemporary armed conflicts creates and exacerbates social cleavages in divided societies:

Conflicting groups live in close geographical proximity. They have direct experience of violent trauma that they associate with their perceived enemies and that is accumulated over generations. Paradoxically, they live as neighbours and yet are locked into longstanding cycles of hostile interaction. According to Lederach the conflicts are characterized by deep-rooted, intense animosity; fear; and severe stereotyping²⁷. Given the effects of intrastate armed conflicts and the trend towards these being framed in exclusionary ethicized rhetoric, it is likely that identity conflicts will continue to be a

²⁴ Oberschall, Anthony. 2007. *Conflict and Peace Building in Divided Societies: Responses to ethnic violence*. New York: Routledge.

²⁵ Horowitz, Donald H. 1985. *Ethnic Groups in Conflict*. Berkeley: University of California Press.

²⁶ Lederach, John Paul. 1997. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington DC: United State Institute of Peace.

²⁷ *ibid*

prominent feature of global violence. As such, the broad definition of peacebuilding for which Lederach advocates is increasingly relevant in addressing some of the many underlying causes of this strife. In the new millennium, there has been a sharp global decline in the number of armed conflicts, rates of civilian-targeted direct violence and number of combat-related fatalities. These data suggest that, despite some notable failures, peacemaking policies and initiatives have had a positive impact on conflict reduction²⁸. Although a decline in armed conflict does not necessarily correlate with higher levels of “positive peace”, this trend does suggest that there are presently a number of societies in which peacebuilding efforts may be productively employed to build relationships between antagonistic identity groups, prevent regressions to armed conflict and lay the foundations upon which a “positive peace” can be built.

1.4.3 Kenya’s Post-election Violence

The country of Kenya was ruled by the iron hands of two men in succession from 1963 to 2002: Jomo Kenyatta (1963-1978) and Daniel Moi (1978-2002). In 2002, there was a change: the ruling political party, the Kenya African National Union (KANU), that had ruled the country since independence, collapsed. It collapsed beneath a new political party comprised of an alliance that had formed between all of the major Kenyan tribes. This political stakeholder was named the National Rainbow Coalition (NARC). The election victory was a landslide²⁹. Mwai Kibaki of the NARC won 62% of the vote on a platform of fighting corruption, forming a coalition government that shared power

²⁸ Human Security Report Project. 2008. *Human Security Brief 2007*.
http://www.humansecuritybrief.info/HSRP_Brief_2007.pdf (June 17, 2009).

²⁹ Mutua, M. (2008). *Kenya’s quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.

amongst the various tribes, and changing the constitution within 100 days of being elected to limit the executive power that had ballooned over the previous four decades. People across Kenya from all tribes felt hope that the country's government was finally on the verge of a system of governance that would have accountability through shared power³⁰.

Yet, within weeks of the election, the memorandum of understanding (MOU) that forged the tribal factions into the NARC alliance and that got Kibaki elected had effectively collapsed³¹. The agreement in the MOU to share power within the cabinet did not occur, as four key positions that were to be created, including that of a Prime Minister position, did not materialize forward. Kibaki, from the Kikuyu tribe, broke his election promise and filled many appointed positions with fellow tribesmen, thus following in the footsteps of his presidential predecessors by selecting people for appointed positions primarily through tribal bias.³² This in turn led to discrimination of many people of other tribes who were more qualified.

Whether the decision to keep the massive executive power that Kibaki had campaigned to reform was premeditated, or whether he succumbed to certain pressures by his fellow tribesmen to hoard power within the tribe once in office may never be known. The result was the same: the disintegration of the NARC party and the broken promises of a shared government and new constitution. This left many citizens tasting what could have been

³⁰ Paffenholz, Thania (2010a) "Civil society and Peacebuilding". In: Paffenholz (ed.) (2010) *Civil Society and Peacebuilding – a critical assessment*. Colorado and London: Rienner.

³¹ Mutua, M. (2008). *Kenya's quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.

³² Ibid

and frustrated over what should have resulted from the new government coming to power in 2002. This frustration fueled the violence that took place after the election in 2007³³.

The carnage was horrific: 1,500 dead, 3,000 innocent women raped, and 300,000 people left internally displaced. Most of these atrocities happened in the first 14 days after the 2007 Kenyan general election. The severity of this conflict unfolded in a span of 59 days between Election Day, December 27th, 2007 to February 28th, 2008, when a political compromise was reached. 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 surprise³⁴. In retrospect, the violence that occurred could not only have been predicted, it could most likely have been prevented.

One of the foundations of this conflict analysis is that what took place during the Kenyan 2007 elections had its roots in a weak national constitution. This constitution has progressively lacked a healthy check and balances system between the executive, legislative and judicial branches of government. Over the span of three decades, amendments to the constitution were made to systematically erode these balances in favor of strengthening presidential powers. The result of these broad powers effectively made the presidential office equivalent to a dictatorship, which gave the president the ability to use and abuse this power without restraint³⁵

³³ Calas, B. (2008). From rigging to violence. Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 165-185). Dar es Salaam: Mkuki na Nyota Publishers, Ltd.

³⁴ Maupeu, H. (2008). Revisiting post-election violence. Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 187-223). Dar es Salaam: Mkuki na Nyota Publishers, Ltd.

³⁵ Cussac, A. (2008). "Kibaki tena?" The challenges of a campaign Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 55-104). Dar es Salaam: Mkuki na Nyota Publishers, Ltd

1.4.4 Genocide in Rwanda

The Rwandan Genocide was a genocidal mass slaughter of Tutsi and moderate Hutu in Rwanda by members of the Hutu majority³⁶. During the approximate 100-day period from April 7, 1994 to mid-July, an estimated 500,000–1,000,000 Rwandans were killed constituting as much as 20% of the country's total population and 70% of the Tutsi then living in Rwanda. The genocide was planned by members of the core political elite known as the Akazu, many of whom occupied positions at top levels of the national government. Perpetrators came from the ranks of the Rwandan army, the National Police (gendarmerie), government-backed militias including the Interahamwe and Impuzamugambi, and the Hutu civilian population.

The genocide took place in the context of the Rwandan Civil War, an ongoing conflict beginning in 1990 between the Hutu-led government and the Rwandan Patriotic Front (RPF), which was largely composed of Tutsi refugees whose families had fled to Uganda following earlier waves of Hutu violence against the Tutsi³⁷. International pressure on the Hutu-led government of Juvénal Habyarimana resulted in a cease-fire in 1993 with a roadmap to implement the Arusha Accords that would create a power-sharing government with the RPF. This agreement displeased many conservative Hutu, including members of the Akazu, who viewed it as conceding to enemy demands. Among the broader Hutu populace, the RPF military campaign had also intensified support for the so-called "Hutu Power" ideology, which portrayed the RPF as an alien force intent on

³⁶ Lynn Duke (1997). "U.S. military role in Rwanda greater than disclosed". *Washington Post*. Retrieved March 22, 2014.

³⁷ Aprille Muscara (2010). "RWANDA: Genocide Ideology and Sectarianism Laws Silencing Critics?". *Inter Press Service*. Retrieved 3 April 2014.

reinstating the Tutsi monarchy and enslaving the Hutus, a prospect met with extreme opposition.

On April 6, 1994, an airplane carrying Habyarimana and Burundian president Cyprien Ntaryamira was shot down on its descent into Kigali, killing all on board. Genocidal killings began the following day: soldiers, police and militia quickly executed key Tutsi and moderate Hutu leaders, then erected checkpoints and barricades and used Rwandans' national identity cards to systematically verify their ethnicity and kill Tutsi³⁸. These forces recruited or pressured Hutu civilians to arm themselves with machetes, clubs, blunt objects and other weapons to rape, maim and kill their Tutsi neighbors and destroy or steal their property.³⁹ The breach of the peace agreement led the RPF to restart their offensive and rapidly seize control of the northern part of the country before capturing Kigali in mid-July, bringing an end to the genocide. During these events and in their aftermath, the United Nations (UN) and countries including the United States, Great Britain and Belgium were criticized for their inaction, including failure to strengthen the force and mandate of the United Nations Assistance Mission for Rwanda (UNAMIR) peacekeepers, while observers criticized the government of France for alleged support of the genocidal regime after the genocide had begun.

The genocide had a lasting and profound impact on Rwanda and its neighboring countries. The pervasive use of war rape caused a spike in HIV infection, including babies born of rape to newly infected mothers; many households were headed by

³⁸ Christian Davenport; Allan C. Stam (2009). "What Really Happened in Rwanda?". psmag.com. Retrieved 10 April 2014.

³⁹ Ohanyan, A. with Lewis, J. (2005). Politics of Peacebuilding: Critical Evaluation of Interethnic Contact and Peace Education in Georgia- Abkhaz Peace Camp, 1998-2002, in: Peace and Change, 30 (1), 57-84.

orphaned children or widows. The decimation of infrastructure and a severe depopulation of the country crippled the economy, challenging the nascent government to achieve rapid economic growth and stabilization. The RPF military victory and installation of an RPF-dominated government prompted many Hutus to flee to neighboring countries, particularly in the eastern portion of Zaire (now the Democratic Republic of Congo) where the Hutu genocidaires began to regroup in refugee camps along the border with Rwanda. Declaring a need to avert further genocide, the RPF-led government led military incursions into Zaire, including the First (1996–97) and Second (1998-2003) Congo Wars⁴⁰.

Armed struggles between the Rwandan government and their opponents in DRC have continued to play out through proxy militias in the Goma region, including the M23 rebellion (2003-2013). Large Rwandan Hutu and Tutsi populations continue to live as refugees throughout the region. Today, Rwanda has two public holidays commemorating the genocide. The national commemoration period begins with Genocide Memorial Day on April 7 and concludes with Liberation Day on July 4. The week following April 7 is designated an official week of mourning. The Rwandan Genocide served as the impetus for creating the International Criminal Court to eliminate the need for ad hoc tribunals to prosecute those accused in future incidents of genocide, crimes against humanity and war crimes.⁴¹

⁴⁰ Tracy Wilkinson (2008). "Spanish judge indicts Rwanda officers". *LA Times*. Retrieved April 2, 2014.

⁴¹ Mutua, M. (2008). *Kenya's quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.

1.4.5 Literature Gap

Achieving peace, in a divided society continues to be a monumental task. However, most literature on peacebuilding addresses economic reforms with limited literature on the effectiveness of justice and reconciliation and the role civil society engagement in peacebuilding and with little on challenges of peace-building in divided societies. This study therefore, sought to explore the effectiveness of justice and reconciliation and to examine the role civil society engagement in peace-building in divided societies and analyze challenges of peace-building in divided societies a comparative analysis of Kenya and Rwanda that has been persistently absent and largely ignored.

1.4.6 Justification of the Study

Conflict, especially violent conflict impacts heavily in the society. After each conflict the societies are required rebuild themselves to either be as they were before the conflict or be in a better position including, thus transforming the conflict situation. Thus, restoration of relationships of the parties involved in the conflict, in the aftermath of a violent conflict is definitely one of the major challenges that is worth taking up in post-conflict peace building. In this paper, Rwanda and Kenya offers a good example of a society destabilized and torn apart by ethnic violent conflict as was the case with genocide of 1994 and 2007/2008 post-election violence in Kenya destroyed relationships between Rwandans and also between Kenyans along ethnic lines respectively, who to this date continue rebuild themselves. In this regard efforts to restore the relationships of people and societies becomes worthwhile to undertake for a progressive future of the concerned countries. It is against this background that this study sought to conduct a

comparative analysis of Kenya and Rwanda to assess the effectiveness of efforts in both countries to restore sustainable peace.

The study is therefore intended to generate both academic and policy-relevant debate that would potentially lead to peace-building in divided societies. The study would help to stimulate academic and policy-debate on the role and the effectiveness of justice and reconciliation in peace-building in divided societies in contemporary Africa societies. The study also aimed to share and popularize the importance of civil society engagement in peace-building in divided societies and identify potential challenges of peace-building in divided societies.

1.4.6.1 Policy Justifications

This study, from the findings and recommendations will provide valuable insights to the government and policy analytics concerned with the cases of the secession of the Sudan. This will be used to prepare its own policy and to engage other Governments and policy makers in the region on new challenges facing regional ethnic conflicts that related to secessionism or affected by the internationalization of such conflicts.

1.4.6.2 Academic Justifications

The study is expected to generate new information in the academia of conflict management. This particularly being the case of secessionist conflicts as the current situation of the redrawing of African borders may bring up more reasons to secede. This study will therefore be important in future study of secessionist movements. Furthermore, once the study is disseminated, it will shed light on the misconceptions of secessionism, its causes and implications on national and regional security.

1.5 Theoretical Framework

This study was based on Burton's human needs theory of conflict resolution and Lederach's theories on conflict transformation.

Burton's human needs theory of conflict resolution

This theory operates on the premise that a pre-condition for the resolution of conflict is that fundamental human needs be met⁴². Burton adopted eight fundamental needs from the basis of the work by the American sociologist Paul Sites and introduced one further need of his own⁴³. Those adopted needs included control, security, justice, stimulation, response, meaning, rationality and esteem/recognition. Burton's additional need was 'role-defence,' the need to defend one's role. Burton called these "ontological needs" as he regarded them as a consequence of human nature, which were universal and would be pursued regardless of the consequence⁴⁴. In this study conflict was perceived to have resulted from competition over scarce resources as a result of common needs.

Lederach's theories on conflict transformation,

From his experience as both a mediator and a non-violent activist, Lederach⁴⁵ explains the differences between social justice activists and conflict resolution practitioners along with a tension that often exists between the two. Lederach suggested that either approach—the revolutionary and resolutionary camps, as he calls them—are short sighted and flawed to the degree that one is exclusive of the other; and, that both camps have something

⁴² John W. Burton and Dennis J. D. Sandole, "Generic Theory: The Basis of Conflict Resolution", *Negotiation Journal*, 2(4), October 1986.

⁴³ Joseph A. Scimecca, "Self-reflexivity and Freedom," in Burton (ed.) *Conflict: Human Needs Theory*, op. cit., p. 206.

⁴⁴ Burton, 1990, op. cit. p. 338.

⁴⁵ Lederach, John Paul. 1995. *Preparing for Peace: Conflict Transformation Across Cultures*. Syracuse, Syracuse University Press.

important to gain from one another. Assuming a vision of justice to be an essential feature of peacemaking, Lederach distinguishes these two approaches like this: “Advocacy, for example, chooses to stand by one side for justice’s sake. Mediation chooses to stand in connection to all sides for justice’s sake”

In this study, the bases of social conflicts in Kenya and Rwanda were generally rooted in some form of perceived inequality or power imbalance. In both Kenya and Rwanda awareness and knowledge of conflicts is often lacking within the societies in question.⁴⁶

And in both Kenya and Rwanda, in order to move a conflict in the direction of sustainable peace, awareness of the conflict, an awareness of the legitimate needs and interests of all concerned must increase. In this way, the progression from un-peaceful to peaceful relations can be charted as moving from latent to overt, often with confrontation as an intermediate step before sides engaged in conflict resolution processes.

1.6 Hypotheses

The study tested the following hypotheses:

- i. Justice and reconciliation enhance peace-building in divided societies;
- ii. Political will and commitment are prerequisites for social reconciliation of deep-rooted conflicts;
- iii. Effective peace-building can take place in divided societies if civil society is fully engaged.

⁴⁶ Mutua, M. (2008). Kenya’s quest for democracy: taming the leviathan. London: Lynne Rienner Publishers.

1.7 Research Methodology

The type of research design that was employed in this study was exploratory in nature. Exploratory research is a type of research design conducted when researchers lack a clear idea of the problems. It draws definitive conclusions only with extreme caution. It also helps determine the best research design, data collection method and selection of subjects⁴⁷. The aim of exploratory research is to discover ideas, concepts, insights, generate possible explanations and hypotheses. This study was based on both quantitative and qualitative research methods since; this strengthens the research by offsetting the weakness of both quantitative and qualitative research methods.

This research was based on primary and secondary data. The primary data was collected by the use of an interview guide. Maholtra explains that questionnaires are an important data collection tool. An interview guide was used since it generally yields highest cooperation and lowest refusal rates, offers high response quality, takes advantage of interviewer presence and its multi-method data collection. Secondary data was gathered by means of reviewing published books, journal articles and public documents on the subject for the relevant concepts and current opinions.

The qualitative data was coded thematically and then analyzed statistically. The data collected using interview guides which was qualitative in nature, was analyzed using conceptual content analysis which is the best suited method of analysis. According to

⁴⁷ Cooper, D.R. & Schindler, P.S. (2000). *Business Research Methods*: New York, McGraw Hill.

Mugenda and Mugenda ⁴⁸the main purpose of content analysis is to study the existing information in order to determine factors that explain a specific phenomenon.

⁴⁸ Mugenda, O. M. and Mugenda, A. G. (2003). *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: Acts.

1.8 Chapter Outline

- Chapter one provides an introduction and background to the study. The following sections of the work were discussed here: a statement of the problem, study objectives, methodology, significance of the study, and scope and limitations. Also included in the introductory part of the study are the research questions and the theoretical review.
- Chapter Two has a historical background to conflicts in Kenya and Rwanda and examines classification of conflicts in Kenya; conflicts within pastoral communities, conflicts between pastoral and agricultural communities, the refugee problem, ethnic clashes, stakeholders in post-election violence, responding to conflict and restoring peace; classification of conflicts in Rwanda; ethnic conflict and ethnic hatred, ecological pressure, the Arusha accords: multiparty system of government and finally the conclusion.
- Chapter three focusses on peace-building in divided societies: a comparative study of Kenya and Rwanda, 1994-2010
- Chapter Four examines the key emerging issues which includes the concept of truth, justice and reconciliation, internationalization of peace-building in divided societies and the role of civil societies.
- Chapter five presents summary of the key findings, conclusions based on the findings and recommendations there-to on peace-building in divided societies. The chapter also presents recommendations for further studies.

CHAPTER TWO

BACKGROUND TO CONFLICTS IN KENYA AND RWANDA

2.1 Introduction

Peace building is shaped by the nature of the conflicts and challenges confronting peace workers. As Anthony Richmond⁴⁹ observes, ethnic conflicts take various forms, sometimes combining different elements. He identifies six types of conflicts: conflicts that engage the state against a community. State-supported systems of domination and exploitation, usually of minorities, may even lead eventually to the extermination of a people or their relegation to the geographic and social margins of the society. Conflicts for emancipation by minority groups seeking to reclaim territory and reassert human rights, with or without the support of outside agencies. Conflicts in which questions of language, religion, and irredentism are involved. Conflict within states, stemming from inter-ethnic antagonisms, and competition for scarce resources, political power struggles, and ideological disputes that fail to be resolved by other means⁵⁰.

Sectarian violence, communal conflict, civil wars, and independence movements may assert themselves under these conditions conflicts that arise because of past and present migrations some of the factors in Richmond's categories are relevant to Kenya. Policies pursued by the government have marginalized certain communities. Competition for

⁴⁹ Richmond, A. (1994). *Global Apartheid*. Oxford: Oxford University Press

⁵⁰ Ibid

scarce resources, political struggles, ethnic nationalism, and migrations have all shaped conflicts in Kenya.⁵¹

2.2 Classification of Conflicts in Kenya

The classification of conflicts in Kenya is based on the socio-economic characteristics of the communities at war. Four broad categories apply: conflicts within pastoral communities; Conflicts between pastoral and agricultural communities; conflicts linked to the presence of refugees and Ethnic clashes.

2.2.1 Conflicts within Pastoral Communities

These conflicts manifest themselves as inter-clan or inter-community conflicts. Inter-clan conflicts are the oldest types of clashes, and many societies in Kenya have experienced them. However, as agricultural communities settled, and individual ownership became the basis for regulating resources, such conflicts have remained primarily in the domain of nomadic pastoralists⁵². Their communities are still organized within the framework of communal ownership of the means of production. Pastoralists occupy ecologically fragile areas characterized by unreliable patterns of rainfall and high evaporation rates. Among these communities are the Somali, Boran, Turkana, and Pokot who live in a belt that stretches across the northern region of Kenya, and the Maasai in the southern Rift Valley. Sustaining their nomadic pastoralist way of life requires large tracks of land⁵³.

⁵¹ Kagwanja, P. (1998). *Killing the Vote: State-Sponsored Violence and Flawed Elections in Kenya* Nairobi: KHRC.

⁵² Kiplagat, B. (1998). "Is Mediation Alien to Africa?" In *Online Journal of Peace and Conflict Resolution*

⁵³ Ibid

Under these circumstances, conflicts over the ownership, control, and use rights of land and other natural resources such as grazing fields and water wells are commonplace. While conflicts are not new to these communities, a combination of factors has changed the dynamics of conflict. Cattle raiding and rustling have overwhelmed local mechanisms for dealing with long term problems and wreaked havoc in the affected communities. During the 1990s, pastoral life was transformed by environmental pressure from droughts and floods, commercialization of cattle raiding, the influx of sophisticated arms, and changes in the political landscape. According to the *National Development Plan*, by 1997, the drought alone threatened the survival of more than 25 per cent of the population and more than 50 percent of livestock⁵⁴. Raiding of animals for social and cultural purposes is one of the characteristics of pastoral life. Herds, as indicators of wealth and status, are important in cultural rituals such as marriage and childbirth. When clans or communities suffer depletion of their livestock because of calamities or raids, counter raids are carried out against other clans or communities to restock⁵⁵.

Pastoralists have developed elaborate social mechanisms and norms that govern negotiations for compensation after raids. These mechanisms have recently been rendered ineffective for several reasons. Increasing environmental pressure has caused an imbalance in these social systems. Between 1972 and 2000, the Turkana experienced 14 years of drought and famine that have literally wiped out their entire stock⁵⁶. This depletion has increased pressure on them to raid other communities to restock. Such raids

⁵⁴ GOK (1997). *The National Development Plan 1997-2002*. Nairobi: Government Printers

⁵⁵ Human Rights Watch. (1997). *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya*. New York: HRW

⁵⁶ Ibid

have resulted in conflicts with loss of life because Turkana are the least armed of the groups in a pastoral axis that includes north-eastern Uganda (Karamanjong), Northwest Kenya, southern Sudan (Toposa) and southern Ethiopia (Randile). Floods from the *El Niño* rains dealt another blow to pastoralists, particularly in north-eastern Kenya. Coming shortly after the 1997 famine and drought, these floods were accompanied by the Rift Valley fever that killed large herds of animals and thousands of people⁵⁷.

Depletion of herds has been exacerbated by the expansion of a market economy and the commercialization of raiding. Historically, raided animals have remained within the same ecological region. This meant that stolen animals could be recovered. However, as meat export to regions beyond Africa expands, raiding has taken on another dimension. The introduction of cash for animals has created a network of businesses that offer a ready market for raided animals. Once raided, animals are driven across borders and sold to markets beyond the reach of pastoralists. In this situation, traditional rescue efforts and negotiation mechanisms are useless⁵⁸. Raiding has become an income generating activity rather than a means for augmenting social status or fulfilling cultural roles. Knowing that raided cattle are valuable commercial assets in a money economy and that raided animals may never be recovered, pastoralists are forced to guard their remaining stock closely. Attempts at raiding are met with strong resistance, often ending in massive destruction of property and loss of life⁵⁹.

⁵⁷ Kagwanja, P. (1998). *Killing the Vote: State-Sponsored Violence and Flawed Elections in Kenya* Nairobi: KHRC.

⁵⁸ Crisp, J. (1999). *A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya*. Geneva: UNHCR

⁵⁹ Ibid

An increasing influx of arms complicates the pressures from the environment and the expansion of animal export commerce. Following the concert of conflicts in the Horn of Africa, and north-eastern Uganda, all of northern Kenya has become an arms bazaar⁶⁰. Two developments have increased the quantity and quality of arms. First, the influx of asylum seekers from countries afflicted by conflict has overwhelmed the capacity of the Kenyan government to control the guns that come in with these populations. Combatants, including militias, mercenaries, and remnants of armies from countries at war, have come with these groups. These men bring the skills and knowledge of waging war along with their sophisticated weapons. The influx of all these armed groups means that the pastoralists have to contend with more than the traditional raiders.

2.2.2 Conflicts between Pastoral and Agricultural Communities

Faced with expanding desertification from the north, ecological pressure within their zones, and encroachment on the fringes of their lands by farming communities, pastoralists have responded in ways that have escalated ethnic conflicts. Many pastoralists have moved out of their regions in search of pastures for their significantly reduced herds or alternative means of subsistence⁶¹. This development has brought them into direct conflict with non-pastoral communities. Migrating groups come into conflict with agricultural communities living on the borderlands of semiarid and arable lands. For example, conflicts between the Somalis and the Akamba people of northern Mwingi District, or between communities in northern Meru, epitomise the clash of different ways

⁶⁰ Birchem, R. (1996). *Women and Peace in Africa*. International Peace Update 61(5).

⁶¹ Crisp, J. (1999). *A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya*. Geneva: UNHCR.

of life and the failure of a harmonious interface between pastoral and agricultural modes of production⁶².

For those without animals, the search for other means is affected by lack of education, skills, or training. The pastoral communities have the lowest levels of education and training. Therefore, those who seek jobs, enter the labour market at the lowest stratum. Some end up as farm hands in agricultural areas, often being paid as little as the food they need for survival. Others have moved to cities. In both cases, they join the inhabitants of sprawling slums in towns and peri-urban areas. Private security companies favour the Turkana and Maasai because of their reputation for fearlessness. They can obtain employment as watchmen, a job that is not only among the lowest paid, but also carries great risks. Just as their counterparts in the agricultural sector, they are exploited and abused⁶³.

Movement out of the northern pastoral zone ultimately destroys pastoral communities and their way of life. It has resulted in family breakdown as the mainly male population gravitates to urban centres and agricultural areas. Left without any other livelihood, the dependency on relief assistance has become the other “mode of subsistence” for those left behind. Most of these people are unprotected women and children who make easy targets for raiders. In Turkana for example, it is women and children who have suffered most from attacks by the better armed Toposas, Rangiles and Karamojong communities⁶⁴.

⁶² Ibid

⁶³ Kitunyi, M. (1991). *Becoming Kenyan*. Nairobi: East African Publishers.

⁶⁴ Mula, A. (1999). “Go to Famine Areas, Ndingi tells NGOs,” *Daily Nation*, 27 November.

2.2.3 The Refugee Problem

Kenya's northern belt is ecologically fragile, however, since 1990; it has received more than 500,000 refugees in locations that support 10,000 people with difficulty. For example, the population of Kakuma division is more than 20,000 people; the Kakuma refugee camp covering an area of 12 square kilometres, hosts more than 100,000 refugees (UNHCR 2009). The effect of such large populations on such fragile environments is momentous. Yet, humanitarian assistance, administered chiefly by international agencies, is designated for refugees. It ignores the plight of the locals whose material condition is usually worse⁶⁵.

The presence of humanitarian assistance resources for refugees in Kakuma, and other displaced populations in the Southern Sudan, for instance, has created oases in the middle of deprived local populations in Turkana districts. This has caused conflicts between the locals and the refugees. As camps continue to attract substantial resources, they develop and expand into surrounding areas. This kind of encroachment also causes conflicts between the locals and refugees⁶⁶. Security in the camps and nearby is inadequate. Women are particularly vulnerable to physical attacks and rapes by locals who commit these negative acts to avenge perceived injustices. Human rights protests at the refugee camps in Dadaab are in response to unprecedented levels of violence, principally rape. Reports from that period disclose that most rapes are perpetrated by bandits, probably local Kenyan Somalis or Somalis from either Somalia or Ethiopia. Increased security

⁶⁵ Ibid

⁶⁶ Crisp, J. (1999). *A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya*. Geneva: UNHCR.

measures such as fencing off the camps has reduced the number of reported rape cases to about 30 per month, of which more than half are perpetrated outside the camp⁶⁷.

2.2.4 Ethnic Clashes

The nature of conflicts in Kenya was transformed by multiparty politics in the 1990s. Across the country, conflicts broke out between or within ethnic groups. While this type of conflict is not new to Kenya, the clashes of the 1990s were noticeably different in scale, complexity, and consequences. These conflicts presented unique challenges for peace activities. Beginning in 1991, in the euphoria of democratization and the anticipation of the historic 1992 elections, the ethnic clashes that erupted reflected political developments. The first conflict erupted at Mitei-tei Farm in Nandi district⁶⁸. Violence then swept through the Rift Valley to Western Province. After the election, clashes intensified and kept recurring on a small scale at different times, in various places through 1995. As the next elections approached, the country witnessed a resurgence of conflicts starting in 1996. In August 1997, Mombasa, unaffected by earlier conflicts, entered the circus of violence⁶⁹.

Some analysts attribute these ethnic clashes in Kenya to increased competition for shrinking resources, particularly land⁷⁰. However, this interpretation does not explain why the clashes erupted in 1991, why they followed a pattern of occurring in ethnically heterogeneous zones, and more significantly, why the state was reluctant to deal firmly

⁶⁷ Ibid

⁶⁸ Kathina, M. and A. Masika. (1997). *Evaluation of the Resettlement Programme for Ethnic Clashes Victims in Kenya*. Nairobi: Department of Foreign and International Development (DFID).

⁶⁹ Ibid

⁷⁰ Rogge, J. (1993). *The Internally Displaced Population in Kenya, Western and Rift Valley Provinces: A need Assessment and a programme proposal for Rehabilitation*. Nairobi: UNDP.

with the perpetrators of violence. Commissioned by UNDP the Rogge report takes an institutional view and does not focus on communities or mention the role of women in the restoration of peace⁷¹. Other analysts look to the role of the state in democratization and opening the political arena in the 1990s, particularly with the repeal of Section 2(a) of the old constitution which made Kenya *de jure* a one party state in 1982. Repeal allowed other parties and different political articulations that challenged the Kenya African National Union (KANU), whose power was beginning to erode⁷². The KANU ruling clique was uneasy over the prospect of losing the second multiparty election since independence. To ensure victory, they created zones of support that paralleled ethnic configurations. The ethnic zones were designed to isolate populations perceived as supportive of opposition parties. For the state, such communities, defined in ethnic terms, were perceived as enemy populations of doubtful allegiance, whose political actions would be difficult to control.

The nexus between ethnicity and geographical space gave the 1990s clashes their unique character⁷³. The campaign against multiparty politics would have had a less violent impact, were it not for this association. These clashes were attempts to drive away populations seen as “alien” (non-indigenous) in a bid to create ethnic homogeneity, presumed to operate as bloc that could offer political support. As “enemy” communities were expunged, KANU strongmen urged vigilantes to create and protect KANU zones. For example, in early 1991, the controversial *majimbo* rallies promulgated the theory

⁷¹ Ibid

⁷² Somjee, S. and M. Kathina. (1997). *Situational Analysis of Emergencies in Kenya*. Nairobi: Action-Aid.

⁷³ Ibid

that the Rift Valley was an exclusive Kalenjin KANU zone. Opposition party leaders were warned not to enter the Rift Valley. Meanwhile, their presumed supporters were being driven out of the Rift Valley⁷⁴. It is this aspect of the clashes that Peter Kagwanja (1998) labels *state-sponsored violence*.

Ironically, the relationship between ethnicity and territory is rooted in colonial policies that created the enviable “white” highlands. During this period, Kenyans were evicted to create space for settler agriculture. With independence, the principle of “willing seller, willing buyer” determined who could own these lands. People of different ethnic backgrounds, with the ability to purchase these farms, either individually or as members of co-operatives, became neighbours⁷⁵.

Meanwhile, large numbers of people who had been evicted earlier, but did not have money after independence, remained squatters. The areas that witnessed the most violent of inter-ethnic clashes were within the former “white” highlands. The principal areas of conflict included (1) the Rift Valley districts of Nakuru, Molo, Kericho, Nandi, Uasin Gishu, Trans-Mara, and Marakwet; (2) the districts that flank Mt. Elgon, namely, Trans-Nzoia, Bungoma and Mt. Elgon, and (3) Mombasa in the Coast region⁷⁶.

⁷⁴ Kathina, M. and A. Masika. (1997). *Evaluation of the Resettlement Programme for Ethnic Clashes Victims in Kenya*. Nairobi: Department of Foreign and International Development (DFID).

⁷⁵ Ibid

⁷⁶ Kagwanja, P. (1998). *Killing the Vote: State-Sponsored Violence and Flawed Elections in Kenya* Nairobi: KHRC.

2.3 Stakeholders in Post-election Violence

2.3.1 Political Parties and Tribes

With the failure of the NARC party, many of those who were left out of power from the failed power-sharing MOU in 2002 that formed the Orange Democratic Movement (ODM). The ODM was largely made up of a tribal alliance between the Kalenjin, Luhyas as well as Luos. Kibaki and the Kikuyu in power formed the Party of National Unity (PNU). The three main tribes involved in the 2007 post-election violence were the Luos, Kikuyus and Kalenjins. The Luhyas were a part of the ODM, however, less is written about their involvement. The reality on the ground is that the majority of African political parties are not communities of the political ideology or philosophy but they are vehicles of ethnic nativism⁷⁷.

2.3.2 International Community

Attempts by the ODM to stage public, peaceful protests in Nairobi and other cities were squashed by the police after Kibaki made them illegal through an executive order. Kibaki, on the other hand, was legally certified as the president and had the legal right to ban the protests, especially if the protests could compromise the stability of the government. The first to step in to mediate a solution between the PNU and ODM was led by an African Union negotiator along with a combined team of the French, British, US diplomats⁷⁸. After this mediation attempt failed, the former Secretary of the UN, Kofi

⁷⁷ Mutua, M. (2008). *Kenya's quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.

⁷⁸ Lafargue, J. and M. Katumanga (2008). Post-election violence and precarious pacification. Lafargue, J. (Ed.). *The general elections in Kenya, 2007*. (pp. 13-34). Dar es Salaam: Mkuki na Nyota Publishers, Ltd.

Annan came in and negotiated a power sharing deal involving Kibaki and Odinga where Odinga became Prime Minister and also the ODM was given ten cabinet positions. This deal was quite similar to that which should have happened in 2002 under the NARC's pre-election agreement.

2.3.3 Land and Government

The subject of land in Kenya is vital in its history of conflict and it is an example of structural violence. This is in part due to long and also complex histories of land dealings amongst the tribes. Mostly, the members of the tribe who were in power were unethically given or else allowed to use land, normally at the expense of the other tribes. This is so because of the complex legal structure surrounding land, for instance, there are at least 42 laws that apply to land currently, some of which contradict to the each other as well as with the weak judicial system to carry out these laws effectively⁷⁹. In the 2007 post-election violence, the historic land problems between the Kikuyu and Kalenjin's continued to be the main cause of conflict.

In the year 1939, under British colonization, the Kikuyu were forced to shift from the Central Province, in order to make way for an exclusive community of white settlers termed as the 'White Highlands'.⁸⁰ Many Kikuyus moved north into the Rift Valley. After Kenya gained independence from Britain, more people from the Kikuyu tribe settled in the Rift Valley, protected by Jomo Kenyatta's power.⁸¹ Some argue that Kenyatta 'gave' this resourcefully rich land to the Kikuyu. However, the Kikuyu state that, they were

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Cussac, A. (2008). "Kibaki tena?" *The challenges of a campaign Lafargue, J. (Ed.). The general elections in Kenya, 2007.* (pp. 55-104). Dar es Salaam: Mkuki na NyotaPublishers, Ltd.

unjustly made to leave their land of the Central Province by the British colonizers, and expected to move elsewhere.⁸²

Parallel to what Kenyatta did with the Kikuyu in the Rift Valley area during his tenure (1963-1978), Moi (1978-2002) did the same with the Mau Forest, the lushest part of the Rift Valley. The forest being government trust land, Moi used his power to give executive permission to his tribal community, the Kalenjins, to stay there. Eventually, Kibaki, also using the same executive power, expelled the Kalenjins from the Mau Forest in the year 2003, with most of the returning. The argument was that they had a right to the land that 'Moi gave them'.⁸³ The expulsion, together with the promise of further expulsion future attempts played a big part in the Kalenjin bands militantly evicting the Kikuyu from their homes in the Rift Valley, destroying their property, as well as occasionally murdering those in resistanceing these actions after the election results were announced. In a case of the dynamic nature of conflict, Kibaki in 2008 again called for the expulsion of the Kalenjins from the Mau Forest. This instance, the Kalenjins lobbied Odinga the then Prime Minister plus part of the ODM Luo-Kalenjin alliance, to actually resist the executive order.

Kibaki set up a commission to document the history of illegal land disbursements during the Kenyatta and Moi eras in 2003. This resulted into the *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*, or else known as the Ndung'u report, which is a 244 page document with almost 1800 pages of appendices

⁸² Cussac, A. (2008). "Kibaki tena?" The challenges of a campaign Lafargue, J. (Ed.). The general elections in Kenya, 2007. (pp. 55-104). Dar es Salaam: Mkuki na NyotaPublishers, Ltd.

⁸³ Ibid

intimately outlining the common practice by corrupt politicians of illegally awarding land for political gain.

Post-election violence resulting from the abnormalities seen in the 2007 election in Kenya involved many facets of society. Perhaps the most unpredictable of these were youth with small opportunity within the previous Kibaki government for jobs as well as having even less hope for the future. The ODM understood this and therefore harnessed the youth's vote by organizing them, for the very first time in a Kenyan election, into voting blocks.⁸⁴ This kind of organization plus Kibaki making peaceful demonstrations illegal is considered to have been the reason why the youth violently reacted after the announcement of the Kibaki's victory⁸⁵.

2.4 Responding to Conflict and Restoring Peace

Attempts to restore peace in Kenya have taken two distinct paths. One consisted of formal peace negotiations conducted by political leaders and sometimes mediated by external parties. The second path contains an array of grass-roots initiatives. These attempts culminated in three types of peace building. The responses can be classified as the formal (government), semiformal (individuals in government positions) and informal (grass roots).

2.4.1 The Role of the Government: Formal Response

The conflicts that plagued Kenya in the 1990s were seen in political terms. Leaders in government, particularly KANU stalwarts, including the President, blamed the clashes on

⁸⁴ Mutua, M. (2008). *Kenya's quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.

⁸⁵ Ibid

multiparty politics. At another level, clashes were seen as an attempt to ensure the survival of the state. According to this interpretation, the political agenda of the state took two forms. First, clashes became a vehicle to fulfill President Moi's prediction that Kenya's return to a multiparty system would plunge the country into tribal violence. The second agenda item was to influence the outcomes of the multiparty elections in 1992 and 1997⁸⁶.

Emanating from these two positions, the search for peace needed to be conceived within the arena of high politics. Affected communities became recipients, rather than participants in these initiatives. This top-down perception of peace became the greatest weakness of the formal response. Activities within this framework remained ad-hoc; they lacked community support, and failed. Calls for peace by the government were met with suspicion and distrust. Government officials were viewed by most victims and analysts as partisan, unable to keep the conflict in check, and either unwilling or incapable of responding to its consequences. The people saw attempts to preach peace as pursuing state survival. The government argued that irresponsible utterances by opposition Members of Parliament (MPs) and their desire to wreak havoc before the elections had caused the clashes and perpetuated them⁸⁷.

After the 1992 clashes the President toured areas affected by clashes, ordered that violence stop, and appealed for calm. In the most insecure areas he invoked the Preservation of Public Security Act and declared the hardest hit areas of Elburgon, Molo,

⁸⁶ Mutua, M. (2008). Kenya's quest for democracy: taming the leviathan. London: Lynne Rienner Publishers.

⁸⁷ Ibid

Londiani and Burnt Forest security operation zones. This act banned outlawed the possession of firearms, instituted curfews, and prohibited movement into these areas. As one young man explained, “When the President came to Mt. Elgon and told people the fighting should stop, it stopped.” While the President’s tour became a reference point for peace building activities, the declaration of security zones isolated these areas. The bans on entering or working in the zones interfered with the work of certain NGOs and prohibited certain individuals from visiting them. Among those obstructed were Aurelia Brazeal, the US Ambassador to Kenya and a team of MPs from the United Kingdom and Denmark⁸⁸.

More government administrators went to affected areas. Their first tasks were to increase security and oversee the return of displaced people. Molo, one of the hardest hit sites, received an additional 15 district and police officers. The presence of government officers, some of whom were eager to begin their assignments, stabilised populations and provided a basis for peace work. These efforts did not go far enough in punishing the perpetrators of violence, leaving this as an unresolved issue in most of the areas affected by clashes. These government-driven efforts encouraged little participation from affected communities. For the most part, these communities remained suspicious of the government and reluctant to seek meaningful involvement⁸⁹.

⁸⁸ Human Rights Watch. (1997). *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya*. New York: HRW.

⁸⁹ Barasa, L. (2000) “Government Set Up Army Camp in West Pokot,” *Daily Nation*, 2 February.

2.4.2 Informal Grassroots Peace Building Initiatives

Local peace-building activities emerged out of despair and exasperation with conflict. Initial responses were based on the relief model and dominated largely by international actors. In this model, food relief comes first, followed by returning displaced populations, rehabilitation, and reconstruction. Peace and reconciliation are part of rehabilitation. However, persistent problems with displacement led to outside actors experiencing burnout. Furthermore, resources were diminishing because of donor fatigue, and frustration with the government was increasing⁹⁰.

Although the departure of foreign actors created a vacuum, it did leave local actors with the space to reassert their role and engage in a wide range of activities related to returning, rehabilitation and reconstruction. Peace building posed particular challenges for most local actors. It required specific skills and institutional support, both of which were scarce at the local and national levels. The withdrawal of foreign actors translated into reduced funds for local actors working with displaced populations. A set of challenges were generated at the ground level where most displaced persons began to show signs of weariness with assistance programmes and eagerness to return to their homes. This generated immense pressure for actors to look to issues beyond relief, a challenge that required big budgets and long term commitments.⁹¹ Constrained by limited expertise, resources, and government support, local actors were forced to turn to local resources. They sought skills, capacities, and available opportunities among members of

⁹⁰ Nasong'o, SW (2007). *Negotiating new rules of the game: Social movements, civil society and the Kenyan transition*. G.R. Murunga, S.W. Nasong'o (Eds.). Kenya: the struggle for democracy. (pp. 19-57). New York, NY: Palgrave Macmillian.

⁹¹ Schlicher, Monika (2007): Geschichte eines Scheiterns. Strafverfolgung und Versöhnung in Osttimor, in: Der Überblick.

communities with which they worked. Through intense interaction and working together, peace actions were initiated and the process of transforming conflict began. In short, local peace builders learned while working for peace.

2.5 Classification of Conflicts in Rwanda

2.5.1 Ethnic Conflict and Ethnic Hatred

In media press at that time, the genocide was explained as an ethnic conflict between two ancient tribes. It was commonly assumed that the Rwandan genocide was spontaneous and conducted by a frenzied population armed with machetes. This was an impression made by much media coverage which typically fed stereotypes and also reinforced Western prejudices that, Africa is a place of darkness, where savages clobber each other on the head to assuage their dark ancestral bloodlusts.⁹² Although there were instances of regional conflict during the time between the Rwandan President, Habyarimana's ascendancy to power and the beginnings of genocide in 1990, there were no reports of ethnic violence. This, according to Andersen provides, strong indication that the cause of the genocide did not lie in the ethnic relations between the Hutu and Tutsi *per se*, as ethnicity was not really an item on the agenda in the years before the outbreak of civil war in 1990.⁹³ Before Habyarimana came to power, widespread discrimination against Tutsis was rife. However, Habyarimana made sure that discrimination against Tutsis was reduced, their security was guaranteed and also a 10% quota established for Tutsi on jobs in the civil service and education. Mass repatriation of the Tutsis in exile from the 1960's

⁹² Prunier, G. The Rwanda Crisis: History of a Genocide, (C. Hurst & Co. 1998), p.xii

⁹³ R. Andersen, "How multilateral development assistance triggered the conflict in Rwanda", Third World Quarterly, 21:3, p.443

Hutus Power revolution was not allowed but the Tutsis who had remained in Rwanda during this period were not living in fear of being killed.

The concept of 'Hutu' and 'Tutsi' contestable; there are a lot of interpretations of what constitutes these identities as well as how they differ from each other. It is extensively acknowledged that what separated Tutsi and the Hutu was the matter of occupation and also wealth. The Tutsi were pastoralist, owning large herds of cattle while their Hutu subjects were largely agriculturalist, farming the land. What defined one as a Tutsi or Hutu was flexible; it was possible to change between any ethnic group depending on the changing circumstances.⁹⁴

The talks used by Hutu radicals to stimulate the genocide were that the Hutus and Tutsis were radically different people of different origins. Uvin supports the idea that Hutu and Tutsi have different historical origins, as it is the case in most neighbouring regions. People were conscious of these differences. The colonizer did not invent them from nothing.⁹⁵ On the other hand, the precise meaning of Hutu and the Tutsi differed over the time and also between regions - a function of power as well as ideological struggles. Uvin suggests that it was the earlier forces, that is those of colonization that were the instrumental factors responsible in perpetuating the ethnic identity; Accordingly, the capacity to blame the Tutsi for all the society's evils plus to eventually consider eradicating them like a cancer from the society does not materialize from thin air. It builds on long standing myths and belie and exclusionary policies⁹⁶ The rediscovered

⁹⁴ Muscara Aprille (2010). "RWANDA: Genocide Ideology and Sectarianism Laws Silencing Critics?". Inter Press Service. Retrieved 3 April 2014.

⁹⁵ Uvin, P. "Prejudice, Crises and Genocide in Rwanda", *African Studies Review*, 40:2 1997, pp.91-115

⁹⁶ Uvin, P. "Reading the Rwandan Genocide", *International Studies Review*, 3:3, 2001, p.81

Hutu ethnicity may have only developed over decades rather than centuries, but due to the way the colonial discourse had acquired meaning for Hutus, it became both real and tangible.

The counter speech, espoused by Tutsis, asserts that the difference between Hutu and Tutsi are the products of the colonial imagination as well as associated with divide and rule policies.⁹⁷ Indeed there is a lot of evidence to support the argument that Hutu and Tutsi were not ‘ethnically’ different. According to Keane, the idea of a ‘pure’ ethnic divide is a myth...there was extensive intermarrying between Tutsis and Hutus and there is a long history of people exchanging identities⁹⁸ The evidence to support this is overwhelming; there are considerably many more similarities than differences between them. The differences between them have more to do with social than ethnic characteristics. For instance, the two groups shared the similar cultural heritage, diet, and also spoke the same language- Kinyarwanda. These shared commonalities suggest there is some weight to the argument that there are no real ethnic differences between Hutu and Tutsi.

2.5.2 Ecological Pressure

Genocide can mainly be understood as an ecological disaster in as far as Rwanda’s scarcity of ecological resources – and the highest population density in Africa for a completely rural country, together with one of Africa’s highest population growth rates – adds to the root cause of the genocide.⁹⁹ Overpopulation in a country struggling with food

⁹⁷ Uvin, P. “Reading the Rwandan Genocide”, *International Studies Review*, 3:3, 2001, p.76

⁹⁸ Keane, F. *Season of Blood: Rwandan Journey*, (Penguin Books, 1996) p.11

⁹⁹ Uvin, P. “Reading the Rwandan Genocide”, *International Studies Review*, 3:3, 2001, p.81

shortages, civil war and famine combined with as well as lack of natural resources can create social conflict in a battle for the few resources that are available. Uvin argues that conflict allows an overpopulated county to equilibrate its carrying capacity,¹⁰⁰ and there is no other alternative to this conflict apart from natural disasters or famine. In an environment where too many people are struggling with too few resources, it is suggested that there is an inevitability of conflict.

This view is shared by the International Red Cross; Food production was slowing as dramatically as the population was increasing. In the late 1980's Rwanda's foreign residents were speculating on a catastrophe before the end of the century...Bloody conflict arrived first.¹⁰¹ Patterson, also supports this view: the 1994 genocide was the unavoidable outcome of overpopulation and environmental limitations¹⁰² Furthermore, the U.N. High Commissioner for Refugees, at that time, Mrs. Sadako Ogata shared this perspective on conflict caused by environmental pressures; she suggests the recent strife in Rwanda is a striking example of ethnic conflict, ignited by population pressure and diminished land resources.¹⁰³ Gerard Prunier also acknowledges the influence of the high population density; the genocidal violence of the spring of 1994 can be partly attributed to the population density.¹⁰⁴ Proponents of this view emphasise that with a population of around eight million in an area the size of Wales, the country was overcrowded,

¹⁰⁰ The idea of a country's 'carrying capacity' is taken from Uvin, P. "Reading the Rwandan Genocide", International Studies Review, 3:3, 2001, p.82

¹⁰¹ International Federation of Red Cross and Red Crescent Societies, "Under the Volcanoes: Special Focus on the Rwandan Refugee Crisis", in World Disasters Report, IFRCRCS, 1994 p.393

¹⁰² Patterson, J. "Rwandan Refugees", Nature, No. 373, 1995, p.185

¹⁰³ Quoted in, Berry, J. Genocide in Rwanda: A Collective Memory, (Harvard University Press, 1999) p.80

¹⁰⁴ Prunier, G. The Rwanda Crisis: History of a Genocide, (C. Hurst & Co. 1998), p.4

overpopulated, and the scarcity of resources had the potential to exacerbate inevitable social tensions.

Whilst many of the scholars recognise the influence of the population density and the relationship between population growth and genocidal violence, few ascribe any more than passing comment on this relationship. Most would argue that whilst the ecological resources scarcity was an influential factor, it was simply a contributing factor and cannot be understood in isolation, aside from political processes.¹⁰⁵ There is little hard evidence to suggest that overpopulation necessitates violence and the battle for ecological resources inevitably leads to genocide.

2.5.3 The Arusha Accords: Multiparty System of Government

The Arusha Accords, signed in 1993, significantly reduced Habyarimana's power and forced multi-party democratisation which clearly exacerbated genocidal tendencies. With the broadening of the democratisation process, the Coalition pour la Defense de la Republique (CDR), a radical racist Hutu party emerged which established the infamous, 'Radio des Mille Collines', to consolidate its anti-Tutsi influence. In response to what they felt as exclusion from the power sharing agreement of the Arusha Accords, "...the CDR took an increasingly active part in building up groups of militias and planning massacres – along with the government party and public authorities.¹⁰⁶ The CDR played a crucial role in fuelling the flames of genocide - and its radio station orchestrated its

¹⁰⁵Muscara Aprille (2010). "RWANDA: Genocide Ideology and Sectarianism Laws Silencing Critics?". Inter Press Service. Retrieved 3 April 2014.

¹⁰⁶ Tongeren, P. et al. eds. 2005 . People Building Peace II, Successful Stories of Civil Society, Boulder CO: Lynne Rienner Publishers, 7-24.

implementation.¹⁰⁷ Whilst the idea for the broadening of democracy was to increase legitimacy for the peace process, it in fact did the opposite.

The multiparty system of government introduced in Rwanda through the Arusha Accords increased the fragmentation of the steadily weakening government. Adelman and Suhrke describe the multiparty system as a cloak behind which particular interests encouraged ethnic mobilisation and fed political fiefdoms which usurped the civil administration.¹⁰⁸ While Habyarimana was negotiating the Arusha Accords, his informal council, the 'Akazu', was making preparations for mass killings and genocide by mobilising the Interahawme.¹⁰⁹ The opposition by Akazu of the Arusha Accords stemmed from their fear of losing power and privileges. There is clear evidence that the fear caused by the break-down in law and order, in addition to the increasing levels of resistance, gave the Akazu the motivation to prepare and plan the massacres over a period of years up to April 1994.¹¹⁰ This atmosphere of insecurity within the elite was the driving force behind the actions taken by the Hutu elite to plan and implement the genocide.

Conditional aid was effectively used as leverage for creating the mutually debilitating stalemate that was needed to force the Rwandan government to the negotiating table at the Arusha Accords in Tanzania. However, the multilateral strategy for economic

¹⁰⁷ Andersen, R. "How multilateral development assistance triggered the conflict in Rwanda", Third World Quarterly, 21:3, p.449

¹⁰⁸ Adelman, H. & Suhrke, A. "Early warning and conflict management", "The International Response to Conflict and Genocide: Lessons from the Rwanda Experience", JEEAR, Copenhagen, 1996, p.23

¹⁰⁹ The opposition to the implementation of the Arusha Accords by the Akazu is widely documented but evidence can be found in the Human Rights Watch Report:

http://www.hrw.org/reports/1999/rwanda/Geno1-3-09.htm#P202_84408 10th April 2005

¹¹⁰ Percival, V. & Homer-Dixon, T. "Environmental scarcity and violent conflict: the case of Rwanda", Journal of Environment and Development, 5:3, p.287

structural adjustment and the multiparty democratisation had a mutually conflicting effect on each other. When donors demanded multiparty democracy, they were effectively dictating Rwandan economic policy. Democracy, as a political goal can generally be perceived as good, however the emergence of multiparty democratisation led to the fragmentation of political groups as well as legitimised the swift emergence of more extremist and radical racist groups which destabilised and eventually destroyed the potential peace process.¹¹¹ Rather than strengthening its legitimacy, this had the effect of weakening the position of the government.

2.6 Conclusion

The Arusha Accords showed the importance of globalization in the way they forced the Rwandan government to make concessions and also adjust the domestic political regime. International peace treaties are not new in themselves, instead of the conditionality attached to the peace, in providing aid on the condition of democratisation shows the power of globalization. The conditions on aid which increased at the beginning of 1994 successfully made Habyarimana to the negotiating table in addition to making concessions he would otherwise not have made. By forcing these concessions however, he lost he lost the support of the Akuza and enabled the emergence of a dangerous multiparty democracy which allowed extremism and identity politics to flourish as neo-ethnicities re-emerged.

¹¹¹Tongeren, P. et al. eds. 2005 . People Building Peace II, Successful Stories of Civil Society, Boulder CO: Lynne Rienner Publishers, 7-24.

CHAPTER THREE

PEACE-BUILDING IN DIVIDED SOCIETIES: A COMPARATIVE STUDY OF KENYA AND RWANDA, 1994 - 2010

3.1 Introduction

The previous chapter focused on background to conflicts in Kenya and Rwanda where classification of conflicts in Kenya i.e. conflicts within pastoral communities, conflicts between pastoral and agricultural communities, conflicts linked to the presence of refugees, ethnic clashes, stakeholders in 2007-2008 post-election violence, responding to conflict and restoring peace and classification of conflicts in Rwanda were discussed into details.

This chapter focusses on peace-building in divided societies: a comparative study of Kenya and Rwanda, 1994-2010 where *Gacaca* Courts in Rwanda, power sharing in Kenya, the concept of justice and reconciliation and effectiveness, the role civil society, challenges in peace-building in divided societies are debated.

3.2 Peace-Building in Divided Societies: An overview

In view of the purpose of this study one must ask if judicial proceedings contribute to an improvement of the relationship between the parties to the conflict or if they can also add to their deterioration.¹¹² A central aspect at this juncture is the question, whose justice and reconciliation is being practiced and to what ends? Following violent conflict an array of interest groups can be identified – for example, the new post-conflict government, the

¹¹² Menzel, Jörg (2007): Die Entwicklung des Völkerrechts. Vom Nürnberg-Tribunal zum Internationalen Strafgerichtshof, in: Der Überblick 1-2, 20.

victims, the international community, all of whom have different intentions and motivations with regard to the naming of crimes and the prosecution of perpetrators.¹¹³

The concept of guilt on which the premise of the concept justice is based remains, on closer inspection, ambivalent. As already mentioned, the aim of justice is to punish perpetrators for their crimes and to uncover hidden crimes. Collective guilt changes individual guilt, the perpetrators are a given a face and the remainder of the community is exonerated of all guilt by which the conciliation of all innocents is made possible. However, this facet of justice is based on an understanding of guilt that is exclusively limited to individual criminal acts. In contrast to this, Karl Jasper draws a distinction between three further types of guilt:¹¹⁴

The political guilt of those who legitimated the perpetrators in their roles, the moral guilt of those who did not act but looked on and the metaphysical guilt of those who survived without having done everything to prevent the criminal act.¹¹⁵ In this view, guilt is not individual but embedded in a collective social and political context, which had a crucial bearing on carrying out the crime and must thus be borne by the whole community. Criminal courts, however, cannot respond to these forms of guilt. For a post-conflict society, in which violence often took place at a community level, this means the majority of bystanders and onlookers must neither admit nor question their roles and

¹¹³ Minow, Martha (1998): *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Boston.

¹¹⁴ Diane F. (1991): *Settling Accounts. The Duty to Prosecute Human Rights Violations of a Prior Regime*, in: *Yale Law Journal* 100: 8, 2537-2615.

¹¹⁵ Rigby, Andrew (2001): *Justice and Reconciliation. After the Violence*, London.

accountability. So the prejudices, intolerance and antipathy remain unchallenged and can impede the improvement of relationships between the parties to the conflict.¹¹⁶

3.3 *Gacaca* Courts in Rwanda

The *Gacaca* court system as it currently functions in Rwanda is often referred to in terminology and descriptions as if it were identical, or at least similar, to the ‘traditional’ conflict resolution mechanism known as the *Gacaca*. However, the relation between the ‘old’ and the ‘new’ *Gacaca* is not one of identity, and not even one of gradual continuity. There is a difference in kind. An essential change marks the installation of the *Gacaca* courts after the genocide. The resemblance lies in the name, a similar orientation in the most general sense, and common features, but one needs to look beyond these most visible elements of similarity to understand the true nature of the ‘old’ and the ‘new’ institution and capture the rupture with the past. The ‘new’ *Gacaca* courts are in the truest sense an ‘invented tradition’. While any ‘traditional’ institution transforms over time due to social change in general, discontinuity prevails in the case of the *Gacaca*. State intervention through legal and social engineering has designed and implemented a novelty, loosely modelled on an existing institution.¹¹⁷

The *Gacaca* courts are part of the policy of creating a true post-colonial Rwanda and restoring unity. To fully understand the origins and purposes of the ancient practice of *Gacaca*, it needs to be placed in the cosmology of the Rwandan socio-political universe

¹¹⁶ F. Diane . (1991): Settling Accounts. The Duty to Prosecute Human Rights Violations of a Prior Regime, in: Yale Law Journal 100: 8, 2537-2615.

¹¹⁷ Oomen, Barbara, ‘Donor Driven Justice and its Discontents: The Case of Rwanda’, Development and Change, vol. 36, no. 5 (2005), pp. 887–910

of the time. ¹¹⁸The extended lineage or family (umuryango) was the main unit of social organization. It encompassed several households (inzu), the smaller lineages and units of society. Age and sex defined status within the lineage. Only aged and married men without parents were independent; all others, and especially women, were dependent upon them. The inzu lineage head was responsible for the observation of the ancestral cults, arranged marriages, paid or received debts and controlled the collective title on land or cattle. The lineage was the primary source of protection and security. ¹¹⁹ A person had no autonomous existence; the family unit was the guarantor of security.

Political structures were superimposed over the lineages. Around the 17th century, Rwanda consisted of several smaller territories governed by kings. The king (mwami) at one and the same time governed things profane and the link with the supernatural. He embodied power, justice and knowledge: judicial and political powers were not separated. The mwami was the ultimate arbitrator, assisted by the abiru, the guardians of tradition. However, a popular saying goes: ‘Before something is heard by the mwami, it needs to be brought before the wise men’. ¹²⁰ This refers to the fact that problems were addressed first at the lowest units of society, by the lineage heads. In practice this happened in what came to be known as *Gacaca* gatherings.

¹¹⁸ Rwanda, Report on the Reflection Meetings Held in the Office of the President of the Republic from May 1998 to March 1999 (Kigali: Office of the President of the Republic, 1999)

¹¹⁹ Mamdani, Mahmood, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton, N.J.: Princeton University Press, 2001)

¹²⁰ Ingelaere, Bert, ‘Does the Truth Pass Across the Fire? Transitional Justice and its Discontents in Rwanda’s Gacaca Courts’, Discussion Paper, Institute of Development Policy and Management, Antwerp, 2007

It has become common wisdom that the word ‘*Gacaca*’ means ‘justice on the grasses. In fact, the name *Gacaca* is derived from the word ‘umugaca’, the Kinyarwandan word referring to a plant that is so soft to sit on that people preferred to gather on it. These gatherings were meant to restore order and harmony.¹²¹ The primary aim of the settlement was the restoration of social harmony, and to a lesser extent the establishment of the truth about what had happened, the punishment of the perpetrator, or even compensation through a gift. Although the latter elements could be part of the resolution, they were subsidiary to the return to harmony between the lineages and a purification of the social order.

Since 2005, *Gacaca* meetings have been held in each of Rwanda’s 9,013 cells and 1,545 sectors.¹²² A cell in Rwandan society coincides with a small face-to-face community, comparable to a neighbourhood in an urban setting. This is the lowest administrative level. A sector is like a small village and groups together several cells. In total there are 12,103 *Gacaca* courts established nationwide, presided over by 169,442 inyangamugayo, the local judges.¹²³ These judges are elected among the populace and no legal training, experience or other education is required. The defining characteristic is that they must be persons of integrity.

Most of the *Gacaca* courts are situated in rural face-to-face communities, but they are installed in every administrative unit nationwide, and thus also in the cities. It is in an

¹²¹ Ibid

¹²² Rwanda, Report on Collecting Data in Gacaca Courts (Kigali: National Service of the Gacaca Courts, 2006) (2006b)

¹²³ Ibid

urban environment that the *Gacaca* process encounters the most problems regarding its most basic operational functioning. Migration, urban anonymity and individuality undermine the prerequisites of the *Gacaca* process - shared knowledge about the past and the fact of daily living together. The *Gacaca* process is very complex in the perception and experience of the ordinary Rwandans. Older people in particular can compare with the past since they may have had first-hand experience of the 'old' institution. They often refer to the *Gacaca* courts as 'an instrument of the state'.¹²⁴ The current *Gacaca* is installed by the state with rules and people taking notes, while the traditional version was much more straightforward in its functioning and objective. The idea was to bring people together, talk about the problem or conflict in order to restore harmonious relations, and prevent hatred lingering on between families. Before, measures taken were mostly symbolic and restorative in nature through punishments that took the form of reparation for the harm inflicted, while the current courts aim at the punishment of individuals through prison sentences.

3.4 Power sharing in Kenya

On March 18, 2008 when the Kenyan National Assembly passed the Constitution of Kenya (Amendment) Bill which constitutionally established the posts of Prime Minister and Deputy Prime Ministers, as agreed upon by the power-sharing deal previously signed by PNU and ODM presidential candidates in the presence of the African union President and former UN secretary General, power-sharing was established in a new territory.

¹²⁴ Oomen, Barbara, 'Donor Driven Justice and its Discontents: The Case of Rwanda', *Development and Change*, vol. 36, no. 5 (2005), pp. 887–910

¹²⁵Before Kenya, never before has power-sharing been used to resolve post election deadlock or disputes and since then power-sharing has been proposed in almost every election disputes in new or fragmentized democracies.

Evident in the key points of the agreement above is that it is the creation of a grand coalition and parties to the agreement have mutual veto rights. This is the closest, the Kenyan power-sharing could be to any of the traditional approaches of power-sharing.¹²⁶ Furthermore, this agreement served as the binding contract to which all actions of government was carried out although there were some disagreements of the legal meaning of some of the points during the course of the eventual five year life span. This power-sharing agreement is the independent variable for this study and variables for the analysis of the causal relationship between post-election power-sharing and political accountability will be drawn from the key points of the agreement.

The power-sharing introduced in Kenya is somewhat new because unlike in the past where power-sharing was mainly used to end civil wars, Kenya witnessed violent conflict but no civil war. The 2007 election deadlock and violence prompted international mediators, chaired by former United Nations Secretary General Kofi Annan to push for a power-sharing agreement between incumbent President Kibaki of PNU and Raila Odinga of ODM. The agreement resulted in the creation of the office of the Prime Minister for

¹²⁵ Adam Mynott (2008). Huge financial cost of Kenya cabinet, BBC News, Nairobi Retrieved 10th June 2013 from <http://news.bbc.co.uk/2/hi/africa/7352261.stm>

¹²⁶ BBC News (2008). Key points: Kenya power-sharing deal. Retrieved 10th June 2013 from <http://news.bbc.co.uk/2/hi/africa/7269476.stm>

Odinga, while Kibaki remained as president. The agreement split executive power, both by creating a second executive office, but also dividing cabinet ministers equally among Kenyan's main political parties.¹²⁷ The consent of ODM and PNU, which are the two major political parties with the largest representation in parliament, is required for virtually every major action and decision of government. Kenya became the first case where a predominantly post-conflict resolution (power-sharing) tool was implemented in a post-election or election deadlock situation. Kenya was swiftly followed by Zimbabwe when election related violence induced regional mediators to push for a Kenya styled power-sharing model. South Africa's President Thabo Mbeki and Kenya's ODM leaders led the negotiations in Zimbabwe.¹²⁸

Power-sharing or Grand Coalition Government in Kenya between 2008 and 2013 was aimed at serving several important purposes. Arguably, the most important two were to put an end to post election violence and also serve as a transitional phase towards the conduct of new and credible presidential elections. Today, we know these two aims were fulfilled but it is the interest of this thesis to examine the impacts of this form of governance structure on the horizontal mechanisms for political accountability because accountability of government is one of the most important recipe for good governance. Also, accountability systems are dependent on the institutional design of their

¹²⁷ Shem Ochuodho (2012). *The Dawn of a Rainbow, The Untold Intrigues of Kenya's First Coalition Government*, Adage publishing, Nairobi Kenya

¹²⁸ Ibid

administrative context, therefore structural changes are therefore likely to influence accountability.¹²⁹

For clarity purposes, the power-sharing adopted in Kenya is not based on ethnic autonomy, ethnic representation in government or decentralization and so do not follow the principles of the integrative or power dividing approach respectively. The power-sharing deal agreed in Kenya is similar to the consociational model because it theoretically consists of two components of Lijphart's consociational model of power-sharing of grand coalition and mutual veto.¹³⁰ Hence this thesis adopts Lijphart's consociational model of power-sharing and any further use of the word power-sharing in this thesis refers to Lijphart's consociational model

The mutual veto and grand coalition resulting from post-election power-sharing had a negative impact on horizontal mechanisms for political accountability in Kenya by limiting parliament's sanctioning capabilities.¹³¹ Furthermore, this study does not doubt the effectiveness of power-sharing as a conflict mediation tool but rather it hopes that its finding would bring awareness to institutional impacts of power-sharing in post-election scenarios and consequently remind power-sharing policy advocates at both continental and international level that adequate considerations needs to be given to government accountability when advocating post-election power-sharing.

¹²⁹ Shem Ochuodho (2012). *The Dawn of a Rainbow, The Untold Intrigues of Kenya's First Coalition Government*, Adage publishing, Nairobi Kenya

¹³⁰ Jarstad Anna (2009). *The prevalence of power-sharing: exploring the patterns of post-election peace*. *Africa Spectrum*, 41-62

¹³¹ Jacqueline Klopp (2009). *Kenya's Unfinished Agendas*. *Journal of International Affairs* 62, no. 2 pp 144.

3.5 The Concept of Justice and Reconciliation and Effectiveness

In the East African TJ has been practised by piecemeal. One common perception among those interviewed during this study was that the pursuit of criminal justice did not come from the region but rather from the international community who are mostly civil society and international actors. The sub regional structure, EAC is yet to develop a policy to spearhead the principles of human rights and transitional justice in the long run. The region is yet to come up with a transitional justice framework since the priority is the reintegration of the partner states and establishment of the sub – regional organization as a successful block that meets the needs of the members’ states at the tail end and ultimately the various citizens of the states, is rather obvious that the perceptions of what transitional justice is understood to be, is greatly informed by how the individual state governments which have been able to engage or apply the truth seeking mechanism.

One of the observations made in the above dialogue was the realization that transitional justice practice is seen in the region but not as a sub-regional organization with a policy framework but rather it is centered on individual states appreciating the mechanisms of transitional justice differently from each other.¹³² Politics in the EAC is defined and shaped by ethnic identities which were creations of the colonial government. In the pursuit of Justice an inter play between the individual trial and the community trial is seen. For some reason, the ethnic identity and in turn ethnic group of the perpetrator is seen to be on trial causing even more divisions within the society. For example the Kenya in case before the ICC is seen as one ethnic community against the other.

¹³² Ibid

Table 3.3 Interviewees' response on public supports to truth commissions

Response	Frequency	Percentage
Yes	27	67.5
No	13	32.5

In the last two decades, establishing a truth commission in a post- conflict society has become increasingly popular. The demand for truth and truth-telling after conflict has grown and the international community has sought to strengthen the emphasis on truth commissions. Hence, since 1974, at least 25 such commissions have been established around the world, and often the first thing that newly elected politicians in a transitional democracy cry out for is the establishment of a commission. Truth commissions, as are currently perceived, stem from the numerous Latin American commissions held in the 1980s, however, they have changed somewhat, particularly in the context of a post-conflict society, which has experienced international intervention. However, it is significant that a large proportion of this literature focuses on a few key cases only, in particular the South African Truth and Reconciliation Commission (TRC) and the various Latin American commissions, and advice on how to design and operate a truth commission. There is an underlying assumption that truth commissions are a path to reconciliation and peace for all post-conflict societies, and that they are to be preferred to other transitional justice mechanisms. However, as with all transitional justice

mechanisms, a truth commission's aim, mandate and what it can achieve is context dependent.¹³³

Its very name establishes that what a truth commission seeks is the 'truth'; however, the truth is a very complex concept that must be treated with caution. Truth, in the form of narratives, is never simply uncovered, but is partially constructed and affected by numerous processes and actors. At best it is subjective. Not all truth commissions acknowledge the complexities of 'truth', which is exacerbated even more in the aftermath of conflict. The TRC was one commission which recognised this problem and, consequently, outlined four different types of truths that could exist, namely, factual, personal, social and healing.

Although this acknowledged the complexity of 'truth', it may not have made it less problematic when applying it in the TRC's process. Unfortunately, numerous commissions have not even acknowledged the problematic nature of 'truth', but assumed that one truth could be established, and must be established so that reconciliation could ensue. Defining the truth as merely factual may be one method of circumventing the complexities of truth. However, 'shared facts do not necessarily conduce to shared truths. Interviews agreed that TJ can ensure sustainable peace. They gave a case in point of Rwanda which has been able to live peacefully despite the ethnic war and genocide that was witnessed there. Rwanda as a country has been able to rise up from the conflict and now it's developing.

¹³³ Kritz, Neil J, ed (1995). *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. 3 Vols. Washington, DC: United States Institute of Peace.

Interviewees agreed that Truth Commissions in Kenya and Rwanda are suitable for analyzing widespread and longstanding patterns of abuse or for cases in which atrocities whether committed in secret by the State or in remote areas are relatively unknown. The aim of a truth commission is to ascertain the facts and causes of systemic abuse in the most objective way possible, and not necessarily to directly punish individuals involved. As official investigative bodies, Truth Commissions require significant political will to implement, and generally are not effective unless the commissioners are truly independent of the parties to the conflict or abuse. Interview truth commissions are not simply closed academic inquiries, but serve as a way for all of society to explore exactly what kind of abuses occurred and why, and how to prevent their recurrence in the future, but in a non-criminal context. They should therefore be formed on the basis of extensive public consultations and often work best when their activities include significant public outreach and engagement.

This debate is quite live within the East Africa region especially in Kenya and Rwanda. Some proponents of TJ argue that truth seeking is a form of justice and some see criminal accountability as truth seeking.¹³⁴ Others view truth as an alternative to trials especially in deeply conflicted society. Society embrace truth seeking and this is attributed to the people seeking closure on past historical injustices. Again truth seeking has been seen as superior to criminal trials as it seems to heal victims of atrocities. Most scholars and proponents of TJ perceive truth seeking as second best to other mechanism and sought after when all else has failed . But others think it's a way for the government to be seen as

¹³⁴ ritz, Neil J, ed (1995).Transitional Justice: How Emerging Democracies Reckon with Former Regimes. 3 Vols. Washington, DC: United States Institute of Peace. .p.20

proactive towards fulfillment of human rights principles with intention of winning favour with international actors. One important aspect of truth commissions is the propensity of then building a case for future criminal trials which actually supports justice after truth seeking.¹³⁵ Those who are against this debate provide that attempts to get a true record of abuse may create resentment and in turn violence. It is imagined that truths may spark tension which is mainly done by the elites in a society.¹³⁶

When respondents in this study were asked if they supported truth commissions, the answer was Yes 67.5 % and No 32.5% meaning they were in favour of truth commissions. One thing this study was unable to measure was the psychological benefits for the victims.

The impacts of Local trials according to interviewees result to truth, deterrence, punishment, reconciliation, and promotion of the rule of law. This takes us back to the debates on retributive justice and restorative justice. Proponents of this mechanism believe that criminal punishment serves the needs of victims, restores human and social dignity, safe guards the new regime form political threats and deters future perpetrators. 168 According to the proponents deterrence is at different levels, the removal of a busers and elites implicated is special deterrence while general deterrence is achieved through massive approach of looking at the outcome to be gained by dealing with potential perpetrators.¹³⁷ Other advocates for this mechanism believe that threats of punishment

¹³⁵ Ibid P 20

¹³⁶ Ibid

¹³⁷ Thoms, Ron & Paris, “ The Effects of Transitiona Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practiti oners, April 2008.p. 21

foster stability in society and encourage a certain way of behaviour for the potential perpetrators.¹³⁸

On the other hand for this institute Kritz states that a sense of that their grievance have been addressed and can hopefully be put to rest, rather than smouldering in anticipation of the next round of conflict. He thinks that trials provide that psychological and psychosocial therapy to victims and giving an impression of justice. Further empirical evidence shows that criminal accountability is a way of upholding the rule of law by the governments in¹³⁹ place. But it also signifies the end of regime and beginning of a new one. They state that the trials stand as pedagogical symbols indicating the degree to which the rule of law has taken hold.¹⁴⁰ Kenya and Rwanda craves national trial processes above the international courts. The problem with this assertion is the influence of tribe and ethnic identity that plagues a lot of decisions towards politics and governance in the region.

Table 3.5: Response to Perpetrators to be tried by local tribunals

Response	Frequency	Percentage
Strongly agree	20	50
Agree	6	15
Disagree	7	17.5

¹³⁸ Ibid p. 21

¹³⁹ Thoms, Ron & Paris, “ The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners, April 2008.p. 21

¹⁴⁰ Ibid p. 12

Strongly Disagree	7	17.5
-------------------	---	------

In domestic criminal justice, it is appreciated that there are various models of domestic criminal justice being the national courts and the traditional mechanisms, among East Africa states, every state has adopted its own traditional mechanisms as the circumstances may require. Rwanda for example, after the genocide, the government established the Gacaca courts under the Organic Law, in Uganda various traditional mechanisms have been adopted depending on the community, for example the Acholi community adopted the Mato Oput, in Kenya among the Karamajong community the Akiriket Council of elders is commonly used. In regard to national courts, majority of the East Africa states inherited the common law system of litigation and all of them share similar court system.

From the study, 50% strongly agreed strongly that perpetrators be tried by local tribunals, 15% agreed that perpetrators be tried by local tribunals, 17.5% strongly disagree that perpetrators be tried by local tribunals while 17.5% disagree that perpetrators be tried by local tribunals.

Gahima ¹⁴¹ argues in support of prosecution through national courts, he argues that these local prosecutions ‘provide an important focus for rebuilding the domestic judiciary and criminal justice system, establishing the courts as a credible forum for the redress of grievances in a non-violent manner’. Kritz ¹⁴² posits that domestic courts can be more sensitive to the nuances of local culture, and resulting decisions ‘could be of greater and

¹⁴¹ Gahima G. *Transitional Justice in Rwanda: Accountability for Atrocity*, Rutledge 2013 pg 124.

¹⁴² Neil Kritz, *Transitional Justice*, Washington DC: USIP Press, 1997 pg.34

more immediate symbolic force because verdicts would be rendered by courts familiar to the local community'. Teitel ¹⁴³adds, these prosecutions are more likely to change values among the people because they are conducted closer to the people than the remote international prosecutions

Reparations should come primarily from the parties responsible for the violations. Thus, in cases of state sponsored human rights violations, it is important that reparations come from the state, rather than from outside agencies. Reparations programs in EAC have benefited from external support, but to a much lesser extent. This may in part be because it is difficult to show the necessary favorable payback periods and rates of return on investment in a reparations program, given its focus on intangibles, such as signification and inclusion. At the same time, however, there may be risks, especially with large, multilateral donors, in allowing the conceptual basis or practical implementation of reparations projects to be too closely linked to or dependent on the other agendas of a donor.

A bias in the culture, expertise, and mission of these institutions may lead to excessive focus on the monetizable aspects of programs, or to the imposition of unrealistic cost-benefit evaluation rubrics. Furthermore, in implementing their other agendas, donors may also make reparations programs more difficult: too strong a focus on cutting budget deficits and state payrolls to meet externally imposed structural adjustment, for example, will undermine a government's ability to fund any kind of reparation scheme.

¹⁴³ Teitel G. Ruti, *Transitional Justice*, Oxford University Press, 2000,pg.79

Reparations and development agency agendas overlap during the period of planning and programming after a conflict has ended, when there is an opportunity for donors to understand the extent to which national funds will need to be committed to reparations programs, and to hold governments accountable for promises to institute reparations initiatives.

According to interviewees Reparations and Compensation to victims of conflict in Kenya and Rwanda are often the most demanded recourse for past violence, but the most difficult to achieve particularly when the government has few resources to give as compensation. For reparations to work effectively, victims must be identified, their injuries must be quantified for example, what is appropriate compensation for the mother of a murdered child, or of a torture survivor, and resources must be available to make some form of payment or in kind service to the aggrieved party. Reparations may be tied to the work of a truth commission to make these assessments. Compensation may be symbolic a memorial or an apology, or in-kind such as free health or education benefits as well as monetary recognizing that no material payment can fully compensate for an emotional loss. Reparations are a powerful tool for helping victims to recover from conflict, but can also sow division when one group is favored for reparations over others who may deserve them.

3.6 The Role of Civil Society

Lederach developed an analytical approach to identify actors on different levels and how they can contribute to peacebuilding. He differentiates between the top leadership (level one), the middle-range leadership (level two), and the grassroots leadership (level three)

while also identifying their possible contributions in a peacebuilding scenario.¹⁴⁴ He argues that the first level leadership often consists of key representatives of the warring parties, i.e. government and opposing group. They are influential political, military or religious leaders that have the possibility to frame topics and questions on the agenda as their statements and positions are highly visible to the public. First level leaders have decision making power; they have “greater capacity to make decisions that affect the entire population, but it also means that the individual is less affected by the day-today consequences of those decisions”.

The first level leadership often advocates a top-down approach to peacebuilding where high-level negotiations to stop the violence are prioritized. This approach is based on the assumption that an agreement between the leadership of two conflict parties can transform the conflict reality at the lower levels, a kind of “trickle-down’ approach to peace”.¹⁴⁵

The middle-range leadership can be made up by a wide range of individuals and/or institutions, groups or associations that are not directly tied to the conflict parties but still are influential in society at large. He further identified sectors such as business, academics, religion, and health to encompass possible middle-range leadership, but also leaders of specific regions and ethnic groups fit into this level. Lederach emphasizes that middle-range actors have connections and relations to the first level leadership as well as to the grassroots, which makes them important actors, facilitators, and networkers in

¹⁴⁴ Lederach J. P. (1997) *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, D.C.: U.S. Institute of Peace Press, 1997), 20, 75, 84-85.

¹⁴⁵ Lederach J. P. (1997) *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, D.C.: U.S. Institute of Peace Press, 1997), 20, 75, 84-85.

peacebuilding processes. The middle-range leadership's approach to peacebuilding is a middle-range approach, which can include informal problem-solving workshops that "...provide a venue for persons who unofficially represent the parties to a conflict to interact in the process of 'collaborative analyses of the problems that separate them.'"¹⁴⁶

Conflict resolution training to improve skills is another activity that can be carried out by middle-range actors, and peace commissions by middle range leadership have successfully been implemented in Nicaragua and South Africa.¹⁴⁷ The grassroots leadership represents the large base of society, and includes leaders of local communities or members of ethnic organizations.¹⁴⁸ The grassroots leadership is closely connected to the local populations, which means that they see conflict and suffering firsthand.

The grassroots level often lacks decision making power but is regularly affected by the decisions made by the top-level leadership. Peacebuilding attempts from grassroots leadership may include local peace conferences to start peace talks and the creation of an infrastructure for peace at the local level, as was made in Somaliland in the 1990's. There are also experiences from creating local peace programs by churches or UN bodies, efforts that includes seminar discussions, training to reduce intolerance or increase decision making at the community level.¹⁴⁹

¹⁴⁶ Lynn Duke (1997). "U.S. military role in Rwanda greater than disclosed". Washington Post. Retrieved March 22, 2014.

¹⁴⁷ Mulaa, A. (1999). "Go to Famine Areas, Ndingi tells NGOs," Daily Nation, 27 November.

¹⁴⁸ C. Spurk (2010) "Understanding Civil Society." In: Paffenholz (ed.) (2010) Civil Society and Peacebuilding – a critical assessment. Colorado and London: Rienner.

¹⁴⁹ Lederach J. P. (1997) Building Peace: Sustainable Reconciliation in Divided Societies (Washington, D.C.: U.S. Institute of Peace Press, 1997), 20, 75, 84-85.

Paffenholz and Spurk provide an analytical framework that helps us understand the role and functions of civil society in a peacebuilding context.¹⁵⁰ They call their framework the Comprehensive framework for the analysis of civil society in peacebuilding and emphasize that the application of the framework provides a more structured understanding of the functions of civil society in peacebuilding.

3.7 Challenges

Democracy and the rule of law are essential foundations for independent and accountable government. The breakdown of these structures in government (and the resulting mistrust on the part of the Rwandan and Kenyan people) began when the promise and hope of a prosperous, independent Rwanda and Kenya faded away. The independence government took on a form that did not allow all Rwandans and Kenyans, regardless of race, ethnic origin, religious belief or persuasion to live the dream of an independent nation with equal access to national resources.

Systemic violations of the rights and dignity of Rwandans and Kenyans commenced and continued to be perpetuated by ensuing governments, and by state and non-state actors alike. Many communities were marginalized as a result of being on the periphery of the governance structures. The root of the problem is therefore not the violations and addressing these violations, important as that remains. Rather, it seems that the destruction of the spirit of national unity and all that it embodies was the major violation to the Rwandans and Kenyan people. The result is these two countries divided along

¹⁵⁰ Paffenholz (2009), Civil Society and Peacebuilding CCDP Working Paper Number 4, Centre on Conflict, Development and Peacebuilding (CCDP), Graduate Institute of International and Development Studies, Geneva.

ethnic lines and state patronage that exploit the institutions of power and the nation's resources.

3.8 Conclusion

In as much as the resolution of historical injustices is important in Kenya, a key opportunity for sustainable reconciliation rests on continued dialogue centered on building trust both between government structures and the people, and among the people themselves as one nation. Often the aim of new post-conflict government in power sharing is to make a clean break with the past and herald in the new political order. In doing so the new government is implicitly acquitted of all liability and the new state is legitimized. In contrast, for victims retribution through punishment is often of higher priority. Aside from this their suffering is not only made known by the proceedings, but also acknowledged, which can have a positive effect on their coming to terms with trauma.¹⁵¹

Furthermore, legal proceedings can also cause victims to develop a heightened sense of belonging to a group. It strengthens their relationships and consequently allows them to gain both personal and political stability and influence. In contrast, the international community is often prompted to assert its norms through criminal courts in an official moral judgment of criminal acts, and in cases of failure to act during a violent conflict, to save face in hindsight. Indeed, one of the aim of this study has been to establish the role of civil society participate in international and domestic in peace-building in divided

¹⁵¹ Silverman, J. and D. Wilson (2002). *Innocence Betrayed: Paedophilia, the Media and Society* . Cambridge: Polity Press.

societies, from the response on general perceptions of international criminal justice mechanism, it is evident that majority of the East Africa people are not conversant with the truth, justice and reconciliation mechanisms. That being the case, it therefore follows that in relation to these mechanisms the level of participation by the relevant stakeholders is low, despite the fact that they are the ones to play a role in achieving peace in divided societies.¹⁵²

¹⁵² See Chapter Four p. 77

CHAPTER FOUR

PEACEBUILDING IN DIVIDED SOCIETIES: A CRITICAL ANALYSIS

4.0 Introduction

In the past two decades, scholars and practitioners have focused increasing attention on the question of how countries and societies can come to terms with a history of violence and war, oppression and human rights violations. The concept of transitional justice (TJ) has come to play a prominent role in academic debates on democratization, nation-building and state reconstruction,¹⁵³ and has gained widespread support from international organizations. Judicial proceedings and prosecution of individuals suspected to have committed gross violations of human rights, truth commissions designed to establish a record of wrongdoing, reparations to the victims and vetting or dismissals of persons from certain positions have become “central ingredients in the ‘menu’ of reforms recommended by international organizations, donor agencies and outside experts for societies in transition from war or authoritarianism.”¹⁵⁴ The concept of reconciliation has gained similar popularity. In the past decade “reconciliation” has become one of the four main categories of initiatives that receive donors’ support, along with political development, socio-economic assistance and security. Many researchers and practitioners

¹⁵³ The United States Institute of Peace (Kritz 1995, 2009), the International Center for Transitional Justice, the South African Centre for the Study of Violence and Reconciliation, Swiss peace and the Center for Justice and Reconciliation in The Hague have conducted research and extensively published on TJ issues. The International Peace Research Institute in Oslo and the University of Wisconsin-Madison have set up TJ databases.

¹⁵⁴ The UN Office for the Coordination of Humanitarian Affairs has compiled profiles of transitional justice measures in more than 40 countries and the United Nations High Commission for Human Rights has published a series of Rule of Law Tools for Post-Conflict States in 2006, online at www.irinnews.org/InDepthMain.aspx?InDepthId=7&ReportId=62746 and www.ohchr.org/EN/PublicationsResources/Pages/SpecialIssues.aspx.

see reconciliation as a necessary requirement for lasting peace, assuming that once a top-down political settlement has been reached, a bottom-up process should take place, in which unresolved issues of the conflict will be handled in order to prevent questioning of the settlement and a return to violence. In this context, coming to terms with the past is considered a precondition for building peace and future relationships.

4.1 Emerging Issues

4.1.1 The Concept of Truth, Justice and Reconciliation

Justice as an element of transitional justice for prosecuting crimes of the past through national or international courts and tribunals and is based on the assumption that dealing with human rights abuses and war crimes is necessary for the transition to peace and security following violent conflict. In the current Centre of interest are the international and hybrid –that is, occupied by both international and national judges and using national international law – courts where individuals are indicted for genocide, war crimes or crimes against humanity. They are established following conflicts which have not remained within “reasonable” parameters, the jus in Bello, or human rights are violated including genocide (violations of the Genocide Convention of 1946), crimes against humanity, war crimes (violations of the four Geneva Conventions of 1949) and acts of aggression.¹⁵⁵

The aim of the criminal courts is to right past wrongs, it wishes to reduce retribution, to find a balance between the offence and the penalty, to acknowledge incurred suffering

¹⁵⁵ Menzel (2007). Die Entwicklung des Völkerrechts. Vom Nürnberg-Tribunal zum Internationalen Strafgerichtshof, in: Der Überblick 1-2, 20.

and to deter future acts of violence.¹⁵⁶ Their method is based on the concept of individualized guilt and a clear separation of victims and perpetrators, although this is not always possible. Through individualized guilt the remainder of society is freed from implicit guilt, which can have a positive effect on the process of reconciliation.¹⁵⁷

A prerequisite for this is that all of the perpetrators are brought before the court; however, this is not always possible for political and financial reasons and in cases where the perpetrators are not traceable. Although retribution remains the main aim of the criminal courts some claim that they also contribute to national reconciliation like for example, the International Criminal Tribunal for Rwanda. In addition to this, it is often argued that the reestablishment of the dignity of the victim is a central concern for the judiciary, which is seen a necessary step in their personal healing process.¹⁵⁸

The ad hoc criminal courts for Rwanda and the former Yugoslavia are often interpreted and criticized as a form of delayed intervention, which in turn belittles their legitimacy and credibility.¹⁵⁹ Furthermore, a desired side effect of tribunals is that new legal standards are developed. For instance, the proceedings before the ICTR have led to rape

¹⁵⁶ Minow (1998): Minow, Martha 1998: *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Boston.

¹⁵⁷ Rigby (2005): Rigby, Andrew (2005): 'Forgiving the Past'. *Paths Towards a Culture of Reconciliation*, Coventry

¹⁵⁸ Biggar (2001) : *Making Peace and Doing Justice. Must We Choose?*, in: Biggar, Nigel (Hrsg.): *Burying the Past. Making Peace and Doing Justice after Civil Conflict*, Washington, 6-22.

¹⁵⁹ Buckley-Zistel (2007) :Buckley-Zistel, Susanne/Moltmann, Bernhard 2006: *Versöhnung. Balance zwischen Wahrheit und Gerechtigkeit*, in: Mutz, Reinhard/al., et. (Hrsg.): *Friedensgutachten*, Berlin, 136-145.

becoming an official crime against humanity and being punished accordingly.¹⁶⁰ Thus, not only are the vulnerability of women and the use of sexual violence as a weapon of war during violent conflict recognized but they are also acknowledged as being in contravention of international law. For the first time simple soldiers – and not just their leaders – can be brought before international tribunals and held accountable for their actions. Therefore, international criminal cases are always also an evaluation of global moral values and lead debates about potential new orientations.¹⁶¹

The significance of these considerations when examining the different actors is that there is not only one form of justice but that rather different groups follow different interests and strategies, rendering justice a political undertaking. The interests of the group which has the strongest position in the preparation and execution of the legal proceedings and which dominates the discourse often prevail in the results of the trial. This often leads to a one-sided development of justice and to the embitterment of the other parties to the conflict and can stand in the way of conflict transformation.¹⁶²

Indeed, tribunals can cause the post-conflict situation to deteriorate, especially if one party has the feeling that it is being wrongly held accountable for war crimes or crimes against humanity. This can be shown for example in the embitterment of the Croats and

¹⁶⁰ Seibert- Fohr (2006): Die Fortentwicklung des Völkerstrafrechts. Verbrechen gegen Frauen im bewaffneten Konflikt, in: Rudolf, Beate (Hrsg.): Frauen und Völkerrecht. Zur Einwirkung von Frauenrechten und Fraueninteressen auf das Völkerrecht, Baden-Baden, 145-169.

¹⁶¹ Ruti G Teitel.(2003): Transitional Justice Genealogy, in: Harvard Human Rights Journal 16, 64-69.

¹⁶² S. W. Nasong'o (2007). Negotiating new rules of the game: Social movements, civil society and the Kenyan transition. G.R. Murunga, S.W. Nasong'o (Eds.). Kenya: the struggle for democracy. (pp. 19-57). New York, NY: Palgrave Macmillian.

Serbs – and to a lesser extent the Bosnians – over the International Criminal Tribunal for the former Yugoslavia.¹⁶³ The ICTY is also an example for cases in which internationally convicted war criminals are celebrated as heroes and martyrs in their home community which in turn leads to aggravation and embitterment among the victims. In 2005, 400000 people demonstrated for their “hero” and “liberator” following the arrest of a Croatian general accused of the deaths of mainly elderly Serbian civilians.¹⁶⁴ For the Serbian side this created a negative perception of the ICTY potentially creating the environment in which the Prime Minister Zoran Djindjic was murdered in 2003 and which led to the attempted murder of the chief prosecutor at the time, Carla del Ponte.¹⁶⁵

Restorative justice is thought to handle wrongdoing differently: it works with the full participation of the victim and of the relevant communities in discussing the facts, identifying the causes of misconduct and the defining sanctions. The ultimate aim is to restore relations as far as possible, both between victim and offender and within the broader community to which they belong.¹⁶⁶ An example of restorative justice in the Western legal system perspective is victim–offender reconciliation programmes. These were developed in North America in the early 1970s. Howard Zehr describes them as

¹⁶³ M. Mutua (2008). *Kenya’s quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.

¹⁶⁴ Hazan (2007): Huhle, Rainer 2004: *Perus Weg zur Aufarbeitung der Vergangenheit*, in: *Lateinamerik Analysen* 9, 127-154.

¹⁶⁵ Hazan (2007): Huhle, Rainer 2004: *Perus Weg zur Aufarbeitung der Vergangenheit*, in: *Lateinamerik Analysen* 9, 127-154.

¹⁶⁶L. Zedner (1994). *Reparation and Retribution: Are They Reconcilable?* *Modern Law Review* .

follows: “In its classic form, it is operated in cooperation with the courts, but often housed in separate non-profit organizations. Upon referral of a case by the court or probation service, trained volunteers separately contact victim and offender to explore what happened and determine their willingness to proceed. If they agree, victim and offender are brought together in a meeting facilitated by the volunteer mediator who serves as a neutral third party. In this meeting, the facts of the offence are fully explored, feelings are expressed, and a written restitution contract is worked out.”¹⁶⁷

Soothill points out that traditional forms of justice complements and even replace more formal and punitive ways of dealing with past human rights violations.¹⁶⁸ However, many doubts remain. These traditional mechanisms have some significant weak points, resulting in many instances in a denial of fair trial. The African Commission on Human and Peoples’ Rights point out that: “It is recognized that traditional courts are capable of playing a role in the achievement of peaceful societies and exercise authority over a significant proportion of the population of African countries. Traditional courts are not exempt from the provisions of the African Charter relating to fair trial”.¹⁶⁹ Traditional forms of justice are designed to deal with relatively small numbers of cases of minor wrongdoing - theft, conflicts between neighbours and so on. Do they have the capacity to restore years and sometimes decades of oppression? Can they bear the weight of the most serious crimes? This is the most important reservation. The problem in answering these

¹⁶⁷ M. Wright. (2002). The Court as Last Resort .British Journal of Criminology 42(3).

¹⁶⁸K. Soothil. (1993)‘ The Serial Killer Industry. Journal of Forensic Psychiatry 4(2): 341–54.

¹⁶⁹ J. Silverman and D. Wilson (2002). Innocence Betrayed: Paedophilia, the Media and Society . Cambridge: Polity Press.

questions is that there are as yet only a few and fairly recent experiences of restorative justice being implemented in post-conflict situations.¹⁷⁰

The most ambitious operation was the remodeling of the *gacaca* tribunals in Rwanda with the aim of speeding up the prosecution of suspected perpetrators of the 1994 genocide, increasing the participation of the population, and introducing elements of mediation and reconciliation into the process.¹⁷¹

Reconciliation is an over-arching process which includes the search for truth, justice, forgiveness, healing and so on. At its simplest, it means finding a way to live alongside former enemies – not necessarily to love them, or forgive them, or forget the past in any way, but to coexist with them, to develop the degree of cooperation necessary to share our society with them, so that we all have better lives together than we have had separately.¹⁷² Politics is a process to deal with the issues that have divided us in the past. Reconciliation is a parallel process that redesigns the relationship between us. This is an immense challenge, and no one should think that it is quick or easy. But the effort carries a great reward: effective reconciliation is the best guarantee that the violence of the past will not return.¹⁷³ If we can build a new relationship between us that is built on respect and a real understanding of each other's needs, fears and aspirations, the habits and

¹⁷⁰ A. Sampson (1994). *Acts of Abuse: Sex Offenders and the Criminal Justice System*. London: Routledge.

¹⁷¹ A. Salter (1995). *Transforming Trauma: A Guide to Understanding and Treating Adult Survivors of Child Sexual Abuse*. Newbury Park, CA: Sage.

¹⁷² Stockholm, (2003):*Reconciliation after Violent Conflict: A Handbook* (Hand-book Series, International.

¹⁷³ Sarkin,(2001). *Democratizacao Justice No Periodo DeTransicao Em Angola,*”in *Conferencia Internacional Angola - Direito, Democracia, Paz E Desenvolvimento*:203

patterns of cooperation that we then develop are the best safeguard against a return to violent division.¹⁷⁴

Healing should be sought at the individual level but dependent upon and inter related with the social context.¹⁷⁵ Just as healing is dependent on the collective and political context, so too can individual and community healing strategies bolster national attempts to re-establish society. When considering healing, particularly at the individual level, it is important to acknowledge that its trajectory is naturally haphazard and it is a slow process. While, on the one hand, political processes and strategies aimed at reconciliation are important in establishing the context for individual healing and coming to terms with violence, each individual's healing path is personal and unique. It can often be at odds with political, social and international political demands on people to leave the past behind.¹⁷⁶

In this sense, some survivors can experience national processes of reconciliation, especially in the absence of full truth and justice, as "false reconciliation". This is because the national process of "moving forward and making amends" does not coincide with the process of the individual's coming to terms with the situation, or because reconciliation has not ensured sufficient social justice to complement the individual

¹⁷⁴ Daly and Jeremy Sarkin (2007). *Reconciliation in Divided Societies: Finding Common Ground*, Pennsylvania, Pennsylvania University Press.2007

¹⁷⁵ Bloomfield, David (2006). *On Good Terms. Clarifying Reconciliation*. Berghof Report No 14. Berlin: Berghof Research Center. Available at www.berghof-conflictresearch.org.

¹⁷⁶ Mamdani (1997); Mani (2002). Mamdani, Mahmood 1997: *From Justice to Reconciliation. Making Sense of the African Experience*, in: Leys, Colin/Mamdani, Mahmood (Hrsg.): *Crisis and Reconstruction .African Perspective*, Uppsala, 17-25.

healing process. This situation is intensified when survivors feel that the social space in which they can vent their anger is closed down, or when their disenchantment with peace processes results in them being branded as “anti-reconciliation”. The result is that often the politicians and the political processes are ready to move on before those who are the direct survivors of political violence.¹⁷⁷

Truth, acknowledgement and justice cannot be separated out from the healing process. Psychosocial interventions which operate in a vacuum are less effective than, and cannot in themselves replace the need for, truth, acknowledgement and justice.¹⁷⁸ Bringing perpetrators to justice is an important, legitimate and sometimes essential component of a victim’s recovery and psychological healing. Amnesties are generally unacceptable to victims.¹⁷⁹

Today, some members of survivor self-help groups in South Africa will speak of a sense of closure, but for most the past is still very much alive. Some of this is merely a reflection of the long-term nature of healing. However, it is also largely due to the fact that, despite various healing initiatives, the truth about many cases has still not been revealed, while amnesty has been granted to perpetrators and reparations have been slow to be delivered.¹⁸⁰ The cry that there can be no reconciliation without truth is still common for many victims. This is not an uncommon occurrence in societies following

¹⁷⁷ Jasper (1979): Die Schuldfrage. Für Völkermord gibt es keine Verjährung, München

¹⁷⁸ Orentlicher (1991) Nino (1996). Buckley-Zistel/Moltmann (2006). Settling Accounts. The Duty to Prosecute Human Rights Violations of a Prior Regime, in: Yale Law Journal 100: 8, 2537-2615.

¹⁷⁹ Jasper (1979): Die Schuldfrage. Für Völkermord gibt es keine Verjährung, München.

¹⁸⁰ M. I Gawerc (2006) Peace-Building: Theoretical and Concrete Perspectives, Peace & Change .

extensive conflict. It may be necessary for those working with individual victims to be aware of broader processes and even be involved in activities such as working for the discovery of the truth of past events or supporting processes such as commissions of enquiry or prosecutions. This activist perspective can pose problems for some traditional psychotherapy models which demand objectivity.¹⁸¹

One of the main interventions needed in terms of genuine healing is to re-establish as far as possible a socio-political context conducive to helping those victimized to begin to reclaim their sense of identity and dignity. A favourable context is necessary if local and traditional forms of support (and resilience) are to be identified and built upon. This means that healing initiatives need to be part of socio-economic and cultural reconstruction in the post-conflict phase.¹⁸²

Here, the most important distinction that must be made is that between individual reconciliation and national or political reconciliation.¹⁸³ While a truth commission may be a useful mechanism in advancing the latter to the extent that it may help prevent basic points of fact from continuing to be a source of conflict or bitterness among political elites, reconciliation on an individual level is much more complex and probably more difficult to achieve by means of a truth commission. Forgiveness, healing and

¹⁸¹ Galtung (1996) *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* International Peace Research Institute, Oslo (PRIO).

¹⁸² amdani (1997); Mani (2002). Mamdani, Mahmood 1997: *From Justice to Reconciliation. Making Sense of the African Experience*, in: Leys, Colin/Mamdani, Mahmood (Hrsg.): *Crisis and Reconstruction .African Perspective*, Uppsala, 17-25.

¹⁸³ Orentlicher (1991) Nino (1996). Buckley-Zistel/Moltmann (2006). *Settling Accounts. The Duty to Prosecute Human Rights Violations of a Prior Regime*, in: *Yale Law Journal* 100: 8, 2537-2615.

reconciliation are deeply personal processes, and each person's needs and reactions to peacemaking and truth-telling may be different.¹⁸⁴

Nevertheless, many continue to assert that it is necessary to know the truth in order to reconcile. It is of course possible to point to evidence and to quote survivors to show that this is the case: sometimes it is, for some people or in some circumstances. Yet it is easy to imagine that the opposite may also be true, or that reconciliation may be more affected by factors other than knowing or acknowledging the truth about past wrongs.¹⁸⁵

For example, true reconciliation might depend on a clear end to the threat of further violence; acknowledgement by the state or by perpetrators of the injuries suffered; a reparation programme for those injured; attention to structural inequalities and the basic material needs of victimized communities; the existence of natural linkages in society that bring formerly opposing parties together; or, most simply, the passage of time.

¹⁸⁶Thus, truth may be only one of many possible elements in the pursuit of reconciliation.

Transitions in places such as Spain and Mozambique suggest that a substantial degree of national reconciliation can sometimes occur even in the absence of a formal truth-seeking process. Whether reconciliation in these and other cases can or will be as genuine or as

¹⁸⁴ Biggar (2001). Biggar, Nigel 2001: Making Peace and Doing Justice. Must We Choose?, in: Biggar, Nigel (Hrsg.): Burying the Past. Making Peace and Doing Justice after Civil Conflict, Washington, 6-22.

¹⁸⁵ Biggar (2001). Biggar, Nigel 2001: Making Peace and Doing Justice. Must We Choose?, in: Biggar, Nigel (Hrsg.): Burying the Past. Making Peace and Doing Justice after Civil Conflict, Washington, 6-22.

¹⁸⁶ E. Conteh-Morgan (2005) Peacebuilding and Human Security: A Constructivist Perspective, International Journal of Peace Studies, Volume 10,.

sustainable as in places where truth commissions were instituted remains very much an open question.¹⁸⁷

4.1.2 Internationalization of Peace-building in Divided Societies

From the field responses, for the process of reconciliation to be successful, certain things should take place in society. Acknowledgment of the harm caused to society for mass violence and gross violations of human rights stands as a key component of this process. Acknowledgment comes in various forms: it may be voluntary or coerced. In an ideal situation, acknowledgment of harm is closely followed by remorse on the part of the perpetrators.¹⁸⁸ The perpetrators should then ask for forgiveness from the victim-survivors who in turn can choose to forgive or not. Forgiveness, however, should not be used as a conduit for impunity.

It was established that both the Rwandans and Kenyans suffered from violations of human rights for decades leading up to the genocide and PEV. The political settlement of both 1994 genocide and PEV 2008, though, marked the beginning of the countries efforts to deal with historical injustices. At the national level, the truth commissions was set up, with the specific mandate to establish an official and accurate record of the atrocities of the past and make recommendations to the government concerning reparations and prosecution, among others, in order to deal with injustices in these countries.

¹⁸⁷ Buckley-Zistel (2005): *The Truth Heals?* Gacaca Jurisdiction and the Consolidation of Peace in Rwanda, in: *Die Friedens Warte* 80: 1-2, 113-129.

¹⁸⁸ Murphy, C. 2010. *Political Reconciliation and International Criminal Trials*. In: L. May & Z. Hoskins, (eds). *International Criminal Law and Philosophy*. New York: Cambridge University Press, 224

The trial of individuals accused of committing gross human rights violations can contribute to reconciliation. Depending on how they are managed, international and locally owned justice processes may either foster or impede national reconciliation. Whereas the ICC process has enjoyed wide public support as a vehicle for fighting impunity in Rwanda and Kenya, there is scepticism about the ability of the ICC interventions to promote reconciliation in these countries. There has been a fair amount of politicisation around the timing and subjects of ICC trials, which does not contribute to an effective dialogue on reconciliation. It is, however, possible for international criminal trials to contribute to political reconciliation by fostering the social conditions required for the rule of law.

Cultivating respect for the rule of law is a constitutive part of the process of political reconciliation. International criminal trials can contribute to reconciliation by cultivating legal decency and good judgment among officials, and encouraging faith in the law among citizens.¹⁸⁹

4.1.3 The Role of Civil Societies

The concept of civil society remains elusive, complex and contested. There are different meanings and interpretations of the concept and, over time, different schools of thought have influenced theoretical debates and empirical research. This study conceives of civil society as the “arena of un-coerced collective action around shared interests, purposes

¹⁸⁹ Murithi, T. 2009. The Value of Reconciliation. In: T. Murithi, *The Ethics of Peacebuilding*. Edinburgh: Edinburgh University Press, 136.

and values”.¹⁹⁰ As a public sphere where citizens and voluntary organizations freely engage, it is distinct from the state, the family and the market. Civil Society Organizations (CSOs) are the “wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.”¹⁹¹

There are diverging views of how peace should be achieved; from the top-down or from the bottom-up. Paffenholz points out that civil society rarely is seen participating at the official negotiation table when trying to resolve an armed conflict, as the common standpoint is that the more actors involved, the harder it is to come to an agreement.¹⁹² Therefore the actual negotiation often consists of a limited amount of representatives from the conflict parties involved. Nevertheless, a study by Wanis and Kew found a positive correlation between the degree of civil society involvement in peace negotiations and the sustainability of peace agreements”, which shows the importance of active civil society involvement in peacebuilding to create long-lasting peace.¹⁹³

¹⁹⁰ Anderson, M. B., L. Olson, and K. Doughty. 2003. *Confronting War: Critical Lessons for peace Practitioners*. Cambridge, MA: The Collaborative for Development Action.

¹⁹¹ Armon, J., R. Sieder, and R. Wilson. (1997). *Negotiating rights. The Guatemalan peace process*. London: Conciliation Resources.

¹⁹² Paffenholz, T., M. Damgaard, and D. Prasain. (2004). *UNDP: Support for Peace and Development Initiatives in Nepal, Review Report*.

¹⁹³ S. Wanis and Kew, D (2006) *The missing link? Civil society and peace negotiations: contributions to sustained peace*. Seminar paper. 47th Annual Convention of the International Studies Association, San Diego.

4.1.4 Other Issues

States weakened by armed conflict typically cannot fulfill the protection for their citizens. During violent conflict, and in its aftermath, civil society initiatives frequently emerge with the aim of protecting citizen's life, freedom and property against attacks and encroachment by conflict actors or the state. According to the Reflecting on Peace (RPP) project, for example, CSOs' direct contributions to providing security and reducing violence is an indicator for effective peace work.¹⁹⁴

Protection functions are often taken on by external NGOs that support national or local civil society either indirectly, through their presence on the ground, as monitoring watchdogs or directly through international accompaniment.¹⁹⁵ The international NGO 'Peace Brigades International', for example, sends outsiders into conflict zones to protect national peace or human rights activists. At the local level, other examples include communities in the Philippines or in Colombia that have negotiated 'zones of peace' where no arms are allowed.¹⁹⁶

Another angle of protection is the support to security-related interventions such as demining, demobilization, disarmament or reintegration of ex-combatants. In case this particular type of protection is not sufficiently ensured by the state, multilateral agencies or the private sector, civil society may engage independently in specific activities that

¹⁹⁴ Anderson, M. B., L. Olson, and K. Doughty. (2003). *Confronting War: Critical Lessons for peace Practitioners*. Cambridge, MA: The Collaborative for Development Action.

¹⁹⁵ C Orjuela. (2004). *Civil Society in Civil War, Peace Work and Identity Politics in Sri Lanka*, PhD Dissertation. Department of Peace and Development Research, University Göteborg.

¹⁹⁶ C. Barnes, 2005. *Weaving the Web: Civil-Society Roles in Working with Conflict and Building Peace*.

concern their own communities. In Mozambique, churches launched a follow-up demobilization campaign after the official UN demobilization process had ended. However, more frequently civil society organizations collaborate with government or international community led activities in areas as diverse as demining, small weapons and light arms control or demobilization.¹⁹⁷

Observing and monitoring the activities of conflict actors is a means to enhance accountability and a precondition of the ‘protection’ and ‘advocacy/ public communication’ functions of civil society in peacebuilding. International and local groups can monitor the conflict situation and make recommendations to decision makers or provide information to advocacy groups.¹⁹⁸

Monitoring is also a precondition of early warning. This civil society function is relevant in all conflict phases. The impact of civil society monitoring activity is maximized when local, national and international actors are closely coordinated. In the field of Early Warning, there is increasing cooperation between local, national and international NGOs but also with regional organizations.¹⁹⁹ In Nepal, national human rights organizations closely cooperate with local groups and maintain close links to Amnesty International. These ties to the international level provide a safer space for the local groups to perform their monitoring tasks. Examples for Early Warning cooperation between the local,

¹⁹⁷ TRESA (2005). *Civil Society Action on Small Arms and Light Weapons Control. Training and Education on Small Arms (TRESA)*, BICC, Bonn.

¹⁹⁸ Robert K. (2009) *Case study research: design and methods*. 4th edition. London: Sage Publications.

¹⁹⁹ C Spurk, (2010) “Understanding Civil Society.” In: Paffenholz (ed.) (2010) *Civil Society and Peacebuilding – a critical assessment*. Colorado and London: Rienner.

national and regional levels come from Africa, where early warning systems of regional organizations (CEWARN in the Horn of Africa) cooperate with local civil society groups in monitoring. In West Africa UNOCHA, the regional organization ECOWAS and a regional NGO peace network have signed a memorandum of understanding for joint early warning.²⁰⁰

Advocacy is one of the core functions in peacebuilding.²⁰¹ Civil society can articulate the interests of specific social groups, including marginalized groups. They create communication channels to facilitate the inclusion of these issues in the public agenda and raise public awareness. Traditionally it has been assumed especially in the conflict management school but also in the complementary school of thought that the influence of civil society on conflict management is fairly limited.²⁰² Only in exceptional cases do members of civil society become mediators themselves, like the Catholic lay organization Sant Egidio in the Mozambique peace negotiations. Civil society plays a role in Track 1 conflict management through the advocacy/public communication function. Civil society can effectively put pressure on the negotiation parties to reach an agreement and can also advocate including specific issues on the negotiation agenda.²⁰³ Advocacy is primarily a

²⁰⁰ T.M. Turay, (2000). Civil Society and Peacebuilding: The Role of the Inter-Religious Council of Sierra Leone, in: Lord, D. (ed.) 2000: Paying the Price – Sierra Leone’s Peace Process, ACCORD Conciliation Resource <http://www.c-r.org/accord/s-leone/accord9/society.shtml>

²⁰¹ M. B. Anderson, L. Olson, and K. Doughty. (2003). *Confronting War: Critical Lessons for peace Practitioners*. Cambridge, MA: The Collaborative for Development Action.

²⁰² Lederach J. P. (1997) *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, D.C.: U.S. Institute of Peace Press, 1997), 20, 75, 84-85.

²⁰³ S. Wanis, and Kew, D (2006) *The missing link? Civil society and peace negotiations: contributions to sustained peace*. Seminar paper. 47th Annual Convention of the International Studies Association, San Diego.

function for national and local civil society. An interesting example is the recent mass mobilization against the Nepali King that started as a political movement of the parties and the armed faction (Maoists) and developed into a country-wide peace and democracy mass movement.²⁰⁴

International civil society can also take up important advocacy functions. I-NGOs and civil society networks have been particularly successful in bringing specific conflict issues (land mines, child soldiers) on the international agenda or directing international attention to the plight of particular conflict countries (e.g., the church-based Sudan Focal Point initiative).²⁰⁵ The Swedish Life and Peace Institute (LPI) has practiced advocacy for Somalia with the objective of making international actors aware of the need for a people-based peace process, the special role of women in peacebuilding and the provision of funding for people's involvement. LPI's main advocacy instrument was to continuously provide information and advocate for a bottom-up solution of the Somali crisis in various international forums, such as UN bodies (UNOSOM in the beginning), the Somali Aid Coordination Body and international conferences.²⁰⁶

Advocacy is relevant in all phases of armed conflict, although different issues might be more or less relevant in different phases. During armed conflict civil society can advocate

²⁰⁴ Spurk, C (2010) "Understanding Civil Society." In: Paffenholz (ed.) (2010) *Civil Society and Peacebuilding – a critical assessment*. Colorado and London: Rienner

²⁰⁵ Kochomay S. (2007) 'Running for Peace: The Role of Peace Races in Peace-building and Development of East African Pastoralists', Proceedings of the 4th IIPT African Conference on Peace through Tourism, 24 May 2007 in Kampala, Uganda

²⁰⁶ Paffenholz, T., M. Damgaard, and D. Prasain. (2004). UNDP: Support for Peace and Development Initiatives in Nepal, Review Report.

for peace agreements, against violence and human rights violations, for broad based participation in the peace process as well as for relevant topics and issues. The population can be linked to the official negotiation process through broad based information campaigns, public opinion polls or more direct involvement.²⁰⁷ For example, official parallel civil society forums were established during the official peace negotiations in Guatemala from 1994 to 1996, and for Afghanistan in 2001.²⁰⁸ They gave recommendations to the official Track 1 negotiations. In the post-conflict phase, civil society can advocate against the recurrence of violence, for the proper implementation of peace agreements, or for important themes on the post-conflict agenda and a culture of peace within society.²⁰⁹

The role of independent media has shown to be extremely important in peacebuilding activities, as it helps reach a broad range of the population, facilitate public communication and amplify advocacy campaigns.²¹⁰ Printing and broadcasting of objective, non-partisan information (on mass killings, human rights violations, and truth and reconciliation efforts) is one important media support for peacebuilding. Producing and distributing more focused peace education features raising awareness on the need and feasibility of non-violent solutions is another. However, what should not be forgotten is

²⁰⁷ Accord. (2002). *Owning the process, Public participation in Peace making*, Accord Series, Reconciliation Resources, London.

²⁰⁸ Armon, J., R. Sieder, and R. Wilson. (1997). *Negotiating rights. The Guatemalan peace process*. London: Conciliation Resources.

²⁰⁹ Orjuela, C. (2004). *Civil Society in Civil War, Peace Work and Identity Politics in Sri Lanka*, PhD Dissertation. Department of Peace and Development Research, University Göteborg.

²¹⁰ Rolt, F. 2005. In: van Tongeren, P. et al. eds. (2005). *People Building Peace II, Successful Stories of Civil Society*, Boulder CO: Lynne Rienner Publishers, 175-184.

that media can easily perpetuate group based stereotypes and fuel further hostilities and violence.

In Rwanda for example, radio Milles Collines preached hatred and helped orchestrate the genocide. An enabling environment for media should facilitate the emergence of independent outlets, including community radio, and aim to promote high professional standards via self-regulation measures. In Burundi, for example, UNESCO, UNDP, and UNHCR collaborated with media to promote reconciliation and peace education. Search for Common Ground, and NGO, supported the establishment of the country's first radio station in 1995.²¹¹

4.2 Conclusion

When weighing the mechanics and methodology of reconciliation programs and policy, it is important to remember that each country has different political, social, cultural, ethnic, and linguistic groups and issues; none of which are the same in any two countries. As a result, there is no universal model for transitional justice or reconciliation. While lessons can be shared among post-conflict states and best practices adapted to the needs of specific countries, it would be dangerous to copy or duplicate what has been done elsewhere and expect the same results, given the inner diversity previously discussed. Countries with similar conditions may be able to adopt a specific piece of legislation or policy, but its impact will be different than in the state of origin. Indeed, it may even fail simply because it is deemed to belong to another country or another context. It is thus

²¹¹ G. S. Cheema (2005). *Building Democratic Institutions. Governance Reform in Developing Countries.* Kumarian Press.

imperative for each country to set its own reconciliation agenda by taking into account in its history, socio economic context as well as other issues.

CHAPTER FIVE

CONCLUSION

5.1 Summary

The main purpose of this was to assess the importance of peace-building in divided societies by comparing Kenya and Rwanda.

The findings of the study established that justice and reconciliation remains key to securing a peaceful future in Kenya and Rwanda and in preventing the use of past injustices as the seed for renewed conflict. A reconciled society has the dual function of representing a breaking of the cycle of violence and gross violations of human rights, and promoting peaceful co-existence among its members. In return there is a consolidation of democratic institutions that ensure good governance and respect for the rule of law.

It is also established that acknowledgment is a key pillar of reconciliation. Harm to bodily integrity is a physical manifestation of violations. Yet it could be argued that the worst forms of violation are those that affect the emotion and the psyche. The harm caused to an emotionally violated individual pervades the very core of the individual's existence, along with the ever-present danger of that individual resorting to revenge and violence. Perpetrators must acknowledge the harm that they have caused to their victims in order for reconciliation between the two parties to have real, long- term meaning. Similarly, institutional acknowledgment of wrongdoing must accompany efforts towards national healing and reconciliation. State and other political entities' acknowledgment of violations to its people is germane to the reconciliation process. Other institutions, such as faith- based groups, must also take responsibility for their complacency with regard to

past injustices, or indeed for complicity in actively engaging in injustices to their constituents.

5.2 Key Findings

Peace-building in divided societies is not a simple process. There are significant limitations and complications that need to be addressed, including political and resource constraints, lack of political will, and lack of capacity to implement terms of the peace agreement.²¹² The efforts of the international community to promote peace in societies recovering from violent conflict are further complicated when there has not been a negotiated end to the violence involving the international community, as in Rwanda after the genocide in 1994 and Kenya PEV of 2007/2008. Boutros-Ghali draws the distinction between post-conflict peace-building in the context of a comprehensive peace settlement, and peace-building activities where the UN does not already have a peacemaking or peacekeeping mandate.²¹³

The findings to this study are that reconciliation is an over-arching process which includes the search for truth, justice, forgiveness, healing and so on. It is not a short process as is seen with the case of Rwanda which after ten years of the genocide is still going through the process of reconciliation and healing. Politics is an important process to deal with the issues that have divided us in the past. Reconciliation is therefore a parallel process that redesigns the relationship between us. This is an immense challenge,

²¹² Bertram E.,(2001). *Reinventing Governments*. Op. cit.

²¹³ Boutros Boutros-Ghali, *Agenda for Peace*. Op cit.

and no one should think that it is quick or easy. But the effort carries a great reward: effective reconciliation is the best guarantee that the violence of the past will not return.²¹⁴

As concerns healing, the findings are that indeed healing should be sought at the individual level but dependent upon and inter related with the social context.²¹⁵ Just as healing is dependent on the collective and political context, so too can individual and community healing strategies bolster national attempts to re-establish society. When considering healing, particularly at the individual level, it is important to acknowledge that its trajectory is naturally haphazard and it is a slow process. While, on the one hand, political processes and strategies aimed at reconciliation are important in establishing the context for individual healing and coming to terms with violence, each individual's healing path is personal and unique. It can often be at odds with political, social and international political demands on people to leave the past behind.²¹⁶

5.3 Recommendations

The Government of Kenya and Rwanda needs to empower an existing permanent institution, such as the NCIC, with the specific mandate of fostering, protecting and enforcing reconciliation nationally and within the different regions both in Kenya and Rwanda. Such an institution should: create platforms for engagement and dialogue

²¹⁴ Sarkin,(2001). Democratizacao Justice No Periodo DeTransicao Em Angola,"in Conferencia Internacional Angola - Direito, Democracia, Paz E Desenvolvimento:203

²¹⁵ Bloomfield, David (2006). On Good Terms. Clarifying Reconciliation. Berghof Report No 14. Berlin: Berghof Research Center. Available at www.berghof-conflictresearch.org.

²¹⁶ Mamdani (1997); Mani (2002). Mamdani, Mahmood 1997: From Justice to Reconciliation. Making Sense of the African Experience, in: Leys, Colin/Mamdani, Mahmood (Hrsg.): Crisis and Reconstruction .African Perspective, Uppsala, 17-25.

between government structures and the people, thereby fostering accountability; coordinate transitional justice interventions both Kenya and Rwanda to contribute to national cohesion and reconciliation; recognize and promote community-level truth-telling processes. In this context, government should promote inter-community dialogues on truth with the assistance of civil society organizations and with the provision of psycho-social support for truth telling; partner with civil society in engaging victims and affected communities in consultations around policies that will affect them; and entrench restorative justice policies to contribute to reconciliation. In support of national healing and recognition of abuses by state and non-state actors alike, symbolically apologize for the harm caused by past and current governments, as a basis for initiating reconciliation dialogues.

The governments also need to fully implement the TJRC report recommendations as well as other unimplemented recommendations from commissions of inquiry relating to reconciliation. They also are required to implement programmes that would educate the electorate on the importance of free, fair and peaceful elections, and take necessary measures to dispel fears of recurrence of violence. In this vein, guarantee free, fair and peaceful elections, to counteract violence stemming from flawed electioneering procedures and practices.

Rwandans and Kenyans in the diaspora positioned in strategic locations in their host countries need to be engaged to raise awareness of reconciliation in Rwanda and Kenya. With the proliferation of social media and the ease of connecting globally via the internet, the Diaspora should be encouraged to support and positively contribute to transitional

justice processes in Rwanda and Kenya. In addition, it is necessary for constructive dialogue to be facilitated by the state through proper channels, in order to receive input from Diasporants on existing or future reconciliation processes.

Capacitate the judiciary, members of the bar and investigative offices to adopt and invoke the language and concepts of reconciliation in the administration of justice are also key. Another key area is to operationalize reconciliation policies through legislation. Placing reconciliation on the legislative agenda would generate the necessary attention and public debate, which would foster the reconciliation process.

The faith-based institutions, who play key role in peace building also need to act as agents of social reconciliation by fostering reconciliation between individuals and communities in conflict. Reconciliation must be approached at all levels. Faith-based institutions should take concrete steps towards engaging their constituents in social reconciliation. Thus they foster inter-faith reconciliation, first among the different faith-based institutions, in order to ensure credibility as agents of social reconciliation, and then with the people, particularly in regions in the country where conflicts and tensions exist based on religious differences. This further means that they also need to undertake clear engagement with politicians, with the aim of ensuring non- politicization of faith issues.

The civil society are also recommended to link to the national reconciliation agenda and coordinate these activities with education and training programmes, in order to create

public awareness of, support for and advancement of reconciliatory and cohesive practices. Also engage with community- level truth-telling exercises. The civil society also need to fully digest the outcomes of reconciliation workshops involving government representatives, civil society and other relevant stakeholders, with the aim of generating educational materials for the Kenyan context relating to national cohesion and reconciliation, and of providing platforms for deconstructing ethnic divisions through dialogues. Thus the civil society need to contribute to the process of consultations with victims and affected communities on restorative justice policies that promote reconciliation, while maintaining that government has the primary responsibility for this.

BIBLIOGRAPHY

- Aall, P. (2001). What Do NGOs Bring to Peacemaking? In: Crocker, C., F. Hampson, and P. Aall. eds. 2001. *Turbulent Peace*, Washington D.C.: United States Institute of Peace Press, 365- 383.
- Accord. (2002). *Owning the process, Public participation in Peace making*, Accord Series, Reconciliation Resources, London.
- Adelmann, H. & Suhrke, A. "Early warning and conflict management", "The International Response to Conflict and Genocide: Lessons from the Rwanda Experience", JEEAR, Copenhagen, 1996, p.23
- Almond, G. A., and G.B.J. Powell. 1988. *Comparative Politics Today. A World View*. Glenview, IL: Scott, Foresman/ Little, Brown College Division.
- Anderson, M. B. (1999). *Do No Harm. How Aid Can Support Peace-or War*. Boulder, CO: Lynne Rienner.
- Anderson, M. B., L. Olson, and K. Doughty. (2003). *Confronting War: Critical Lessons for peace Practitioners*. Cambridge, MA: The Collaborative for Development Action.
- Annual Report for Liberia (2006). NewYork: Amnesty International.
- Armon, J., R. Sieder, and R. Wilson. (1997). *Negotiating rights. The Guatemalan peace process*. London: Conciliation Resources.
- Baines, Erin K. (2007): *Recht sprechen oder Frieden hers tellen? Streit um die Bestrafung n Norduganda*, in: *Der Überblick* 43: 1-2, 28-31
- Barasa, L. (2000) "Government Set Up Army Camp in West Pokot," *Daily Nation*, 2 February.
- Barnes, C. (2005). *Weaving the Web: Civil-Society Roles in Working with Conflict and Building Peace*. In: van Tongeren, P. et al. eds. 2005. *People Building Peace II, Successful Stories of Civil Society*, Boulder CO: Lynne Rienner Publishers, 7-24.
- Biggar, Nigel (2001): *Making Peace and Doing Justice. Must We Choose?*, in: Biggar, Nigel (Hrsg.): *Burying the Past. Making Peace and Doi ng Justice after Civil Conflict*, Washington, 6-22.
- Birchem. R. (1996). *Women and Peace in Africa*. International Peace Update 61(5).
- Bloomfield, David (2006). *On Good Terms. Clarifying Reconciliation*. Berghof Report No 14. Berlin: Berghof Research Center. Available at www.berghof-conflictresearch.org.

- Bloomfield, David, Teresa Barnes and Luc Huyse (2003). *Reconciliation after Violent Conflict. A Handbook*. Stockholm: International IDEA.
- Boraine, Alexander (2006). Transitional Justice. A Holistic Interpretation, in: *Journal of International Affairs* 60, 1, 17-27.
- Brouneus, Karen (2008). Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts, in: *Security Dialogue* 39, 1, 55-76.
- Buckley-Zistel (2008c.). The Truth Heals"?Gacaca Jurisdiction and the Consolidation of Peace in Rwanda, in: *Die Friedens Werte* 80: 1-2, 113-129.
- Buckley-Zistel, Susanne/Moltmann, Bernhard (2006): Versöhnung. Balance zwischen Wahrheit und Gerechtigkeit, in: Mutz, Reinhard/al., et. (Hrsg.): *Friedensgutachten*, Berlin, 136-145.
- Cheema, G. S. (2005). *Building Democratic Institutions. Governance Reform in Developing Countries*. Kumarian Press.
- Christian Davenport; Allan C. Stam (2009). "What Really Happened in Rwanda?". *psmag.com*. Retrieved 10 April 2014.
- Church, C., and Shouldice J. (2002). *Conflict Resolution Evaluation. Framing the State of Play*. Derry: Initiative on Conflict Resolution and Ethnicity
- Clark, J. (2003). *Worlds Apart, Civil Society and the Battle for Ethical Globalization*. Bloomfield CT: Kumarian Press.
- Cooper, D.R. & Schindler, P.S. (2000). *Business Research Methods*: New York, McGraw Hill.
- Crisp, J. (1999). *A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya*. Geneva: UNHCR.
- Crisp, J. (1999). *A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya*. Geneva: UNHCR.
- Cussac, A. (2008). "Kibaki tena?" *The challenges of a campaign Lafargue, J. (Ed.)*. The general elections in Kenya, 2007. (pp. 55-104). Dar es Salaam: Mkuki na NyotaPublishers, Ltd.
- Daly and Jeremy Sarkin (2007). *Reconciliation in Divided Societies: Finding Common Ground*, Pennsylvania, Pennsylvania University Press.
- Donald L. Horowitz, (1985) *Ethnic Groups in Conflict*, (Los Angeles: University of California Press), p. 59.

- Elisabeth M. Cousens, (2001) "Introduction" in Elisabeth M. Cousens & Chetan Kumar (eds), *Peacebuilding as Politics: Cultivating Peace in Fragile Societies* (Boulder, Colorado: Lynne Rienner, 2001), pp. 1-20.
- Elster, Jon (2004). *Closing the Books. Transitional Justice in Historical Perspective*. Cambridge/New York: Cambridge University Press.
- Enns, Diane (2007). *Identity and Victimhood: Questions for Conflict Management Practice*. Bergh of Occasional Paper No 28. Berlin: Berghof Research Center.
- Farr, Vanessa (2003). *The Importance of a Gender Perspective to Successful Disarmament, Demobilization and Reintegration Processes*, in: *Disarmament Forum*, 4/2003, 25-36.
- Gibson, James L. (2006). *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* New York: Russell Sage Foundation Publications.
- GOK (1997). *The National Development Plan 1997-2002*. Nairobi: Government Printers
- Havers Julian (2006). *Cooperating for Peace: Post-conflict recovery through self help*. Paper prepared for the International Conference on Cooperatives and the Pursuit of Peace, Victoria, BC. Available at: http://www.peace.coop/main/wp-content/uploads/2006/08/Julian_Havers_Full.pdf
- Hayner, Priscilla (1994). *Fifteen Truth Commissions – 1974-1994: A Comparative Study*, in: *Human Rights Quarterly* 16, 4, 597-65.
- Hazan (2007: 11): *Das Mantra der Gerechtigkeit. Vom beschränkten Erfolg international verordneter Vergangenheitsbewältigung*, in: *Der Überblick* 1-2, 10-22.
- Huhle, Rainer 2004: *Perus Weg zur Aufarbeitung der Vergangenheit*, in: *Lateinamerik Analysen* 9, 127-154.
- Human Rights Watch. (1997). *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya*. New York: HRW.
- Jasper (1979) : *Die Schuldfrage. Für Völkermord gibt es keine Verjährung*, München.
- Jeong, H. (2005). *Peacebuilding in Postconflict Societies, Strategy & Process*. Boulder, London: Lynne Rienner.
- Johan Galtung, (1969). "Violence, Peace and Peace Research", *Journal of Peace Research*, pp. 167-191.
- John W. Burton and Dennis J. D. Sandole, "Generic Theory: The Basis of Conflict Resolution", *Negotiation Journal*, 2(4), October 1986.

- Joseph A. Scimecca,(2001). Self-reflexivity and Freedom,” in Burton (ed.) Conflict: Human Needs Theory, op. cit., p. 206.
- Kagwanja, P. (1998). *Killing the Vote: State-Sponsored Violence and Flawed Elections in Kenya* Nairobi: KHRC.
- Kathina, M. and A. Masika. (1997). *Evaluation of the Resettlement Programme for Ethnic Clashes Victims in Kenya*. Nairobi: Department of Foreign and International Development (DFID).
- Keane, F. Season of Blood: Rwandan Journey, (Penguin Books, 1996) p.11
- Kiplagat, B. (1998). “Is Mediation Alien to Africa?” In Online *Journal of Peace and Conflict Resolution*
- Kitunyi, M. (1991). *Becoming Kenyan*. Nairobi: East African Publishers.
- Lafargue, J. (Ed.). The general elections in Kenya, 2007. (pp. 13-34). Dar es Salaam: Mkuki na Nyota Publishers, Ltd.
- Lafargue, J. and M. Katumanga (2008). Post-election violence and precarious pacification.
- Ledearch, John Paul (1997): *Building Peace. Sustainable Reconciliation in Divided Societies*, Washington.
- Lederach, John Paul. (1995). *Preparing for Peace: Conflict Transformation Across Cultures*. Syracuse, Syracuse University Press.
- Lijphart A., (2002) “The Wave of Power-Sharing Democracy,” in *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, ed. Andrew Reynolds (Oxford: Oxford University Press), p. 39.
- Lynn Duke (1997). "U.S. military role in Rwanda greater than disclosed". *Washington Post*. Retrieved March 22, 2014.
- Mamdani, Mahmood (1997): *From Justice to Reconciliation. Making Sense of the African Experience*, in: Leys, Colin/Mamdani, Mahmood (Hrsg.): *Crisis and Reconstruction .African Perspective*, Uppsala, 17-25.
- Menzel, Jörg (2007): *Die Entwicklung des Völkerrechts. Vom Nürnberg-Tribunal zum Internationalen Strafgerichtshof*, in: *Der Überblick* 1-2, 20.
- Mertus, Julie (2000): *Truth in a Box: The Limits of Justice through Judicial Mechanisms*, in: Amadiume, Ifi/An-Na'im, Abdullahi (Hrsg.): *The Politics of Memory. Truth, Healing and Social Justice*, London, 142-161.

- Minow, Martha (1998): *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Boston.
- Mulaa, A. (1999). "Go to Famine Areas, Ndingi tells NGOs," *Daily Nation*, 27 November.
- Muscara Aprille (2010). "RWANDA: Genocide Ideology and Sectarianism Laws Silencing Critics?". Inter Press Service. Retrieved 3 April 2014.
- Mutua, M. (2008). *Kenya's quest for democracy: taming the leviathan*. London: Lynne Rienner Publishers.
- Nasong'o, SW (2007). *Negotiating new rules of the game: Social movements, civil society and the Kenyan transition*. G.R. Murunga, S.W. Nasong'o (Eds.). Kenya: the struggle for democracy. (pp. 19-57). New York, NY: Palgrave Macmillian.
- O'Reilly, S. (1998). *The Contribution of Community Development to Peacebuilding: World Vision's Area Development Programs*.
- Ohanyan, A. with Lewis, J. (2005). *Politics of Peacebuilding: Critical Evaluation of Interethnic Contact and Peace Education in Georgia- Abkhaz Peace Camp, 1998-2002*, in: *Peace and Change*, 30 (1), 57-84.
- Orentlicher (1991) Nino (1996). Buckley-Zistel/Moltmann (2006). *Settling Accounts. The Duty to Prosecute Human Rights Violations of a Prior Regime*, in: *Yale Law Journal* 100: 8, 2537-2615
- Orjuela, C. (2004). *Civil Society in Civil War, Peace Work and Identity Politics in Sri Lanka*, PhD Dissertation. Department of Peace and Development Research, University Göteborg.
- Orjuela, C. 2004. *Civil Society in Civil War, Peace Work and Identity Politics in Sri Lanka*, PhD Dissertation. Department of Peace and Development Research, University Göteborg.
- Paffenholz (2003). *Experiences Gained from ATP in Sri Lanka*, Eschborn: GTZ.
- Paffenholz, T. (1998). *Konflikttransformation durch Vermittlung. Theoretische und praktische Erkenntnisse aus dem Friedensprozess in Mosambik (1995-1996)*. Mainz: Grunewald.
- Paffenholz, T., and L. Reychler. (2005). *Towards Better Policy and Program Work in Conflict Zones. Introducing the 'Aid for Peace' Approach*. *Journal of Peacebuilding and Development*, 2 (2), 6-23.
- Paffenholz, T., M. Damgaard,, and D. Prasain. (2004). *UNDP: Support for Peace and Development Initiatives in Nepal*, Review Report.

- Paffenholz, T., M. Damgaard, and D. Prasain. (2004). UNDP: Support for Peace and Development Initiatives in Nepal, Review Report.
- Percival, V. & Homer-Dixon, T. (2000). Environmental scarcity and violent conflict: the case of Rwanda”, *Journal of Environment and Development*, 5:3, p.287.
- Putnam, R.D. (2002). *Democracies in Flux: The Evolution of Social Capital in Contemporary Society*. Oxford: Oxford University Press.
- Andersen R., (1998). How multilateral development assistance triggered the conflict in Rwanda”, *Third World Quarterly*.
- Humphrey, Michael (2000): From Terror to Trauma. Commissioning Truth for National Reconciliation, in: *Social Identities* 6: 1,
- Schlicher, Monika (2007): Geschichte eines Scheiterns. Strafverfolgung und Versöhnung in Osttimor, in: *Der Überblick*.
- Teitel, Ruti G. (2003): Transitional Justice Genealogy, in: *Harvard Human Rights Journal* 16, 64-69.
- Ledearch, John Paul (1997): *Building Peace. Sustainable Reconciliation in Divided Societies*, Washington.
- Raymond G. Hemilck (2003). *Forgiveness and Reconciliation in the Theory of Liberal Democracy* (Chicago: University of Chicago Press).
- Rebecca Spence, (2001). “Post-Conflict Peacebuilding: Who Determines the Peace?” in
- Richmond, A. (1994). *Global Apartheid*. Oxford: Oxford University Press.
- Rigby, Andrew (2005): 'Forgiving the Past'. Paths towards a Culture of Reconciliation, Coventry.
- Rogge, J. (1993). *The Internally Displaced Population in Kenya, Western and Rift Valley Provinces: A need Assessment and a programme proposal for Rehabilitation*. Nairobi: UNDP.
- Rolt, F. 2005. In: van Tongeren, P. et al. eds. (2005). *People Building Peace II, Successful Stories of Civil Society*, Boulder CO: Lynne Rienner Publishers, 175-184.
- Sarkin and Guilia Dalco (2006). Promoting human rights and achieving reconciliation at the international level (Part1),” *Law, Democracy and Development* 2006 (1): 69-99.

- Sarkin,(2001). Democratizacão Justice No Período DeTransição Em Angola,”in Conferência Internacional Angola - Direito, Democracia, Paz E Desenvolvimento: 203
- Seibert-Fohr, Anja 2006: Die Fortentwicklung des Völkerstrafrechts. Verbrechen gegen Frauen im bewaffneten Konflikt, in: Rudolf, Beate (Hrsg.): Frauen und Völkerrecht. Zur Einwirkung von Frauenrechten undFraueninteressen auf das Völkerrecht, Baden-Baden, 145-169.
- SIDA. (2005). Sida’s Policy for Civil Society: The Objective of Sida’s cooperation with Civil Society. Available at: www.sida.se.
- Somjee, S. and M. Kathina. (1997). *Situational Analysis of Emergencies in Kenya*. Nairobi: Action-Aid.
- Spence R., (2001). “Post-Conflict Peacebuilding”, p. 145.
- Tongerens, P. et al. eds. 2005. *People Building Peace II, Successful Stories of Civil Society*, Boulder CO: Lynne Rienner Publishers, 7-24.
- Tracy Wilkinson (2008). "Spanish judge indicts Rwanda officers". *LA Times*. Retrieved April 2, 2014.
- TRESA (2005). *Civil Society Action on Small Arms and Light Weapons Control. Training and Education on Small Arms (TRESA)*, BICC, Bonn.
- Turay, T.M. (2000). *Civil Society and Peacebuilding: The Role of the Inter-Religious Council of Sierra Leone*, in: Lord, D. (ed.) 2000: *Paying the Price – Sierra Leone’s Peace Process*, ACCORD Conciliation Resource <http://www.c-r.org/accord/s-leone/accord9/society.shtml>.
- UN (1992). *An Agenda for Peace. Preventive Diplomacy, Peacemaking and Peacekeeping*. Report of the Secretary- General, 17 June 1992, A/47/277-S/24111. <http://www.un.org/Docs/SG/agpeace.html>.
- Uvin Peter (1998). *Aiding Violence: The Development Enterprise in Rwanda*. West Hartford, CT: Kumarian Press.
- Uvin, P. “Reading the Rwandan Genocide”, *International Studies Review*, 3:3, 2001, p.81
- Uvin, P., (1997).“Prejudice, Crises and Genocide in Rwanda”, *African Studies Review*, 40:2, pp.91-115.
- Varshney, A. (2002). *Ethnic Conflict and Civic Life: Hindus and Moslems in India*. New Haven: Yale University Press.

- Zorbas Eugenia (2004). Reconciliation in Post-Genocide Rwanda. *In African Journal of Legal Studies*. Vol.1, n°1, pp.30-52.
- Zedner, L. (1994) .Reparation and Retribution: Are They Reconcilable? *Modern Law Review* 57.
- Wright, M. (2002). The Court as Last Resort .*British Journal of Criminology* 42(3).
- Soothill, K. (1993)‘ The Serial Killer Industry. *Journal of Forensic Psychiatry* 4(2): 341-54.
- Sampson, A. (1994). *Acts of Abuse: Sex Offenders and the Criminal Justice System*. London: Routledge.
- Silverman, J. and D. Wilson (2002). *Innocence Betrayed: Paedophilia, the Media and Society*. Cambridge: Polity Press.
- Salter, A. (1995). *Transforming Trauma: A Guide to Understanding and Treating Adult Survivors of Child Sexual Abuse*. Newbury Park, CA: Sage.
- Menzel, Jörg 2007: Die Entwicklung des Völkerrechts. Vom Nürnberg-Tribunal zum Internationalen Strafgerichtshof, in: *Der Überblick*..
- Minow, Martha (1998): *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Boston.
- Mani, Rama (2002): *Beyond Retribution. Seeking Justice in the Shadows of War* Cambridge/Oxford.
- Diane F. (1991): *Settling Accounts. The Duty to Prosecute Human Rights Violations of a Prior Regime*, in: *Yale Law Journal* 100: 8, 2537-2615.
- Rigby, Andrew (2001): *Justice and Reconciliation. After the Violence*, London.

APPENDICES

Appendix I: Interview Guide

1. What is your perception of the Post-Election Crisis in Kenya?
2. What is your general Perception of the International Criminal Processes both in Kenya and Rwanda?
3. Do you have any knowledge on how International criminal Justice System function in Kenya and Rwanda
4. What impact does the International criminal Justice have on reconciliation in Kenya and Rwanda?
5. How can you compare truth and justice in Kenya and Rwanda?
6. What is the impact of local trials perceived in both Kenya and Rwanda?
7. How does reparations in Transitional for Justice done in Kenya and Rwanda?
8. What are the challenges for reconciliation as a process and transitional of justice in divided societies?
9. What are the opportunities realized for consolidating transitional justice mechanisms for reconciliation?