

Ethnopolitical Violence, Transitional Justice and Peacebuilding in Kenya: Nurturing a Tripartite
Hybridity

By

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DECLARATION

“I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor material which to a substantial extent has been accepted for the award of any other degree or diploma of the university or other institute of higher learning, except where due acknowledgment has been made in the text.”

Peter Karari, October 10, 2014

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DEDICATION

This doctoral thesis is dedicated to my family including my wife Mercy, my daughters Precious and Joy, and my son Peace for their unfatigued support in the course of my doctoral studies. May the pains of this doctoral journey translate into gains in the life of our family!

Peter Karari, 2014

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LIST OF ABBREVIATIONS

ACCJ-African Criminal Court of Justice

ANC-African National Congress

APP-African Peoples Party

ARIA Framework-Antagonistic, Reflexive, Integrative and Action Framework

CBS- Central Bureau of Statistics

CIC-Commission for the Implementation of the Constitution

CIPEV-Commission of Inquiry into Post-Election Violence

DDR-Disarmament, Demobilisation, and Reintegration

DP-Democratic Party

FORD-Forum for the Restoration of Democracy

GEMA-Gikuyu, Embu, Meru, Akamba

GOK- Government of Kenya

GSU-General Service Unit

HDI- Human Development Index

HIV-Human Immuno-deficiency Virus

ICC-International Criminal Court

ICISS-International Commission on Intervention and State Sovereignty

ICTJ-International Centre for Transitional Justice

IDPS-Internally Displaced Persons

KADU- Kenya African Democratic Union

KANU-Kenyan African National Union

KAU-Kenya African Union

KDHS-Kenya Demographic and Health Survey

KHRC-Kenya Human Rights Commission

KLA-Kenya Land Alliance

KNCHR-Kenya National Commission on Human Rights

KPU-Kenya Peoples Union

KRC-Kenya Red Cross

LAPSSET-Lamu Port and Lamu Southern Sudan-Ethiopia Transport

LUM-Luo United Movement

MDF-Moorland Defence Forces

MNC-Multi National Company

MoU-Memorandum of Understanding

MRC-Mombasa Republican Council

MTD-Multi-track diplomacy

NARC-National Rainbow Coalition

NCIC-National Cohesion and Integration Commission

NFD-Northern Frontier District

NGOs-Non Governmental Organizations

NPPPP-Northern Province People's Progressive Party

NPUA-Northern Province United Association

OAU-Organization of African Unity

PNU-Party of National Unity

PSW-Problem solving workshops

SATRC-South Africa Truth and Reconciliation Commission

SDLF-Sabaot Land Defence Force

SSR- Security Sector Reform

TJRC-Truth, Justice, and Reconciliation Commission

TRC- Truth and Reconciliation Commission

UDHR- The Universal Declaration of Human Rights

UNDP-The United Nation Development Programme

UNSC-United Nations Security Council

VOMP-Victim Offender Mediation Programs

VOR-Victim Offender Reconciliation

ABSTRACT

Morality, trust, social ties, shared institutions, and social capital are in short supply after ethnic wars: ethnic identity is prominent; attachment to collective myths and symbols offensive to other groups is strong; avoidance is legitimate; minority returnees are not welcome; and disputants harbor deep-seated grievances. How can peace and a culture of tolerance be nurtured in such a social milieu? (Oberschall, 2007:231).

The statement above represents the challenge of this research. Studies indicate that African conflicts are rooted in complex constructions and conjectures of the continent's political economies, social identities, and cultural ecologies, each of which is derived out of local, national, and regional historical experiences and patterns of engagement with an ever changing world system (Nhema and Zeleza, 2008). These conflicts threaten regional stability, destroy human lives, as well as social and physical infrastructure and place at risk, minorities' fundamental freedoms and human rights. Such precarity calls for timely and informed interventions to mitigate conflict protraction and virulence. Studies indicate that a civic culture of tolerance and respect for minorities is not conceivable without truth and justice in human affairs (Oberschall, 2007). Therefore, the proliferation of intrastate conflicts around the world has led to the emergence of transitional justice mechanisms which respond to legacies of collective violence and systematic human rights violations in a bid to establish the truth about the past, determine accountability, and offer some form of redress (Van Der Merwe, et al., 2009). This study investigates the perception and/or experiences of the respondents about ethno-political violence, transitional justice, and peacebuilding in Kenya. Kenyan ethno-political challenge led to the formation of the Truth Justice and Reconciliation Commission of Kenya (TJRC) and the interventionism of the International Criminal Court (ICC) both of which are highly critiqued by a section of Kenyans for their inadequacy to address the Kenyan problem (Rugene, 2010; Barasa, 2009; Omtata, 2010). Indigenous approaches to peacebuilding which are thought to be complimentary forces to the ICC and TJRC have their merits and demerits too. This study

indicates that neither the dualistic model of TJRC and the ICC nor the Tripartite Hybridity of TJRC, ICC, and Indigenous approaches to peacebuilding is adequate enough in facilitating transitional justice in Kenya. To complement the gaps of the dualistic and tripartite approaches, this study has come up with an experience-based grounded model for transitional justice, peacebuilding and conflict resolution in Kenya informed by the expressed needs and the recommendations of the study participants. Apart from having the tripartite hybridity of TJRC, ICC, and Indigenous Approaches to peacebuilding, the new model emphasizes the importance of implementing institutional and policy frameworks that would address historical injustices and structural violence ingrained in the Kenyan system in order to mitigate ethnopolitical violence in the future. If well implemented, the new Kenyan model namely *The JET LINERS-RIGS Grounded Approach for Peacebuilding and Conflict Resolution* is expected to nurture sustainable peacebuilding, conflict resolution, and transitional justice in Kenya.

1.0 CHAPTER ONE: INTRODUCTION

1.1 Background Information

The end of the Cold War saw the emergence of a new global challenge—the proliferation of intrastate and ethno-political conflicts characterized by unspeakable atrocities in which nation states faced multiple challenges when seeking to come to terms with their violent past, including healing and rebuilding their societies (Hayner, 2001). Ethnic conflicts now have the potential more than ever before to become a major international security problem capable of creating global humanitarian disasters (Wolff, 2006: 190). Having claimed more than ten million lives since World War II, ethnic violence as a force shaping human and world affairs can no longer be ignored (Horowitz, 2000; Taras and Ganguly, 2006). Protracted ethnic violence has happened in Northern Ireland, Sri Lanka, Rwanda, Kashmir, Nigeria, the enclaves of the former Yugoslavia, Cyprus, and Kenya, among other regions (Carter et al., 2009). Despite the virulence of ethnic violence, there is a lack of comprehensive inquiry into their protraction due to their diversity and complexity, which suggests the urgency for informed interventionism (Horowitz, 2000). To understand ethno-political conflicts we need to answer a variety of questions: What nurtures ethnic conflicts? Why is ethnic conflict more prevalent in some regions than others? What causes the politicization and militarization of ethnic conflicts? How can ethno-political violence be addressed and interethnic cooperation enhanced? Answers to such questions facilitates understanding, explanation, and timely interventionism in ethnic violence and protracted ethnic conflicts (Horowitz, 2000).

This study focuses on Kenya, which has experienced over two decades of ethno-political violence that climaxed in 2008 after the disputed Presidential elections. The (Commission of Inquiry into Post-Election Violence [hereafter CIPEV], 2008) indicates that the violence resulted in 1500 deaths, 500000 displacements, pillaging, and crimes against humanity. This violence was

a protest against decades of historical injustices and structural violence against some ethnic groups (Parliamentary Select Committee to Investigate Ethnic Clashes, 1992; Judicial Commission of Inquiry into Tribal Clashes in Kenya, 1999; CIPEV, 2008). Fortunately, Kenya was salvaged from the verge of collapse by the unfatigued efforts of the international community through the auspices of the African Union (AU) Panel of Eminent African Personalities chaired by former UN Secretary-General Kofi Annan (Kagwanja and Southall, 2011; Osamba, 2011). This led to a power-sharing pact and a coalition Government between the Party of National Unity (PNU) of the incumbent President Mwai Kibaki and the leader of the opposition, the Orange Democratic Movement (ODM) Raila Odinga (Kagwanja and Southall, 2011; Osamba, 2011).

Proliferation of such intrastate conflicts around the world has led to the emergence of transitional justice mechanisms which respond to legacies of collective violence and systematic human rights violations in a bid to establish the truth about the past, determine accountability, and offer some form of redress (Van Der Merwe, et al., 2009). The Kenyan coalition Government agreed to establish several commissions of inquiry including the Commission of Inquiry into Post-Election Violence (CIPEV), the Independent Review Commission on the General Elections also known as the Krieger Commission, a National Ethnic and Race Relations Commission (NERC), and a Truth Justice and Reconciliation Commission (TJRC). The mandate of CIPEV was to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies and how they handled it, and to make recommendations concerning these and other matters (CIPEV 2008: vii). Both the CIPEV and Krieger reports indicate that the post-election violence in Kenya was not just a mere juxtaposition of citizen-to-citizen opportunistic assaults, but rather systematic attacks based on ethnicity and political leanings

(International Centre for Transitional Justice [hereafter ICTJ], 2010). The reports recommended the establishment of the Special Tribunal of Kenya (STK) to pursue accountability for those who bore the greatest responsibility for the post-election violence and particularly crimes against humanity. CIPEV handed over an envelope containing a list of twenty perpetrators believed to bear the greatest responsibility for crimes against humanity to the AU Panel of Eminent African Personalities, which was to be forwarded to ICC for implementation if the special tribunal of Kenya failed to be established.

In October 2008, the Kenyan parliament enacted the TJRC bill which became a law in November 2008. According to the United States Institute of Peace [hereafter USIP], 2009), TJRC was mandated to establish an accurate, complete, and historical record of gross human rights violations and economic crimes committed between December 12, 1963, when Kenya gained independence, and February 28, 2008, when the power sharing pact was signed (Ibid). The TJRC was tasked to establish the causes, nature and extent of the post-election violence, including unresolved injustices such as the distribution of land and state resources. The Commission was also mandated to investigate politically motivated violence, assassinations, displacements and major economic crimes including corruption and irregular acquisition of land. The TJRC was also charged with making recommendations on how best to redress victims and provide reparation and compensation (ICTJ, 2010). The Commission was also to recommend policies that would guide reparations for victims, prosecutions, and the creation of institutions that would nurture a stable and a fair society. The Commission's charter contains provisions for individual amnesty procedures in case applicants make full disclosure of information relating to post-election violence (Ibid). The Commission was also mandated to make public all the findings (ICTJ: 2010). However, the Kenyan TJRC was marred by inconsistencies, political

manipulation, and exclusion of victims from its process (Kenya National Commission on Human Rights [hereafter KNCHR], 2008).

The TJRC was meant to compliment the special local tribunal as recommended by CIPEV and the Krieger reports. However, the Kenyan parliament failed to pass the Constitutional Amendment Bill for a Special Tribunal into post-election violence in Summer 2009 fearing political interference and judicial compromise (CIPEV, Chapter 11: 473). This was the entry point of the ICC in Kenya. The Rome Statute of the ICC was established in the 1998 UN conference in Rome and came into force on July 1, 2002. As entrenched in Article 5 (I) of the Rome Statute, the crimes under the ICC jurisdiction include genocide, crimes of aggression, war crimes and crimes against humanity, committed after the entry into force of the Statute (Article 11) within the territory of a state party (Article 12). The *proprio motu* jurisdiction of the ICC prosecutor is guided by the principle of complementarity and is evoked as a last resort after the failure of a state's national jurisdiction to deal with an offence i.e. when a state is unwilling or unable to investigate and prosecute (Wise 2000; Article 15). The failure of Kenya to institute a special tribunal into post-election violence prompted the ICC prosecutor to request the ICC judges of the Pre-Trial chamber I, to open an investigation into PEVK, which was granted in March 31, (ICC, 2010:83).

On December 15, 2010 the ICC prosecutor Luis Moreno Ocampo named six suspects (Ocampo Six) and applied to Pre-Trial Chamber II for their summons (ICC, 2010:6). The Ocampo six included: the Commissioner of Police, Hussein Ali; deputy prime minister, Uhuru Kenyatta; Head of Public Service, Francis Muthaura; ODM chairman, Henry Kosgey; Minister for Higher Education, Science and Technology, William Ruto; and head of Kalenjin FM radio station (KASS FM) Joshua Sang (ICC, 2010:11-15; ICC, 2010:12-16). Ruto, Kosgey, and Sang

all supporters of ODM were charged with four counts of crimes against humanity including; murder, deportation or forcible transfer of a population, torture, and persecution which violates articles 7(1) (a), 7(1) (d), 7(1) (f), and 7(1) (h) of the Rome Statute respectively (ICC, 2010:16-17). Kenyatta, Ali, and Muthaura all supporters of PNU were charged with five counts of crimes against humanity including: murder; deportation or forcible transfer of a population; rape and other forms of sexual violence; persecution; and inhumane acts which violates articles 7(1) (a), 7(1) (d), 7(1) (g), 7(1) (h), and 7(1) (k) of the Rome Statute respectively (ICC, 2010: 16-19). The ICC charges against Ocampo six were confirmed on January 23, 2012 leading to different reactions in Kenya and abroad.

In Kenya, the ICC was dismissed as an imperial and colonial court (Rugene, 2010). Kenyan legislators moved a motion to cut ties and challenged the constitutionality of the Rome Statute on the basis of its incompatibility with the new Kenyan constitution (Omtata, 2010). Critics of the Rome Statute quoted Article 1 of the Kenyan constitution as follows; “All sovereign power belongs to the people of Kenya and shall be exercised... through the Executive, the Legislature, and the Judiciary.” Similarly Article 2(1) indicates that the Constitution constitutes the supreme law while Article 2(4), observes that “Any law... that is inconsistent with this Constitution is void...and any act or omission in contravention of this Constitution is invalid.” While Article 2(5) indicates that “the general rules of international law shall form part of the law of Kenya,” Article 2(6) emphasizes that, “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” Therefore such treaties become invalid if they contradict the Constitution of Kenya. Section 7 schedule six of the constitution further observes that in case of conflict, “with respect to any particular matter” the provisions of Kenyan Constitution prevails. Article 159 (1) indicates that all judicial authority is derived and

vested in the Kenyans through tribunals and courts established by Kenyan Constitution. The new Kenyan Constitutional and independent judicial structure supplants the complementarity principle of the ICC, therefore, the description of the ICC as the “court of last resort” violates the constitutional superiority of the Kenyan Courts which have exclusive authority to oversee crimes committed on the Kenyan soil (Wise 2000; Rome Statute, Article 15; Kenyan Constitution, Article 60). While various Western nations including the USA sides with the Rome Statute position on Kenya, the African Union (AU) has dismissed the ICC as being overly unfair to Africa and advocates for the referral of the case to Kenya or Tanzania (Scott, 2011). The ICC has been criticized for its selective justice and lack of reconciliatory impacts at the grassroots (USIP, 2009). To date, the ICC case continues but the prosecutor faces an uphill task due to the challenge posed by the Kenyan constitution, lack of cooperation from the government, the stance of the AU, lack of grassroots support, and the withdrawal of key witnesses (Barasa, 2009; Omtata, 2010; Daily Nation, 2011). The *Ocampo six* was reduced to the *Hague four* comprising of Uhuru Kenyatta, William Ruto, Joshua Sang, and Francis Muthaura after the cases of Henry Kosgey and Hussein Ali were withdrawn due to lack of enough evidence. Later on, Muthaura’s case was also withdrawn leaving Kenyatta, Ruto, and Sang. While the TJRC and ICC cannot be entirely dismissed as mechanisms for transitional justice in Kenya, they are not a panacea for justice. Studies reiterate the incompleteness and inescapable inadequacy of each possible response to collective atrocities and advocate for a stance between vengeance and forgiveness that facilitates inclusive and participatory peacebuilding processes (Brudholm, 2008:7).

Initially, the assumption of this study was that the weakness of the dualistic approach of the ICC and TJRC in facilitating transitional justice in Kenya could be complemented by the integration of the indigenous approaches to peacebuilding. It was assumed that the tripartite hybridity of the

TJRC, ICC, and Indigenous approaches to peacebuilding could facilitate transitional justice, peacebuilding, and conflict resolution in Kenya. However, responses from the study participants indicates the incompleteness and inadequacy of the Tripartite Model of the TJRC, ICC and Indigenous approaches to peacebuilding in addressing ethno-political violence or in facilitating transitional justice and peacebuilding in Kenya. Like the TJRC and ICC, the indigenous approaches to peacebuilding, which were initially thought to be a remedy that would bridge the gaps within the dualistic model of the TJRC and ICC, have their own limitations. While indigenous approaches to peacebuilding are communitarian, non-prescriptive, and accommodative, (Schirch, 2004; Zeigler, 2003; Zartman, 2000) they have been compromised by the erosion of their superstructures and political economy, modernism, rural-urban migration, politicization, and competition for scarce resources. To complement the tripartite model of the ICC, TJRC, and indigenous approaches to peacebuilding, this study has facilitated a new grounded model namely, “*The JET LINERS-RIGS Grounded Approach for Peacebuilding and Conflict Resolution*” hereafter referred to as the *New Kenyan Model*. The New Kenyan Model is based on institutional and policy components outlined in table 1.0 below. These components are derived from the expressed needs of study the participants. The implementation of these policy and institutional components is expected to promote sustainable transitional justice, peacebuilding, and conflict resolution in Kenya.

Table 1.0

The JET LINERS-RIGS Grounded Approach for Peacebuilding and Conflict Resolution	
Justice, Equity, Equality, and Fairness	J
Socioeconomic Empowerment	E
TJRC	T
Land Policy	L
Indigenous approaches to Peacebuilding	I
National Ideology and Identity	N
Formal, informal and Civic Education	E
Revolution/renaissance	R
Security, Safety and the Rule of Law,	S
Institutional and Constitutional Reforms	R
ICC	I
Good Leadership and Governance	G
Cross-community Interactions, Dialogue, and Sharing	S

Created by Peter Karari

Qualitative research methods, namely interviewing and narratives/storytelling, are used in this study. This study is informed by theories of ethno-political conflict, theories of transitional justice, theories of conflict transformation, theories of peacebuilding, and theories of conflict management and resolution. The purpose of this research is to explore the experiences and perceptions of participants about ethno-political violence, transitional justice and peacebuilding in Kenya. This study is significant because it addresses ethno-political violence, which is currently a global challenge. The study also informs the practice in peace and conflict studies and theories of ethno-political violence, transitional justice, and peacebuilding. This research will also inform institutional policies relating to ethnic violence in Kenya and around the world.

1.2 Chapter Overviews

Chapter two discusses the context of this study. The context chapter describes the demographic map of Kenya, the pre-colonial and colonial nature of ethnic relations, and the ethnic cleavages that nurture ethnopolitical violence in Kenya. The ethnic cleavages discussed in this study include: colonial injustices against the freedom fighters; preferential administration; colonial and post-colonial political alliances; colonial and post-colonial political leadership and governance; colonial and post-colonial massacres; and the land issue. While pre-Colonial ethnic relations were interdependent and mutually beneficial, we learn from this chapter that preferential colonial administration nurtured ethnic consciousness (Oyugi, 2003; Elkins, 2005, Anderson, 2005). Moreover, post-colonial regimes inherited the colonial constitution which they used to nurture ethnopolitical partisanship, paternalism, and patronage (Munene, 2001; Wamwere, 2008). Colonial and post-colonial political alliances, alignments, and mobilizations were founded on ethnic consciousness, which nurtured ethnic hatred, mistrust, and violence (Oyugi, 2003).

Still in chapter two, we learn that Kenya has been a site of multiple massacres and acts of violence against colonial and post-colonial opposition groups (Anderson, 2005; French, 2011; Anderson, Bennet, and Branch, 2006; Hassan, 2008; Wild, 2011; Nissimi, 2006; KHRC, 2007). There is lack of political will to address historical injustices related to these massacres or even to pay reparations to those affected and hence ethnopolitical prejudice, tension and violence. Another explosive cleavage for ethnopolitical violence in Kenya is the dispossession of ancestral land by colonial and post-colonial regimes (Mazrui, 2008; Wamwere, 2008). While this has caused great humiliation and loss of identity to native Kenyans, it has never been addressed by

successive regimes. Instead land has been used as a tool for political patronage used against the opposition and ethnic others.

Chapter three discusses theories of ethnic conflict, theories of transitional justice, theories of conflict transformation and peacebuilding, and theories of conflict management and resolution. Since the patterns of global proliferation of intrastate and ethno-political conflicts are destructive and complex (Horowitz, 2000; Deutsch and Coleman, 2000), these theories inform our understanding of how such conflicts emerge, are shaped and mobilized (Black, 2003; Reicher, 2004). Ethnic violence in this study is informed by instrumentalist and constructivist approaches. Instrumentalists hold that ethnic groups are sites of mass mobilization in which ethnicity as an asset is manipulated, invented, or fabricated for the purpose of establishing power relations, nationhood and identity (Cornell and Hartmann, 1998; Smith, 2010). On the other hand, constructivists argue that identity formation is derived from mythical fabrications and stereotypes related to structural and historical injustices which are used to justify the violence against the enemy others (Petroska-Beska and Kenig, 2009; Batsinduka, 2009). This chapter also discusses transitional justice theories including retributive and restorative justice. Retributive justice is a retroactive approach that advocates for punishment to perpetrators of crimes against humanity (Maiese, 2003) while restorative justice is conciliatory, participatory, empowering, satisfying and able to offer a relational healing process (Woolford, 2009).

Discussed in chapter three too are theories of conflict management and resolution including: indigenous approaches to peacebuilding; post-conflict reconstruction; elicitive and prescriptive approaches; and human needs approaches. Indigenous approaches to peacebuilding are said to embrace shared responsibilities, equality, and reciprocity (Zartman, 2000); they are timely and process oriented; bottom-up, inclusive, and participatory; and accommodate psycho-

social and spiritual dimensions (Boege, 2006). Prescriptive approaches are cookie cutter, liberal perspectives that exclude local knowledge and social realities (Lederach, 1997; Freire, 1968). Elicitive approaches on the other hand are aimed at discovery, creation, and sustainability of models that emerge from contextualized needs (Lederach, 1995). Human needs approaches holds that conflicts arise when non-negotiable needs for dignity, power, identity, safety, destiny, and justice are threatened or frustrated (Burton, 1997; Rothman, 1992). In such circumstances, relative deprivation sparks competition for resources and group mobilization leading to conflict and violence (Toft, 2003:5). Post-conflict reconstruction approaches pursues policies that encourage equality and equity in the distribution of resources, services, and opportunities therefore mitigating violence (Oberschall Anthony, 2007:232).

Finally are theories of peacebuilding and conflict transformation are discussed. These include psycho-social approaches, integrative problem solving, and problem solving workshops. Psychosocial approaches indicates that lasting physical, emotional, or spiritual injuries leaves the victims with special needs, traumas, and wounds (Schirch, 2004; Volkan, 1998). Conflict transformation nurtures a common humanity and recreation of social bonds (Daly and Sarkin, 2007; Jeong, 2010). Integrative problem solving holds that peacebuilding and conflict transformation requires an integrated approach to address the complexity and diversity of conflicts and to facilitate informed interventions (Reychler and Paffenholz, 2001). Problem solving workshops (PSW) indicates the importance of creating spaces for opinion leaders representing disputants to re-analyse a conflict as a shared problem and generate alternative mutually acceptable actions (Rothman, 1992).

Chapter four discusses the methodology employed in this study. This discussion includes: the rationale for the use of interviews and narratives/storytelling as qualitative methodologies in

this study; the scope of the study; sampling procedures, recruitment process, and access; the role of the researcher; pilot testing; data collection method and instruments; personal limitation of the study and biases; data collection procedure; and data analysis. In this study, qualitative interviewing and storytelling/narratives are used due to their capacity to elicit rich responses from study participants. In this chapter we learn that while stories and narratives nurture spaces for the expression of pain and loss suffered by disputants in a non-confrontational way (Senehi, 2009), they can also cultivate “the transgenerational transmission” of conflict if abused (Volkan, 2000). We also learn that interviewing provides a space for respondents to share their suppressed feelings and understand the world of others which creates the deconstruction of taken-for-granted realities (Gonzalez, 2009; Rubin and Rubin, 1995; Seidman, 2006; Schultz, 1967). However, interviewing is critiqued for being unable to discern the validity and reliability of data, being expensive and time consuming, turning people into objects and as a form of exploitation (Seidman, 2006; Patai, 1988).

This study involved 101 participants representing the ethno-cultural, social and political diversity in Kenya. Stratified, purposive, and snowballing sampling procedures were used to select the study participants. The study participants were recruited through emails, telephone calls, letters, visitation and referrals. Access was created through introduction letters from the university and community gatekeepers. The role of the researcher was that of an independent interviewer. Pilot testing was done to establish the reliability of the research questions used in this study. Qualitative interviewing was used as the primary data collection method. The main research question in this study reads: *“What are your perceptions and/or experiences about ethnopolitical violence, transitional justice and peacebuilding in Kenya?”* The data collection instruments consisted of twelve semi-structured and open-ended questions. In this study, audio

recording was used. The end data constituted a total of 900 transcribed pages. To preserve the identity of the respondents' pseudonyms were used. Data was transcribed verbatim in order to preserve its originality. Data collection procedure involved making appointments, explaining the procedures of the interview, building rapport, interviewing, as well as reviewing, and setting agendas for the following day. Data analysis was done manually after computer data analysis software failed to perform optimally.

Chapter five is the first of the three data chapters in this study. This chapter presents varying experiences and/or perceptions of the respondents pertaining to the root causes of ethno-political violence in Kenya. In this study the respondents' perceptions and/or experiences indicate that the root causes of ethno-political violence in Kenya are: Colonial and post-colonial legacies of leadership and governance; historical injustices; national ideologies and identities; institutional and constitutional crises; and formal, informal, and civic education. Colonial and post-colonial legacies of poor leadership and governance has led to the preferential administration of basic needs, services, and opportunities and hence ethnic animosity and violence (Nasong'o, 2007). Historical injustices such as land dispossession, socioeconomic and political marginalization, and human rights abuse also constitute cleavages that promote ethnic violence in Kenya. Therefore ethno-political violence is a fight for justice for those in the peripheries of the society. This study also indicates that ethnic animosity and violence is also caused by violation of spaces relating to ethnic identities and ideologies (Mazrui, 2008). Another cause of ethnic violence is the failure of institutional and constitutional reforms. This has compromised the implementation of a bill of rights and hence the realization of justice in Kenya (Kimenyi, 1997). This study also identifies negative education and socialization as another cause

of ethnic violence in Kenya. Education is described as Janus-faced; it can help resolve or aggravate ethnic violence (Volkan, 2000).

Chapter six is the second of the three data presentation and analysis chapters in this study. This chapter presents experiences and/or perceptions of the study participants pertaining to the means of addressing ethnopolitical violence in Kenya. At the same time, this chapter discusses how sustainable trustbuilding, peacebuilding, and justice can be nurtured in Kenya. The respondents in this study identified various ways in which ethnopolitical violence can be addressed and how trust, peace, and justice can be nurtured in Kenya. These include: socioeconomic empowerment; good leadership and governance; institutional and constitutional reforms; justice, equality, equity, and fairness; peace, security, and safety; national ideologies and identities; and positive socialization and education. In regard to socioeconomic empowerment of the marginalized communities in Kenya this research recommends the institution of policy frameworks that embraces access, affirmative action, equality, and equity across the ethnopolitical divide. Key in addressing ethnopolitical conflicts too is good leadership and governance. The study advocates for leadership and governance that is intolerant to impunity, upholds integrity and responsibility, commits to fairness and justice, and embraces the rule of law and democratic practices. This study also identifies institutional and constitutional reforms as key in addressing the Kenyan ethnic challenge. Such reforms facilitates institutional guarantees, a bill of rights, and democratic freedoms. Justice, equity, equality, and fairness also constitutes key ingredients for addressing ethnopolitical violence. This calls for the entrenchment of human rights into plans, policies and processes of leadership and governance (Hurlbert and Mulvale, 2011). This study also identifies peace, security, and safety as important in addressing ethnopolitical violence. This entails the embracement of a bill of rights, constitutionalism,

democratic freedoms, and access to basic needs, services and opportunities (Kimenyi, 1997; Dayton and Kriesberg, 2009). This study also indicates that nurturing a national ideology and identity is key in addressing Kenyan ethnopolitical violence. Nationalism impedes ethnocentrism and ethno-nationalism. Finally, positive education and socialization is also mentioned as key in addressing stereotypes and violence. This study advocates for integrative and elicitive education that empowers and accommodates ethno-cultural diversity of Kenya.

Chapter seven is the third and last of the three data presentation and analysis chapters in this study. This chapter discusses respondent experiences and/or perceptions about the means of achieving transitional justice, reconciliation, and conflict transformation in Kenya. In this chapter different transitional justice mechanisms including the ICC, TJRC, and Indigenous approaches to peacebuilding are discussed. The chapter also discusses TJRC processes including testimonies, forgiveness, and amnesties. Discussed in this chapter too are the concepts of humiliation, trauma, historical injustices, hopes and fears. This study indicates that transitional justice, reconciliation, and conflict transformation in Kenya can be achieved through: systemic revolution and regime change; cross-community interactions, dialogue, and sharing; indigenous approaches to peacebuilding; addressing the people's expressed hopes and fears; and embracement of the ICC and the TJRC. In this chapter we learn that systemic revolution is key for the emancipation of the oppressed. This requires resistance to oppressive discourses through critical dialogues (Freire, 1968; Fanon, 1970). We also learn that cross-community interactions, dialogue, and sharing empower disputants to share personal experiences and gain a deeper understanding of issues affecting them (Schirch, 2004). Cross-community forums encourage the embracement of complexity and the appreciation of people's common humanity (Lederach, 2005). This study also indicates that indigenous approaches to peacebuilding offer a space to accommodate cultural

stories of shame, confusion, and fear (Daly and Sarkin, 2007). Important too is the understanding of people's fears and hopes if they are to be addressed adequately (Furlong, 2005). This requires institutional reforms, democratization, and equitable development (Daly and Sarkin, 2007). Study participants had mixed reactions about the ICC as a form of transitional justice in Kenya. While the ICC deterrence of crimes against humanity is commendable, the court is seen as an instrument of neo-colonialism and neo-imperialism (Arieff et. al., 2010). In this chapter we also learn that the prescription of transitional justice compromises its process, ownership, and sustainability (Hayner, 2001). Therefore, the TJRC process should be transformative, participatory, and inclusive (Woolford, 2009). Satisfaction of the expressed needs of the affected people is key to effective transitional justice.

In the chapter eight (concluding chapter), the inadequacy of the Tripartite Model of the TJRC, ICC, and Indigenous approaches to peacebuilding is discussed and a new grounded model introduced. The new model namely: *"The JET-LINERS-RIGS Grounded Approach for Peacebuilding and Conflict Resolution"* complements the Tripartite Model of the TJRC, the ICC, and Indigenous approaches to peacebuilding by integrating key institutional and policy components emanating from the expressed needs of study participants. The new Kenyan model is holistic and integrative and is expected to address conflict in ways that reduce violence and increase justice in human relationships. Since ethno-political violence is complex, the new Kenyan model offers a grounded initiative that focuses on local dynamics and interventionism. This is in respect to the fact that our communities are central to the solution of their problems (Hurlbert and Greenberg, 2011) and hence the need to invest in their cultural knowledge (Lederach, 1995). It is hoped that the implementation of the new Kenyan model will address structural violence and injustices, nurture justice and help to build sustainable peace.

1.3. Conclusion

This chapter has introduced the entire study. Apart from the prefatory parts, this chapter has also introduced the main objective of this study including the study questions. The abstract indicates ethnic and intra-state violence constitutes not only a Kenyan problem but also a global challenge that requires immediate intervention. The background information summarizes the context of the Kenyan ethnopolitical challenge including various intervention initiatives such as the ICC and TJRC. In this chapter too, the new grounded Kenyan Model, the Jet-Liner Rigs, is introduced as an effort to bridge the gap left out by the tripartite hybridity of the TJRC, the ICC, and the Indigenous approaches to peacebuilding and conflict resolution. This chapter has also provided chapter overviews in this study.

2.0 CHAPTER TWO: CONTEXT DESCRIPTION

2.1 Introduction

This section provides a description of Kenya, the context of this study. The section starts by describing the demographic map of Kenya followed by a discussion about the pre-colonial and colonial nature of ethnic relations in Kenya. The rest of the discussion focuses on ethnic cleavages that have influenced and continue to perpetuate protracted ethnopolitical violence in Kenya. These cleavages include:

1. Colonial injustices against the Freedom Fighters;
2. Post-colonial political ethnicization of leadership and governance;
3. Colonial and post-colonial Preferential administration of the structures of privilege;
4. Colonial and post-colonial political alliances, alignments and mobilizations;
5. Colonial and post-colonial massacres; and the
6. The Land Issue

The discussion of the aforementioned mentioned cleavages of ethnopolitical violence in Kenya will facilitate understanding of the context of this study and hence offer a necessary backdrop for the subsequent chapters.

2.2 The Demographic Map of Kenya

The context of this study is Kenya, a country situated in East Africa. According to the Central Bureau of Statistics ([hereafter CBS] 2004) and Kenya Demographic and Health Survey ([hereafter KDHS] 2003), Kenya is the greatest economy in East and Central Africa and has enjoyed many years of political stability. The country has a population of 40 million people made up of forty two highly diverse ethnic groups including the Kikuyu 22 percent, Luhya 14 percent, Luo 13 percent, Kalenjin 12 percent, Kamba 11 percent, Kisii 6 percent, Meru 6 percent, other Africans 15 percent, and other races including European, Asians, and Arabs 1 percent

(Ibid). Religious affiliations include Protestants 45 percent, Roman Catholics 33 percent, Indigenous 10 percent, Muslims 10 percent, and others 2 percent (CBS, 2004; KDHS, 2003). The formal languages of Kenya are English and Kiswahili with the latter also doubling as the national language. The country covers a total area of 225,000 square miles (582,646 square kilometres) which includes 80 percent arid or semi-arid land and 20 percent arable land (Oyugi, 1998; CBS, 2004; KDHS, 2003). Kenya is the gateway to East Africa with the port of Mombasa at the coast serving the landlocked countries in east and central Africa. Kenya is divided into eight main administrative units, namely the Rift Valley, Eastern, North-Eastern, Coast, Nyanza, Central, Western and Nairobi provinces (Ibid). With the 2007 promulgation of the new constitution, the country has further been subdivided into 47 County governments to facilitate the decentralization of governance and socioeconomic development (Mkangi and Githaiga, 2012). The following section discusses pre-colonial, colonial, and post-colonial ethnic relations in Kenya.

2.3 The Pre-Colonial and Colonial Nature of Ethnic Relations in Kenya

The roots of ethnicity in Kenya can partially be understood by looking at the nature of ethnic relations before colonialism. It is worth noting that the Kenyan communities led an interdependent communal life characterized by inter-ethnic interactions, marriage, barter-trade, and patronage (Lonsdale, 1989; Elkins, 2005; Anderson, 2005). Socioeconomic interactions existed between the highland Bantus (i.e. the Kikuyu, Embu, Meru, and Kamba); the Bantu speaking Luhya and Kisii; the Nilotic Luos; and the Cushitic Maasai and Turkana (Ibid). Ethnic socioeconomic relations even transversed Kenyan ethnic groups to include the Swahili speaking Arabs who came to the Kenyan interior to trade their spices for ivory (Oyugi, 1998; Oyugi, 2003; Wamwere, 2008). This indicates that pre-colonial ethnic relations were mutually beneficial.

Colonialism can partially be seen as the genesis of ethnic mutual antagonism in Kenya (Leys 1975; Berg-Schlosser, 1984; Elkins 2005; Anderson, 2005). The settlement of the British in Kenya led to the appropriation of about 7.5 million acres, approximately 25 percent of agricultural land (white highlands) across Kenya thereby displacing millions of Kenyans from their land and confining them to squatter settlements (Ibid). The divide and rule administration structures of the British authorities created a homogeneous politico-administrative centre which broke up the independent tribal authorities and confined natives to prescribed administrative enclaves and reserves (Elkins, 2005; Anderson, 2005). To understand the colonial role in nurturing ethnic mutual antagonism in Kenya, it is vital to discuss the colonial injustices against the Mau Mau Rebellion and its aftermath.

2.4 Colonial Injustices against the Mau Mau Freedom Fighters

The Mau Mau “Mzungu Aende Ulaya Mwafrika Apate Uhuru,” which means “The whites should go back abroad, to allow the Africans to regain their freedom” (Kariuki, 1963: 167) was an anti-colonial insurgency between 1952 and 1960 comprised mainly of the Kikuyu ethnic group (Anderson, 2005; Elkins, 2005). Other anti-colonial rebellions included the 1880-1900 Kikuyu rebellion, the 1895-1905 Nandi uprising, and the 1913-1914 Giriama revolt (Alam, 2007:2). There was also the 1947 Muranga women’s revolt (Odhiambo, 1995:25) and the 1950 Kalloa Affray rebellion (Ogot, 2005:15). While some arguments indicate that the Mau Mau rebellion contributed to Kenyan independence (Percox, 2005) others contend that it delayed independence due to the divisions it created among the local communities and the disagreements it sparked between the colonial regime and the crown (Anderson, 2005:4; Branch, 2007: xii). Kanogo (1993:23-25) asserts that the insurgency was actually referred to as the Kenya Land and Freedom Army (KLFA) but the colonial authorities preferred the acronym Mau Mau, which

they used as propaganda to deny the movement the international legitimacy (Kariuki, 1960: 24, 167) and empower the colonial administration's divide and rule strategy (Furedi, 1998).

The resistance and the insurgency against the colonial authorities was a protest against the indiscriminate dispossession of land, wealth, and property, as well as oppression, violence and interference with traditional governance and value systems (Elkins, 2005:3; Anderson, 2005:22; Mosley, 2009). Cheap labour, land, and capital were the catalysts needed to fund the colonial economy and therefore millions of Kenyans and mainly the Kikuyu, Giriama, Maasai, and the Nandi were dispossessed of over seven million acres of land to accommodate the agricultural needs of the colonial settlers (Kanogo, 1993:8-9; Anderson, 2004:294; Anderson, 2005:3; Elkins, 2005:12). The affected indigenous communities had to participate in forced wage labour to enable them pay the colonial hut taxes introduced in 1901 and the poll taxes introduced in 1910. This labour was meant to service the colonial economy and especially the construction of the Kenya-Uganda railway (Ibid). The affected Kenyan populations were divided and isolated from each other and confined in overcrowded reserves in which their movements were restricted through the enforcement of the 1906 Masters and Servants Ordinance and the 1918 Kipande system¹ (Shilaro, 2002, Anderson, 2000, 2004:505-6).

The African squatters in the reserves had no tenancy rights and were overly humiliated, mistreated, dehumanized, flogged, denied basic needs such as medication and sometimes beaten to death contrary to colonial labour legislation (William, 1925; Anderson, 2004: 516-28; Wamwere, 2008). The most affected were the Kikuyu whose 10 percent of the population were squatters by the end of World War 1 (Oyugi, 1998; Anderson, 2005; Elkins; 2005). The squatter system forced many ethnic groups to leave their ancestral lands to start squatter farming in areas

¹ Kipande was an identity document enforced through the 1906 Masters and Servants Ordinance. It was worn at all times around the neck and used to control the natives' movement and also to track their labour record.

formally occupied by other ethnic groups. This violated traditional ethnic boundaries and hence nurtured ethnic resentment and hatred from the affected groups (Oyugi, 1998; Anderson, 2005; Elkins; 2005). The introduction of the money economy by the colonial government in Kenya led to rural-urban migrations which made the pre-colonial ethnic boundaries porous and created competition for limited resources and opportunities therefore precipitating the invocation of blood brotherhood, based on ethnic consciousness (Oyugi, 2003; Mamdani, 2001; Elkins, 2005, Anderson, 2005).

Between the 1930s and 1940s in the Nyanza province of Kenya, over a million Kenyans mainly from the Luo ethnic group were confined to 7000 square miles of land while 17,000 whites occupied over 16,000 square miles of land (Shilaro, 2002: 123; Anderson, 2005:10). At the same time, over 1.2 million Kikuyu in central Kenya were confined within 2000 square miles of land while 30,000 white settlers occupied about 12,000 square miles of land. These injustices motivated the Mau Mau insurgency determined to fight for the land and the freedom of the Kenyan native people (Elkins, 2005:25; Nissini, 2006:4; Branch, 2007:1). The British reaction to the Mau Mau insurgency was brutal, violent, and inhuman (French, 2011:29). In 1952, the colonial government declared a state of emergency followed by *Operation Jock Scott* in which suspected Mau Mau leaders including Jomo Kenyatta, Kenya's first President and 180 other Mau Mau suspects were arrested (Anderson, 2005:62; Elkins 2005:35-6). Thousands of other Mau Mau led by Dedan Kimathi, their leader, fled to the Aberdare and Mount Kenya forests (Ibid). The British, using their air power, dropped over six million bombs in the forests killing over 900 Mau Mau freedom fighters, wildlife, and extensively destroying the environment (Chappell, 2011). The air power also aided the spread of British propaganda as leaflets and photos of mutilated bodies were dropped depicting the Mau Mau as brutal, inhumane, and irrational

savages as well as forces of evil dominated by “bestial impulses” (McCulloch, 1995:64-76; Chappell, 2011:64-70). The British propaganda was greatly reinforced through *Kitson’s military strategy* used in both Northern Ireland and in Kenya (Stapleton, 2013). This strategy faked terrorism on Mau Mau by using state sponsored *pseudo-gangs* (home guards) to spread propaganda and cause chaos. The pseudo-gangs covertly befriended the Mau Mau and gathered intelligence which the British soldiers used to ambush the latter. Consequently, the Mau Mau were blamed and demonized while the agenda of colonial authorities was advanced. British propaganda and pseudo-gangs created divisions, low morale, and reduced support for the Mau Mau by the natives (Ibid). In a bid to deny the Mau Mau replenishment of supplies, resources, and recruits the British launched *Operation Anvil* in 1954 in which 25,000 British security forces besieged Nairobi, considered to be the nerve centre of the Mau Mau. About 20,000 Mau Mau suspects were confined in Lang’ata concentration camp in Nairobi while 30,000 others were sent to the reserves (French 2011:116-7).

The Mau Mau who confessed to oath taking and submitted to intelligence demands were repatriated back to the reserves (Elkins, 2005: 179-91; Andrew 2009, 456:7), while the non-compliant ones were flogged, tortured, strangled or hanged, and finally mutilated and their tongues cut out as a signal to warn others (Peterson, 2008:75-91). The detention camps such as those in Wamumu, Gilgil, Manyani, Kamiti, and Lang’ata were deplorable and inhumane due to poor sanitation, lack of health services, lack of basic needs and malnutrition (Curtis, 2003: Chapter 15; Elkins, 2005: Chapter 5; Cobain and Walker, 2011). The worst affected were the lactating and expectant mothers, children and infants who cried of hunger and thirst (Elkins, 2005: 151-227). To decrease colonial expenditure in the overpopulated African reserves, the Swynnerton Plan was legislated in 1954 in which land was consolidated and small parcels of

land issued to native African families for food and cash crop production (Swynnerton, 1955; Anderson, 2005, 294). While this plan promoted security of tenure, it destroyed the indigenous clan system and benefitted the middlemen loyalists rather than the natives. This is an injustice that has never been addressed by postcolonial regimes (Atieno-Odhiambo and Elisha, 1995:25-47); Oucho, 2002:138-40).

To ensure the last blow against the Mau Mau insurgency, the colonial authorities initiated the villagilisation programme in central Kenya, confining over one million kikuyu to 800 villages with over 20,000 huts behind barbed wire fences, spiked trenches, and watch towers (French, 2011: 116-37; Elkins, 2005:235-40; Anderson, 2005:294). This was meant to prevent resources and supplies from the reserves getting to the Mau Mau, thereby weakening the movement and protecting the loyalists (Ibid). The villagilisation programme was enforced through surveillance, curfews, collective punishment, and denial of basic needs such as food, water, and medicine, which resulted in hunger, extreme malnutrition, and death of approximately 50,000 Kikuyu, half of whom were children under ten years of age and most of the others being the elderly (Elkins, 2005: 260-63). The state of emergency in Kenya, detentions without trial, concentration camps, the villagilisation programme, deliberate starvation, and torture and massacre of the civilians, the Mau Mau, and their sympathisers constituted an eliminationist campaign characterised by some of worst atrocities, abuse of human rights, and historical injustices, perpetrated against a defenceless people (French, 2011: 116-37; Elkins, 2005:235-63; Anderson, 2005:294). The number of Kenyans killed during the colonial period is disputed: some put it at 50,000 (Blacker, 2007) while others place it at 300,000 (Elkins, 2005:366). These historical injustices remain unaddressed, the affected groups remain uncompensated, and hence the fight for justice continues. The next section introduces Jomo Kenyatta and Daniel Arap Moi

the first and second Presidents of Kenya respectively both of whom greatly influenced Kenyan ethnopolitical resentment and violence.

2.5 Post-Colonial Political Ethnicization of Leadership and Governance

When Kenya attained its internal self-governance in June 1961, Jomo Kenyatta (1889-1978) became the first Prime Minister. In December 1963 and December 1964 Kenya became independent and a republic respectively with Kenyatta as the first President. Kenyatta ruled for fifteen years until his death at the age of 89 in August 1978. While Kenyatta is acclaimed for his role in Pan-Africanism, economic growth, and political stability during his tenure, he could be regarded as the father of ethnic politics that has bedevilled Kenya since independence (Miller and Yeager, 1993). During his reign he favoured his Kikuyu ethnic group in terms of socioeconomic and infrastructural development; access to basic needs, resources, services, and opportunities; and political patronage involving dispensation of public and political positions, contracts, and jobs (CIPEV, 2008; NRC, 2003; Ngugi Wa Thiong'o, 1982; Ghai and McAuslan, 1970). Kenyatta's cabinet formed GEMA— Gikuyu, Embu, Meru, Akamba—comprised of pro-regime Bantu composite groups. Nicknamed *The Mount Kenya Mafia*, GEMA maintained the Kikuyu's socioeconomic and political supremacy and the status quo to the disgruntlement of other ethnic groups (Wamwere, 2008). This nurtured a feeling of discrimination among other Kenyan ethnic groups and hence disgruntlement, resentment, animosity, and hatred. By the time of his death, Kenyatta left a deeply disproportionate society characterised by corruption and impunity, spatial inequality, ethnopolitical patronage, ethnic hatred, and animosity.

When Daniel Arap Moi, born in September 2, 1924 was sworn in as the second President of Kenya in 1978, he coined the philosophy of "Nyayoism" meaning "following the footsteps." Nyayoism is borrowed from the Swahili word "Nyayo" which means "foot". This suggested that

his new regime was to follow Kenyatta's footsteps. Sarcastically though, Nyayoism meant that Moi would entrench ethnic favouritism as Kenyatta did in his era, but with the new beneficiaries being his own people, the Kalenjin (Oyugi, 1998; Gimode, 2007; Wamwere, 2008). Moi Nyayoism pursued what could be perceived as corrective justice, or tit-for-tat, in which the former centre was pushed to the periphery while the former periphery occupied the centre. The 1980s saw the semi-literate Kalenjins replace the Kikuyus in public service, parastatals, foreign missions, and key government institutions most of which collapsed due to poor management (Wamwere, 2008). Moi entrenched *Majimboism* (regionalism) as opposed to Kenyatta's centralization in order to broaden his power base by reaching out to minority groups. He destroyed the Kikuyu's hegemony by banning and dissolving all "tribal" associations thereby dismantling GEMA's vast economic empire. He invoked the colonial divide and rule as an instrument to consolidate his own power to the disgruntlement of the newly marginalized groups. He reached out to loyal Kikuyus and distanced himself from adversaries (Oyugi, 1998; Oyugi, 2003; Gimode, 2007). During Moi's era, impunity, corruption, and ethnopolitical patronage surpassed that of Kenyatta's time while ethnic hatred, animosity, and violence escalated undeterred (Amnesty International, 2000; UN Special Rapporteur, 2005; Karanja, 2003; ICSID, 2006; Rice, 2007). There was massive ethnic displacement, dispossession, and pillaging with the Kikuyu being the most affected (Ibid). The Kenyan economy, livelihood, and public institutions literally collapsed. Moi ruled with an iron hand for twenty four years until 2002 when the new constitution could not allow him to continue. Like Kenyatta he left behind a highly divided society ingrained in ethnopolitical patronage; ethnic stereotyping, hatred, and violence; corruption and impunity. Kenyatta and Moi set a wrong precedent in terms of ethnic relations in Kenya which have partially nurtured ethnopolitical violence to date (Lumumba, 2008;

Wamwere, 2008; Wrong, 2010). Things have not changed with the successive regimes of Mwai Kibaki, a Kikuyu and Uhuru Kenyatta also a Kikuyu and the son of the first President. The Kenyan ethnic problem is protracted but hopefully reversible.

2.6 Colonial and post-Colonial Preferential Administration of Structures of Privilege

Colonial and postcolonial preferential administration of structures of privilege continue to inform ethnopolitical competition and mobilization and hence ethnic hatred, mistrust, and violence. The colonial education policies were discriminative with the missionary-led education being concentrated among the loyalists groups and denied to resistant groups. Part of the loyal Kikuyu, Luo, and Luhya benefited from colonial education while nomadic communities such as the Maasai, Turkana, Samburu and the Kalenjins were marginalized (Oyugi, 1998; Oyugi, 2003; Wamwere, 2008). Also, colonial and post-colonial recruitment policies favoured the educated loyalists and left out resistant groups that fought for freedom (Ibid). Ethnic discrimination and preferential treatments partially nurtured ethnic mutual antagonism and a sense of consciousness about “us versus them” (Haberson, 1973; Lonsdale, 1989; Wolf, 1974; Zeleza, 1989; Kimenyi, 1997; Mamdani, 2001; Wamwere, 2008).

Kenyan's ethnic situation was also aggravated by immigrant communities such as the Indians who had been contracted by the British to build the Kenya-Uganda railway and settled in Kenya afterwards (Oyugi, 1998; Elkins, 2005; Anderson, 2005, Cassandra, 2006). In the provision of social services such as education, health care, and housing, race became a factor in determining the structure and quality of access (Ibid). The deracialization of the structures of privilege on the eve of independence characterized by the incorporation of Africans into the existing order generated rivalry and conflict because it was ethnic in nature and mainly profited those that benefited from colonial preferential structures (Oyugi, 1998; Elkins, 2005; Anderson,

2005; Wamwere, 2008). Another cause for postcolonial ethnic antagonism was the demand for the resettlement of ethnic groups affected by colonial displacements (Haberson, 1973). The settlement of the Kikuyu, Luo, Kisii, Embu, Meru, Kamba, and Luhya in areas that traditionally belonged to other groups' generated animosity from affected communities such as the Maasai and the Kalenjin in the Rift-valley province (Ibid). Preferential access to structures of privilege in terms of basic needs, opportunities, and services continue to generate ethnic antagonism in postcolonial Kenya and have not been addressed by successive regimes (Oyugi, 1998; Oyugi, 2003; Wamwere, 2008).

2.7 Colonial and Post-colonial Political Alliances, Alignments and Mobilizations

Colonial political alignments played a major role in structuring Kenya's ethnic map and hence ethnic mobilization and violence (Oyugi, 1998; Oyugi, 2003; Oloo, 2007). The white settlers strived to determine the context of transition and the shape of future governance in Kenya. This was meant to nurture political allies in the post-independence regime who would protect the whites' interests and investments in the country (Munene, 2001; Oyugi, 2003). An indigenous middle class was adopted and used as a buffer between the white settlers and the African masses (Blundel, 1964; Oyugi, 2003). Ironically the buffer class constituted colonial loyalists and collaborators who later invoked the inherited colonial constitution to promote their interests and marginalize the Kenyan masses (Ley, 1975; Berg-Schlosser, 1992; Munene, 2001; Oyugi, 2003).

In the quest for divide and rule, colonial authorities endorsed ethnic-based political parties rather than national parties (Oyugi, 1998; Munene, 2001). In the 1950s, the Kenya African Union (KAU), the only national political organization in Kenya, was banned. Between 1955 and 1962, KAU was replaced by ethnicized political associations such as the Baluhya

Political Union (BPU), the Kalenjin Political Alliance (KPA), and the Maasai United Front (MUF) (Oyugi, 1998; Oyugi, 2003). At the coast of Kenya, the post-independence fight for autonomy led to the formation of the Pwani party, which agitated for the “Mwambao cause” or the secession and/or reintegration of the coast strip with Zanzibar (Goldsmith, 2011:3-12). The ethnicization of politics had become protracted by the time the ban on national parties was lifted in 1960. National political parties became a source of suspicion for the minority groups who could not control them (Oyugi, 1998; Munene, 2001). The proliferation of ethnic political parties facilitated spaces for peripheral bargaining when competing at the centre was deemed impossible. In 1960, the Kenyan African National Union (KANU) and Kenya African Democratic Union (KADU) were formed (Oyugi, 1998; Oyugi, 2003). KANU was dominated by the Kikuyu while KADU belonged to the Luo and other minority groups (Ibid). The KANU and KADU political parties’ manifestos were based on post-independence state power structures with KANU advocating for centralization and KADU pushing for *Majimboism* (decentralization or federalism) (Oyugi, 1998; Wamwere, 2008). The proponents of *Majimboism* hoped to protect the interests of the minority ethnic groups and in particular the encroachment of land by the dominant groups. The Mwambao campaign at the coast fizzled out due to pressure from KADU which called for *Majimboism* instead of either autonomy or reintegration (Goldsmith, 2011). However, the federalism option was ruled out by the ruling party KANU which left the minority groups marginalized, antagonized, and fighting for justice (Goldsmith, 1999, 2011).

Kenyatta, Kenya’s first President and the chair of KANU, plotted the “death” of KADU through the denial of permits for political rallies, social services, and development funds to regions or “*Majimbos*” dominated by KADU (Wamwere, 2008). Eventually, KADU broke up in 1961 making Kenya a de-facto one party state controlled and dominated by the Kikuyu (Oyugi,

1998, Oyugi, 2003). This compromised the equal representation of other ethnic factions who protested by defecting back to ethnicized political parties. The Kamba formed the African Peoples Party (APP); the Luo formed the Luo United Movement (LUM) and later the Kenya Peoples Union (KPU) (Oyugi, 2003; Gimode, 2007). Political intrigues also led to high profile assassinations including that of Tom Mboya seen as a threat to the Kenyatta regime, the arrest and detention of KPU leaders, the banning of KPU led to escalated resentment between the Kikuyu and other ethnic groups (Ibid).

Ethnic animosity was further entrenched in the Kenyan system with the emergence of multiparty politics. In the mid-1980s, Moi feared that the new global wave of multipartyism would end his legacy of one party rule (Oyugi, 1998; Wamwere, 2008). Multipartyism was met with full brutality, leading to the assassination of opposing political figures, civil society activists and church ministers (Ibid). Multipartyism continued undeterred into the 1990s when political alliances arose to challenge Moi's de-facto one-party regime. The new multiparty politics started with a grand ethnic coalition namely the Forum for the Restoration of Democracy (FORD), which shook the foundation of Moi's de facto regime (Wamwere, 2008; Oyugi, 2003). In 1991, Moi gave in to the demands to change Kenya's constitution's section 2A to provide for multipartyism (Ibid). However, he mobilised the minority ethnic groups and their leaders, supposedly the victims of the shift of power who called for Majimboism and labelled multipartyism as anti-Moi and anti-Kalenjin (Wamwere, 2008). The politicians linked to the de-facto Moi regime invoked hate speech and mobilized the Kalenjins to displace non-Kalenjins including the Kikuyu, Luo, Luhya, and Kisii living in the Rift-valley back to their ancestral land. This was the genesis of ethnic wars that began in 1991 and climaxed in the 2008 targeting the perceived enemy others across the ethnopolitical divide. The 1992 Kiliku report estimates that

779 “invaders” were killed during the 1991-1992 ethnic clashes. The grand ethnic coalition, FORD, disintegrated due to ethnic-based factions jostling for power, representation, and control. These included Ford Kenya of Oginga Odinga, a Luo; Ford-Asili of Kenneth Matiba and Martin Shikuku, a Kikuyu and Luhya respectively; and the Democratic Party of Kenya (DP) of Mwai Kibaki, a Kikuyu (Oyugi, 2003; Wamwere, 2008). The 1992 election demonstrated strong ethnic affiliations to political parties. For example: Kikuyus voted for the DP; Luo’s for Ford Kenya; Kikuyus and Luhya for Ford Asili; and the minority tribes for Moi’s KANU. The collapse of FORD due to its failure to field a single candidate was a great relief to Moi who was easily re-elected to the disgruntlement of opposing ethnic groups. Ethnic political parties and coalitions continue to dictate political mobilizations and affiliations in Kenya setting a forum for ethnic antagonism, resentment, and violence and compromising ideological or issue-based politics.

2.8 Colonial and Post-Colonial Massacres

Human rights atrocities and injustices allowed or perpetrated during colonial and post-colonial massacres have not been addressed by successive regimes and continue to nurture ethnopolitical tensions and violence. These massacres were perpetrated against people who disobeyed or resisted the ruling regime and in areas that were singled out as anti-government. The result was always devastating in terms of loss of human life, torture, and humiliation. The following is a discussion about some of the massacres that have been perpetrated in Kenya against particular ethnic groups which were innocent and overly defenceless.

2.8.1 The Lari Massacre

The Lari massacre was an act of retaliation by colonial authorities against the Mau Mau insurgency, who on the night of March 26, 1953 raided a concentration camp in Lari, burning houses and killing about 74 loyalists, including women and children who supported colonial

authorities against the oath of unity (Anderson, 2005; French, 2011). The revenge by the Colonial African Security force under British command by shooting, torture, and detainment without trial claimed the life of 150 Mau Mau suspects and their sympathisers (Anderson, 2005; Anderson, Bennett, and Branch; 2006). Torture was executed by the use of electric shock, fire, clubs, whips, truncheons, and cigarette butts (Elkins, 2006:66). Other methods of torture included the thrusting of broken bottles, sand, water, gun barrels, hot eggs, vermin, knives, and snakes into women's vaginas and men's rectums (Ibid). The suspects were also flogged, sexually abused, castrated, burned, or had their bodies mutilated, hanged upside down, eyes gouged out, and testicles and ears cut off to facilitate intelligence gathering (KHRC, 2012; Elkins, 2005: 87; Elkins, 2006:66; Anderson 2005: 299-300). These extreme methods of torture were referred to as *dilution technique* and were meant to induce the victims to confess or cooperate (KHRC, 2012). Most of the victims of the dilution technique died of severe haemorrhage and/or shock (KHRC, 2012). About 12,000 Mau Mau freedom fighters were killed by colonial authorities while thousands others went missing or were unaccounted for (Anderson, 2005:4). In contrast, only 200 and 579 Whites respectively, were killed and wounded by the Mau Mau (Ibid). Civilians' statistics of the killed and wounded included: 1819 and 916 Africans; 26 and 36 Asians; and 32 and 29 Whites respectively (Anderson, 2005: 84). While victims and affected families of the Lari massacres continue to live in socioeconomic hardships and psychological traumas (Elkins, 2005; Anderson, 2005), no apologies, reparation or compensation have been given to them (Bowcott, 2011). The ongoing case to compel the British government to compensate those affected by the Lari massacres began in April 2012 in London and has achieved limited success (KHRC, 2012).

2.8.2 The Chuka Massacre

The Chuka massacre of June 1953, supposedly a counterinsurgency against terrorists, mercilessly ended the life of twenty innocent and defenceless adults and a child (Anderson, Bennet, and Branch; 2006). While the truth about the Chuka massacre was to be made public by 1984, it was suspended by the ministry of defence and the case-file marked for closure by 2038 (Ibid). However, through the Freedom of Information Act, shocking details accessed in 2006 revealed that extreme human rights abuse and torture were committed before the victims were killed, including tethering and chopping off their ears, castration, flogging, cutting off of body parts, and indiscriminate shooting at close range (KHRC, 2012; Anderson, 2005; Anderson, Bennet, and Branch; 2006). The collaborators were rewarded according to how many “terrorists” they killed, numbers of body parts they chopped off, or quality of information they obtained through torture (Ibid). Despite the testimonies from the eyewitnesses, the pathologist’s report, and a military inquiry into the Chuka massacre, the colonial government never acknowledged, publicised, or prosecuted the perpetrators supposedly due to a lack of evidence (Anderson, 2005; Elkins, 2005). The denial and cover up by the colonial government was meant to protect its image. Despite the accessibility of the file on the Chuka massacre, eleven pages with information and the names of the perpetrators were removed supposedly in line with section 40 of the Freedom of Information act in the Kenyan constitution relating to personal information (Anderson, Bennet, and Branch; 2006). This has denied justice to the families and relatives of the victims while the perpetrators continue to be free.

2.8.3 The Bulla (Garissa) Massacre

The Bulla massacre also known as the Garissa massacre happened in Garissa in 1980 and claimed the lives of about 3000 people while a similar number went missing (Hassan, 2008). It

was executed by the Kenyan army after six government officers were ambushed and killed by bandits (Ibid, 2008). The entire Bulla estate was burned down, innocent residents killed, women raped, and the remaining population restricted to a concentration camp in the playground of Garissa Primary School for three days without access to basic needs (Hassan, 2008). No reparation or compensation has been given to the victims, affected families, or their relatives who lost their properties and continue to suffer psychological and physical traumas.

2.8.4 The Wagalla Massacre

The Wagalla massacre, described as the worst in Kenyan history happened in Wajir in 1984 when the General Service Unit (GSU) carried out an operation in which about 5000 Degodia, a sub-clan of ethnic Somali's, were rounded up and incarcerated at the Wajir airstrip, denied food and water for three days and eventually executed (Sheik, 2007; Hassan, 2008). It was not until the year 2000 that the government acknowledged that indeed human rights atrocities were committed by the state against them (Ongeri and Obure, 2004). However, no official intervention has been instituted to facilitate truth telling, reparation, or compensation to the victims and their relatives (Sheik, 2007).

2.8.5 The Hola Massacre

The Hola camp was exclusively meant for Mau Mau detainees perceived to be most notorious, uncooperative, and resistant to orders and authority (Mark, 2003). In the late 1950s and early 1960s, the Hola camp had about 506 captives, a quarter of whom remained in secluded cells under high security. The colonial authorities decided to massacre some of them in order to induce the compliance of others. On March 3, 1959 about 88 detainees were tortured and eventually clobbered mercilessly, leaving eleven of them dead while seventy-seven others sustained permanent injuries and disabilities (Maloba, 1993). There were concerted efforts by

colonial authorities to cover up the massacre, dismissing the death of the detainees as having been caused by water contamination (Wild, 2011). While London ordered the detention camps closed due to the ensuing negative image, the truth about what happened have never been told while reparation and compensation for those affected have never been effected (Simpson, 2002; Nissimi, 2006).

2.8.6 Tana River Massacres

The Tana River Massacres between the Pokomo and Orma ethnic groups have been protracted but intensified in the course of 2012 and 2013 (Kenya Red Cross (KRC), 2012). These massacres between the Pokomo farmers and the Orma pastoralists are resource-based and mainly related to disputes and competition for land, pasture and water (Ibid). On August 14, 2012 in Kau village this violence left three people dead; seven injured; 110 houses burned and 198 cattle stolen (KRC, 2012). On August 22, 2012 in Reketa village, the Orma killed three Pokomo while the latter sought revenge by stealing 200 cows, burning 100 houses and killing fifty-two people in Tarassa (Taya, 2012; Leposo, 2012; Dixon, 2012). On September 1, 2012 in Semikaro village an Orma male was killed and two injuries were reported while 200 goats were stolen. On September 7, 2012 in Chamwanamuma village the Orma reciprocated by killing seventeen Pokomo and injuring ten others. In the same incident, ninety-four houses were burned down and 200 cows and 400 goats take away (KRC, 2012). On September 10, 2012 in Kilelengwani village the Pokomo killed thirty-eight Orma and torched 167 houses (Ibid). The Orma responded on September 11, 2012 by killing four Pokomo in Semikaro village, burning twenty houses in Laini village as well as 109 houses in Shirikisho Village, and ninety houses in Nduru village (Leposo, 2012, Dixon, 2012). This was followed by torching sixty-seven houses in Ozi village on September 17, 2012 (Ibid). Further revenge attacks were carried out on December 14, 2012

when thirty nine people were killed (Leposo, 2012, Dixon, 2012). On January 9, 2013, renewed fighting resulted in the killing of six Orma and five Pokomo raiders in Nduru village followed by a revenge attack on January 10, 2013 in Kubusu village which saw nineteen homes torched and eleven Pokomo killed (KRC, 2012; Leposo, 2012, Dixon, 2012). By end of 2012, ethnic fighting in the Tana River delta had left a total of 177 people dead, but only forty-nine deaths were officially reported (KRC, 2012). The massacres also resulted in the displacement of 112,000 people, the loss of 458 cattle and 600 goats, and the burning of 754 homes (KRC, 2012; Leposo, 2012; Dixon, 2012). In spite of the gross human rights atrocities and injustices, there is a lack of political will to end the Tana River massacres due to strategic socioeconomic and political interests (Practical Action, 2012). There is no guarantee for reparations or compensation for the continued loss of innocent life, property, and displacement.

2.8.7 The Sabaot Land Defence Forces (SLDF) Conflict

Land grievances in the Kalenjin neighbouring region of Mt. Elgon in Western Kenya saw the emergence of the SLDF led by Wycliffe Matakwei Kirui Komon and backed by powerful local politicians to defend their ancestral land from encroachment by other ethnic groups (HRW, 2008). The Mount Elgon area in western Kenya has a population of about 160,000 inhabitants and covers approximately 900 square kilometres with two-thirds under moorland and forest cover (Baumann, 2011). The area is multi-ethnic with 60 percent of the population being the Sabaot ethnic group (Romborah, 2008; Baumann, 2011). About 80 percent of Sabaot are Soy (Semek), who occupy the southern arable land of Mount Elgon, while 20 percent are the pastoralists Ndorobo (Mosop), who occupy the northern remote non-arable moorland and forest (Ibid). In the 1960s, the government planned the resettlement of the Ndorobo from the north to the Soy's South in order to conserve and protect the water catchment area, bring the Ndorobo

closer to government services, and protect them from Ugandan cattle rustlers (Baumann, 2011). The resettlement was carried out in three phases, namely: Chepyuk I, between 1971 and 1974; Chepyuk II, in the 1980s; and Chepyuk III, between 1993 and 2006 (Baumann, 2011). However, the resettlement was characterised by poor planning, delay, inadequate preparation of the affected groups, lack of land tenure, biased allocation of title deeds in exchange for political support, corruption, and political ethnicization and interventionism (Alston, 2009; HRW, 2008; Baumann, 2011). This resulted in armed conflict between Soy's SLDF who decried forced evictions and vowed to defend their ancestral land and the Ndorobo Moorland Defence Forces (MDF) who defended the resettlement programme (Baumann, 2011; Romborah, 2008; Human Rights Watch, 2008). The SLDF were extremely brutal and committed human rights atrocities including rape, forced taxation, torture, the killing of political opponents, and forced recruitments into their force (KNCHR, 2008; HRW, 2008; Alston, 2009; Baumann, 2011).

The two year expulsion and extermination of the Ndorobo by the SDLF led to the death of about 800 people, the displacement of 60,000 people and the torture of thousands of others (KHRC, 2007). The government, in disregard of its role in the failed resettlement programme, launched *Operation Okoa Maisha* (Operation Save Lives) in which Matakwei and other high-ranking commanders in his army were killed (Ibid). While in pursuit of the SDLF, the Kenyan security forces were involved in human rights abuses including torture, rape, and the detainment of about 3,000 civilian without trial for interrogation (KNCHR, 2008; HRW, 2008; Alston, 2009; Baumann, 2011; Medecins Sans Frontiers, 2008). Reports indicate that about 200 civilians were killed by government security forces while the affected families have never been compensated for the injustices committed against them and their loved ones (Alston, 2009). Mount Elgon's

land conflict remains largely unresolved and ethnic tensions are high; it is a time-bomb that requires urgent address.

2.9 The Land Issue

The scramble for Africa by the European imperial powers culminated in the 1885 Berlin Conference in Germany and the signing of the Berlin treaty that partitioned Africa without any due regard to indigenous boundaries and the lifestyles of the natives (Ndung'u, 2006; Wamwere, 2008). Kenya became part of the British Empire where indigenous communities were displaced from their land which was allocated to white settlers on freehold tenure or leasehold terms of up to 999 years (KLA, 2004; Ndung'u, 2006; Mazrui, 2008). This was facilitated through the enactment of the East Africa Lands Orders in the Council of 1895, 1897, and 1901, which later were re-enacted as the Crown Land Ordinances of 1902 and 1915 that were meant to facilitate the allocation of crown land (Ndung'u, 2006; Machira, 2010). The best and most fertile Kenyan land (white highlands), approximately 20 percent of the Kenyan landmass, was allocated to British settlers who engaged in a lucrative agricultural economy in which indigenous populations became servants of the crown (Ndung'u, 2006; Mazrui, 2008). Indigenous uprisings against British colonialism in the 1950s resulted in the 1962-1963 London constitutional talks; internal self-governance in June 1963; and the independence of Kenya in December 1963 (Ndung'u, 2008; Maxon, 2009).

Kenya's independence meant a bright future for most Kenyans, an expectation that never came to pass. Unfortunately, Kenya inherited and adopted the colonial constitution, including the oppressive land laws that were previously meant to dominate the indigenous populations, except for minor amendments that replaced the words "Ordinances, Crown, Crown Land, and British Monarch" with "Act, President, Government Land, and Government" thereby

transferring the powers of land alienation from the crown to the institution of the presidency (Murunga and Nasong'o 2007; Mazrui, 2008; Wamwere, 2008). The 1st and 2nd Lancaster constitutional talks held in London in 1961-62 provided for the protection of property rights, a re-settlement programme for indigenous populations in the former white highlands, soft loans for agricultural development to new indigenous settlers, and long term loans for the commercial development of white highlands not intended for resettlement (Ndung'u, 2006). However, the post-independence regime driven by impunity, corruption, ethnic politics, and dictatorship, disposed public land at will as Her Majesty did, therefore obliterating the hope of the majority of Kenyans (Ndung'u, 2006; Oloo, 2007). Land became a political tool for patronage used indiscriminately by the President to reward his cronies and political supporters (Wamwere, 2008). For forty years, 1963-2003, a period traversing three presidencies, this was the trend. As public land diminished, political patronage was vulnerable, and land grabbing spread to public utilities (Ndung'u, 2008). The President and his cronies overlooked the fact that while a monarch has boundless powers over her subjects and resources in her empire, the President, having been elected by the people is a trustee of the electorate and manages the country and its resources on their behalf (Ibid).

The 2002 triumph of the NARC coalition that removed KANU from power after 24 years of Moi's dictatorship promised zero tolerance to corruption, including the recovery of illegally acquired public land. This saw the appointment of a commission of inquiry on June 30, 2003 to investigate the illegal and irregular allocation of public land in Kenya popularly known as the Ndung'u report (Ndung'u, 2006). The report found out that about 200,000 illegal title deeds were issued between 1962 and 2002 most of them during the Moi regime; the public land affected included trust lands, research farms, wetlands, state cooperation lands, roads and road reserves,

national parks and game reserves, settlement schemes for the landless, government civil servants houses, grave yards, public toilets, and government offices; and the President and his powerful cronies were behind land grabbing and allocation mainly for ethnopolitical patronage (Ibid). Due to the voluminous number of illegal allocations of land, political unwillingness, and institutional bureaucracies, it was impossible to revoke the illegally acquired title deeds. Instead, the report recommended the formation of key land implementing institutions including the Land Titles Tribunal, Land Task Force, and National Land Commission which were to enact a national land policy to facilitate land reforms, develop an alternative land justice system and therefore a framework for addressing land injustices (Ndung'u, 2006; Mghanga, 2010:56). These institutions and policies were meant to ensure the implementation of the recommendations, the repeal of identified past illegalities and to deter such illegalities in the future.

This discussion indicates that the land issue is a key catalyst of ethnopolitical violence in Kenya. The colonial land displacement and dispossession led to the proliferation of squatter farming and the porosity of ethnic boundaries and hence the encroachment on ancestral land by the ethnic others (Elkins, 2005; Anderson, 2005). This was interpreted as relative deprivation, a key issue in KADU's agitation for Majimboism to protect the interests of the minority tribes on the eve of Kenya's independence in 1963 (Oyugi, 1998; Oyugi, 2003). For example, the preferential settlement of the landless Kikuyu in the Rift Valley on the eve of Kenya's independence remains a key grievance (Haberson, 1973; Kimenyi, 1997; Wamwere, 2008). This settlement was resisted bitterly by the Kalenjin and their leaders but the Kenyatta regime ignored the protests. These circumstances led to ethnic mistrust, hatred, animosity and hence protracted ethnopolitical violence across the ethnopolitical divide in Kenya. The land issue as a root cause

of ethno-political violence in Kenya can best be understood by discussing three important case studies namely the Rift Valley, the coast province, and the Northern Frontier District (NFD).

2.9.1 Ethno-political Violence and the Land Issue in the Rift Valley

The settlement of the British in Kenya displaced millions of indigenous inhabitants of the Rift Valley and central province to create space for the white settlers (Mazrui, 2008; Anderson, 2005, Elkins, 2005; Throup, 1987). After independence, the displaced communities were not given back their land. Out of greed, corruption, and impunity, the fertile and productive white highlands in central Kenya were grabbed and shared among political cronies of the Kenyatta government (Crisis Group, 2008; Saturday Nation Newspapers, 2008). Consequently, the dawn of independence found hundreds of thousands of Kikuyu landless. To avert a possible Kikuyu civil war over land in central Kenya, Kenyatta had to find alternative land for the landless Kikuyu (Oyugi, 1998; Machira, 2010). Kenyatta used land buying companies to acquire huge tracts of fertile land in the Rift Valley from the departing colonial settlers. On this land he resettled the Kikuyu instead of the original natives, the Kalenjin (KNHRC, 2008; Machira, 2010). Therefore, Kenyatta resolved a problem by creating another problem. Apart from the Kikuyu, other tribes such as the Kisii, Luhya and Luo also acquired land in the Rift Valley, mainly through willing-buyer/willing-seller arrangements (Machira, 2010:17; Wamwere, 2008). The aggrieved Kalenjin perceived the Kikuyu as deceitful, corrupt, dishonest and gluttonous land-grabbers, who manipulated political circumstances to entrench their political supremacy, wealth, and power (Crisis Group, 2008; Wamwere, 2008). The Kalenjin, like many other ethnic groups in Kenya attached great symbolic meaning to land. Consequently, the occupation of the Kalenjin ancestral land and the change of local names by the immigrant Kikuyu were a threat to the identity, heritage, and the very survival of the Kalenjins (Crisis Group, 2008, Machira, 2010).

It is alleged that Kenyatta, the first President, a Kikuyu, suppressed the disgruntlement of the Kalenjin by appointing one of their own, Mr Moi, as his vice President (Crisis Group, 2008; Machira, 2010:17; Chweya, 2002). After Kenyatta died, Moi, a Kalenjin, succeeded him. Behind the scenes, he supported systematic hate speeches and displacement of the Kikuyu in order to re-acquire the ancestral land and to reassert the political supremacy of the Kalenjins in the Rift Valley (KNHRC, 2008; Crisis Group, 2008; Akiwumi Report, 2001). Ethnic clashes have also been predominant in the South Rift around Kericho, Sotik, and Bomet, where the Kisii community, was targeted by the Kalenjins (Crisis Group, 2008). A laissez-faire structure of land acquisition and allocation often linked with corruption and political patronage has deeply affected the traditional communal land ownership system (Ibid; Wamwere, 2008). Land has always changed hands between those in power, leaving the opposition groups marginalized and impoverished (KHRC, 2007). This has led to the clamour for Majimboism in which the peripheral regions such as the Rift Valley and the Coast has called for secession and/or self-governance (Crisis Group, 2008).

Ethnic stereotyping have also been perpetuated by the media and especially the vernacular FM stations, such as Coro, Kameme and Inooro belonging to Kikuyu and Kass FM belonging to Kalenjin (KNCHR, 2008; Crisis Group, 2008). During the 2008 ethnic violence, the Kalenjin Kass FM station used propaganda campaigns referring to the Kikuyu as greedy, dishonest, deceitful, and corrupt (Ibid). Such phrases as “enough is enough”, “how many more have to die before we act” and “our people will be exterminated” heightened emotions and acted as catalysts to ethno-political violence (Crisis Group, 2008). The “people of the milk” (Kalenjin) were called upon to “clear the weed” (Kikuyu) claiming that time had come to reclaim back their ancestral land (Ibid). Negative narratives are common across the ethno-political divide in Kenya

and have continued to nurture the ‘us versus them’ mentality. For example, people from the Coast are regarded as easy-to-manipulate, submissive and economically impotent while mainland Kenyans are seen as good-for-nothing, uncultured, aggressive, greedy, and money hungry robbers (Zuhur, 2005). These narratives create fear, tensions, insecurity, and violence among different ethnic groups in Kenya. An example is the revenge attacks by the Mungiki, a Kikuyu cult against the Luo in 2008. The Mungiki identified those from the ‘wrong’ ethnic group by checking their identity cards for names starting with letter “O” or “A” (most Luo names starts with the two letters) or physically checking for uncircumcised males after which the victims were circumcised with machetes and/or killed in the most gruesome manner (Crisis Group, 2008). Formed in early 1990s, the Mungiki is comprised of impoverished youths who lobby for the reinstatement of indigenous values and are opposed to westernization and post-colonial oppression (Anderson, 2002; Kagwanja, 2003, 2005). Backed by powerful Kikuyu politicians, the Mungiki is largely seen as an informal defender of the besieged Kikuyu in the Rift Valley (Crisis Group, 2008). The members of the sect are bound together by strong background networks and oathing rituals that ensure secrecy and solidarity while defections are deterred by beheading the traitors as a signature punishment (Wang and Ahmed, 2006: 5).

2.9.2 Ethnopolitical Violence and the Land Issue in the Coast Province of Kenya

Grievances about ethnic separatism, marginalization, and landlessness have nurtured Islamic radicalism and militancy in the coast province of Kenya, and have resulted in the calls for secession of the coast from the rest of the country (Crisis Group, 2008). Socioeconomic and political marginalization of the indigenous coast inhabitants such as the Digo and Mijikenda have nurtured mistrust and hatred towards the government, leading to a spirited campaign for political autonomy (Mazrui, 2000). This post-independence dichotomy led to the birth of the

Mombasa Republican Council (MRC) in 2008 and its campaign for “Pwani Si Kenya” (Coast is not Kenya) bound together by oaths, strong cultural values, norms, and networks (Bellamy 2004; Smith, 2008; Goldsmith, 2011; Wang and Ahmed, 2006:5). At this point it is perhaps important to trace the history of marginalization prevalent with the coastal indigenous communities. The MRC’s “Pwani si Kenya” campaign is rooted in complex socioeconomic, historical and political injustices. The British colonial administration at the coast disregarded the customary land tenure system by declaring all uncultivated land as Crown property under the 1908 Land Title Ordinance (Okoth-Ogendo, 1999, 2007; Goldsmith, 2011). Thereafter, the 1915 (Cap 208) Land Ordinance gave absolute colonial control of all Crown lands rendering the indigenous populations squatters on their own land (Ibid). These land ordinances constituted agreements with the Sultanate of Zanzibar who was opposed to interference on his free market system and property rights along the coastal strip by the colonial administration.

To avoid conflict, while allocating their East African zones of influence, the Anglo-German Treaty of 1886 between Britain and Germany awarded the Sultanate of Zanzibar a ten nautical mile coastal strip running from Vanga on the Tanzanian-Kenyan Border to Lamu (Goldsmith, 2011; Mwaruvie, 2011). To have access and the right to use the Sultan’s coastal strip the British leased it at £17,000 pounds annually, equal to the tax the Sultan used to collect, while the Germans paid a one-time compensatory fee of £200,000 to the Sultan of Zanzibar (Ibid). When the British wanted to change the status of the East African Protectorate into a colony for the purpose of development in 1920, annexing the coastal strip could not be effected without revisiting international treaties that the Sultan of Zanzibar had made with other colonial powers including the USA (1833), France (1862), and Germany (1886), guaranteeing him sovereignty over the coastal region (Maxon, 1994:117; Alam, 2007; Mwaruvie, 2011;

Goldsmith, 2011). As a short cut, mainland Kenya became a colony while the coastal strip remained a protectorate, a decision that was to haunt Kenya at independence when the Arabs resisted re-integration with mainland Kenya (Alam, 2007; Mwaruvie, 2011; Goldsmith, 2011).

During the 1960 first Lancaster Conference in London to discuss the independence of Kenya, the Arabs wished to have the British Protectorate of the Coastal strip either secede from mainland Kenya or become autonomous, a position that was opposed by the African delegation led by Jomo Kenyatta (Alam, 2007; Mwaruvie, 2011). The coastal minority Arab and Asian populations feared for the loss of their land ownership and tenure to the mainland. The 1962 Carter Commission's report on the future of the coast strip indicated the potential marginalization of the coastal region by the central government in terms of socioeconomic and political welfare (Kenya Land Commission Report [hereafter KLCR], 1962; Goldsmith, 2011). The Robertson Commission that was set to research on the viability of the coastal strip's (British Protectorate) autonomy from mainland Kenya (British Colony) foresaw the challenges of merging the coastal strip to an independent Kenya and proposed constitutional measures that would safeguard the interests and heritage of indigenous communities in its sessional paper No. 9 of 1961 (KLCR, 1962; Alam, 2007; Goldsmith, 2011). Further to this recommendation, the commission also proposed the formation of a Coast Land Board to advise the Government and Legislature on land policy in regard to the use and disposal of public lands, use of fallow private land, dispute settlement between tenants and landlords, codes for relations between labourers and land owners, and land transfer from coastal indigenous owners to immigrants from elsewhere (Goldsmith, 2011).

In addition to the fears foreseen by the Robertson Commission the secession or the autonomy of the coastal strip had negative inter-regional socioeconomic and political

consequences. For example, while the construction of the port of Mombasa was financed by Kenyans from both the mainland and the coast, there was fear that the autonomy of the coastal strip would render mainland Kenya, the larger East Africa, and the Great Lakes region landlocked. There were no foreseeable challenges for merging the coastal strip with mainland Kenya because the coastal strip had no independent boundaries, the British protectorate was to compensate the Sultanate of Zanzibar for the loss of the annual lease collections, the autonomy of the coastal strip had no economic significance, the Sultanate of Zanzibar agreed to the merging of the coastal strip and the mainland Kenya if the interests of indigenous Muslim communities were protected and safeguarded (Goldsmith, 2011). The recommendations of Robertson Commission presented at the 1962 second Lancaster Conference in London proposed: that the Kenyan constitution should accommodate Muslim religion, Sharia law, and education; the annulment of the 1895 Sultanate-Colonial agreement and the merging of the coastal strip to mainland Kenya; coastal administration by Arabs to ensure the preservation of Muslim traditions; the formation of the Coast Land Board to facilitate land disposal, transfer, and mitigation of land disputes; and a £675,000 compensation to the Sultanate of Zanzibar by the Crown for letting go of the coastal strip (Goldsmith, 2011).

To entrench trust and goodwill pertaining to the provisions of the Carter and Robertson Commissions, the second Lancaster Conference was followed up by a memorandum of understanding (MoU) in 1963 between Jomo Kenyatta and the Sultanate of Zanzibar that officially transferred the sovereignty of the coastal strip to an independent Kenya (Goldsmith, 2011). The MoU provided: freedom of worship for Muslims and the preservation of their religious buildings and institutions; sole jurisdiction by Chief Kadhi over issues relating to Muslim law such as inheritance, marriage, and divorce; administration of Muslim areas by Arab

officers; instruction of Muslim children in Arabic; recognition, preservation and registration of freehold land titles and compensation for land used for public purposes (Goldsmith, 2011:11). In addition, Jomo Kenyatta and the Sultanate of Zanzibar signed a MoU in October 1963 revoking the 1890 and 1895 Kenya protectorate agreements therefore paving the way for Kenya's independence (Mwaruvie, 2011). However, it is important to note that the post-independence Kenyan regime dishonoured all the provisions of the pre-independence MoU apart from the constitutional provision of Kadhi courts (Goldsmith, 2011). For example, the proposed Coast Land Board that was meant to safeguard the security of land tenure for indigenous communities was never formed. Also, while the MoU addressed the Arabs feelings of land insecurity, fear, mistrust and suspicion, it ignored the plight of native Africans squatters who had originally been dispossessed of their land by Arab settlers (Mwaruvie, 2011; Goldsmith, 2011). Instead of addressing the plight of African squatters, Kenyatta and his political cronies acquired large chunks of land for themselves (Ibid).

The post-independence Kenyan regime entrenched the Arab and Asian freehold and title deed system of land ownership at the coast depriving the indigenous African communities of their traditional land tenure system, practices, and religious connections for example the Miji Kenda's sacred Kayas forests² (Goldsmith, 2011). The new post-independence system of the willing seller and willing buyer further marginalized the African communities who had no financial resources to buy the land (Ibid). This meant that the coastal region and especially the highly priced arable land and the beautiful beaches ended up in the hands of the rich Arab families, private developers, and pro-government elites in the Kenyatta regime, leaving the

² Kayas, created in the 16th century and abandoned in 1940 constitute ten sacred sites spread over 200 km and conserved by Miji Kenda elders. Being among the UNESCO's heritage list, Kayas provide a great source of cultural and religious identity for the Miji Kenya. Sadly the Kayas survival is under threat of extinction due to encroachment by corrupt political elites and private developers: <http://whc.unesco.org/en/list/1231>: Accessed April 20, 2013.

indigenous communities as impoverished squatters and beggars on their own land (Mwakimoto, 2010, 2011). The government also put all the land without title deeds under trust and used it to reward government loyalists and supporters over the years especially during political elections (Mwaruvie, 2011). The discontent of the indigenous populations on the coast is therefore rooted in socioeconomic and political injustices, marginalization, and exclusion by state bureaucracies. The British agreements that refused the autonomy and/or the reintegration of the coastal strip with Zanzibar are bitterly dismissed by the indigenous communities as purely selfish and corrupt endeavours that utterly disregarded indigenous interests (Mghanga 2010, 21). The said treaties were implemented without due regard to the expressed needs, consent, involvement or participation of indigenous people while the provisions that were meant to protect their rights were dishonoured.

Statistics indicate that 82 percent of the coastal immigrant communities have land title deeds while only 38 percent of indigenous communities have such title deeds leading to a sense of insecurity and uncertainty (Coast Land Survey, 2011; Kanyingi, 2000). Land alienation has denied the coastal indigenous communities access to basic human needs such as education, standard health, shelter, food, and clothing, condemning them to cheap labour including child labour in mining industries such as the Malindi salt company (Mavisi, 2006; Rakodi et al, 2000). The bureaucracies and ethnicization of public and private service recruitment have been preferential and paternalistic in nature and have not favoured the illiterate and semi-literate indigenous populations entrenching them further into the cycle of poverty (Goldsmith, 2011). Further statistics indicate that four of the six counties of the coast including Kilifi, Tana River, Malindi, and Kwale are among the fifteen poorest counties in Kenya (Ibid). The growing apprehension of the people at the coast therefore justifies the call for autonomy and/or secession

of the coastal region from the mainland Kenya (Goldsmith, 2011). Statistics about the composition of the population of coastal settlement schemes justifies the fears of the coastal indigenous people. For example, the Kwale settlement scheme constitutes 57 percent of the Kamba ethnic group from the mainland and only 33 percent of the indigenous Mijikenda while the Kenyatta settlement scheme in Mpeketoni Lamu includes mainly the Kikuyu and hardly any indigenous populations (Coastal Land Survey, 2011; Goldsmith, 2011; Kanyingi, 2000). Similarly, the Mariakani settlement scheme was privatised to accommodate the Army Barracks, Ramisi Sugar Estate and the Lea Vipingo Sisal estate (Kenya National Assembly Official Record, 1973:529; Hoorweg, 2000; Goldsmith, 2011). The most recent displacement of the locals was created by the proposed Lamu Port and Lamu Southern Sudan-Ethiopia Transport (LAPSSET) corridor, a Kenyan transport and infrastructure project involving the construction of a Port in Kenya, three airports, three resort cities, road, railway line, and oil pipelines serving Kenya, South Sudan, and Ethiopia (Ridwan, 2010; Mghanga, 2010: 3).

Terrorism and the war on terror have similarly led to political harassment, human rights violations and victimization of the Muslim community at the coast by the state (Howell et. al., 2007; Goldsmith, 2008; Oded, 2002; Mghanga, 2010: 9-18). Informal groups such as the MRC fighting for social justice, inclusion, and recognition have been dismissed as ‘outlawed groups’ by the government therefore justifying its brutal and aggressive repression (Goldsmith, 2011). Violent repression of informal groups such as the MRC or Mungiki by government authorities cannot help resolve historical injustices and amounts to the violation of rights and freedom of speech and free association (Ruteere, 2009). Such groups should be allowed to air their grievances and actively participate or be involved in addressing their expressed needs

constructively in order to nurture conflict transformation and sustainable peacebuilding (Robb, 2007; Ronfeldt and Arquilla, 2001).

In sum, it can therefore be noted that the fight for autonomy by indigenous communities in the coastal region of Kenya is a complex phenomenon derived from people's feelings of fear, insecurity, vulnerability, and mistrust related to socioeconomic, political, and historical injustices (Roger, 2005; Wachira, 2008; Yahya, 2010). All of the above discussed cleavages precipitated the 2007-2008 ethno-political violence at the coast mostly directed against immigrant communities and especially the supporters of PNU living in the ODM strong holds of Bamburi, Changanwe, Kisauni, Magongo, Kongowea, and Mshoromoni (Goldsmith, 2011).

2.9.3 Ethno-political Violence and the Case of the Kenyan Northern Frontier District

The Kenyan Northern Frontier District (NFD) consists of the districts of Mandera, Wajir, Ijara, Isiolo, Marsabit, Garissa, and Moyale in the North Eastern Province of Kenya and is inhabited by the Borana and various Somali ethnic groups (Hassan, 2008). The Somali constitute one of the largest ethnic blocks in Africa traversing the countries of Kenya, Somalia, Ethiopia, and Djibouti; they have strong attachment to pastoralism and nomadic lifestyles with livestock considered as a symbol of status and wealth (Lewis, 2002; Whittaker, 2008). The availability of pasture and water for livestock is the basis of Somali livelihood and the scarcity of such resources lead to cattle rustling and inter-clan conflicts (Lewis, 2002). The Somali community has been marginalized by both colonial and post-colonial regimes in Kenya. This marginalization led to a spirited campaign by the Kenyan Somali community to secede from Kenya and re-unite with the larger Somalia, based on their right to self-determination, an agenda that was dismissed and resisted by the Kenyatta regime (Whittaker, 2008). As a reprisal, the Somali organized guerrilla warfare popularly known as Shifta in which they carried out sporadic attacks on Kenyan

government police posts, as well as administrative and security personnel (Ibid). The term Shifta is derived from the Amharic word for banditry (Sheftenat), to rebel (Sheffata), and bandit (Shefta) (Whittaker, 2008). The 1963-1964 Shifta war between the Somali community and the Kenyan government derived from the socioeconomic, cultural and political marginalization of the Somali ethnic group in Kenya by the British colonial government (Ringquist, 2011).

The secession agenda aided by the Somali Government undermined Kenyan territorial integrity and was a threat to the decolonization project of the British and KANU, which was opposed to KADU's Majimboism (Whittaker, 2008). The Shifta guerrilla warfare and secession agenda was thus a threat to state building and consolidation, a factor that was used to justify an indiscriminate government's repression of secessionists (Hassan, 2008; Whittaker, 2008). The push for secession led to the criminalization, marginalization, and forced villagisation of the Somali community in fortified villages (Mantayyas) and the incarceration of suspects in concentration camps (Mburu, 2005, Whittaker, 2008). The British authorities used the NFD as a buffer zone from Italian Somaliland and Ethiopian expansionism to protect their economic projects such as the white highlands and the newly constructed Kenya-Uganda railway (Ringquist, 2011). The colonial villagisation violated the nomadic and warrior lifestyles of Somali ethnic groups whose social, political and cultural attachments traversed Kenya, Ethiopia, and Somalia. Apart from being a buffer zone, the British had no developmental agenda for the NFD. The Somali were dismissed as a security problem and were denied identity cards imposed on the majority of Kenyans through the registration ordinance (Ringquist, 2011). The villagisation project was partially meant to suppress resource-based inter-clan animosity, serve as social reform for Somali collaborators, and operate as a counter-insurgency against the Somali irredentists (Whittaker, 2008).

The British also used divide and rule tactics to realize their goals. For example, in 1921 they armed the Gurre Clan to fight against disloyal clans. This was partially the genesis of the current proliferation of illegal firearms, cattle rustling, and ethnic violence in NFD regions of Marsabit, Moyale, Mandera, Wajir, Garissa, and Isiolo (Mburu, 2005; Whittaker, 2008). To control and restrict the movement of Somalis within the NFD borders, the British authorities legislated several ordinances including the 1902 Outlying District Ordinance (ODO) which closed up the NFD region (Fratkin, 2001; Hassan, 2008; Ringquist, 2011); and the 1933 Stock Theft and Produce Ordinance (STOP) which empowered colonial authorities to arrest, detain, confiscate, impose fines and levies, seize properties of Shifta suspects and collaborators including the collective punishment of ethnic groups and clans allied to them (Ibid). There was also the 1934 Special District Ordinance (SDO) that focused on maintaining tribal villages, pastures, watering zones, and livestock health, and the prevention of the spread of Islam which the British feared could derail the structured colonial governance (Ringquist, 2011).

The colonial structure of tribal zoning, villagisation and the divide and rule governance nurtured the concept of us versus them, resulting in protracted resource based banditry among some pastoral communities in the NFD (Mburu, 2005). The zoning was also an administrative measure to contain the Somali because of their continued resistance, political consciousness, and access to arms, which was a threat to the colonial regime (Ibid). The socioeconomic and political marginalization of the Somali community by the isolative colonial zoning policy did not succeed but rather intensified people's disgruntlement, the push for secession, and identification with the larger Somalia including the Italian Somaliland, the French Somaliland (today's Djibouti), British Somaliland, Ogadenia in Ethiopia, and later with the 1950s Pan-Somali irredentism (Hassan, 2008; Ringquist, 2011). The 1962 referendum for secession indicated that 87 percent of

the communities in the NFD wished to secede to the larger Somali, an agenda spearheaded by the Northern Province People's Progressive Party (NPPPP) and supported by the Somalia government but which was dismissed by the colonial government to safeguard the future of the Kenyan nation state (Mburu, 2005; Whittaker, 2008; Ringquist, 2011). This was the beginning of a protracted 'nationalist' guerrilla Shifita war that targeted strategic government infrastructures (Mburu, 2005). The Shiftas aimed to send a political message of their wish to secede from Kenya. The goals of the Shiftas included ejection of the British administration from the NFD, awareness creation about the welfare of the minority, and the prevention of collaboration with the Kenyan government, and secession (Mburu, 2005; Whittaker, 2008; Ringquist, 2011). The Shiftas launched successful assaults against colonial and post-colonial regimes aided by intelligence and support gathered from civilian sympathizers, the use of landmines, kidnapping, assassinations, knowledge of the terrain, logistics, and the fact that they were not restrained by the Geneva Convention Protocols (Ringquist, 2011). In the dawn of Kenyan independence, the new government imposed a state of emergency in the NFD reinforced by a dawn-to-dusk curfew, a shoot to kill policy, and confiscation of Shiftas' resources (Mburu, 2005). However, the government's counterinsurgency program was hampered by difficult terrain, the distance from Nairobi, weather, and logistical uncertainty about the Shiftas positions (Ibid). The state of emergency that extended for thirty years was characterised by human rights atrocities, marginalization and underdevelopment (Hassan, 2008). In 1967, the government employed *Operation Fagia Shifita* (Operation Cleanse the Shifita) in which a full and indiscriminate force reinforced by Mantayyas villagilisation was used to eliminate the Shifita threat once and for all (Fratkin, 2001). The villagilisation policy robbed the Somali of their identity, socioeconomic and cultural way of life, and resulted in huge losses of livestock due to the lack of pasture and water

(Mburu, 2005). The colonial and post-colonial divide and rule policy created animosities, hatred, and suspicion among the NFD inhabitants and therefore new political inclinations and affiliations (Mburu, 2005; Ringquist, 2011). For example, the Northern Province United Association (NPUA) of the Burji and Borana of Marsabit and Isiolo districts affiliated themselves with KANU and enjoyed the government's protection in their Mantayyas (Ibid). This resulted in serious reprisals on government collaborators and sympathisers who were abducted, assassinated, and had their Mantayyas and resources confiscated (Mburu, 2005).

The regional instability that the Shifta posed to the Horn of Africa led to diplomatic efforts by the Organization of African Unity (OAU) under Emperor Haile Selassie of Ethiopia that eventually reconciled Kenya and Somalia (Ringquist, 2011). While this diplomatic reconciliation ended the dream of Somali irredentism, it marked the beginning of ethnic violence, intercommunal disputes, and antagonism between disgruntled clans who felt betrayed or bitter due to the loss of their livelihood, political patronage, and the erosion of their socioeconomic and cultural ways of life (Mburu, 2005; Whittaker, 2008). Somali clans including the Ogaden, Gurreh, and Ajuran from Mandera and Wajir and Borana, Degodia, and Burji from Isiolo and Marsabit still engage in cattle rustling and ethnic violence (Ibid). This could be interpreted as a futile pursuit in the restoration of their lost identity, inheritance, and cultural way of life resulting from the Shifta conflict and worsened by demographic and ecological changes (Whittaker, 2008). Through *Operation Fagia Shifta* the Borana community alone lost about 194,000 camels, 462,000 goats and sheep, and 148,000 cattle while hundreds of Mantayyas and properties were confiscated (Ringquist, 2011). In Isiolo, compensation claims indicate that 3,300 sheep and goats, 15,800 cattle, 200 donkeys, and 14 camels were killed or confiscated while over 50 houses were burned (Whittaker, 2008). The Operation Fagia Shifta and the consequent

screening of Somali people in Kenya in the late 1980s and early 1990s led to continued human rights abuses including rape, arbitrary arrests, detentions without trial, and massacres all in response to the perceived Shifta threat (Whittaker, 2008). Shifta was a political tool in pursuit of building a Kenyan nation state that justified stripping Somali people of their socioeconomic and cultural identity and forcefully assimilating them into a new way of life (Whitaker, 2008; Ringquist, 2011). To date, no compensation or reparations have been made to address historical injustices, human rights atrocities, pillaging, and institutionalized discrimination of the Somali people (Ibid).

After Kenyan independence in 1963, the Governor General was empowered through Kenyan subsidiary legislation under section 19 of the independence constitution to make arbitrary decisions relating to states of emergency in a bid to maintain law and order especially in the NFD (Hassan, 2008). When Kenya became a republic in 1964 an all-powerful President replaced the Governor General under section 127 of the republic's constitution and spearheaded constitutional amendments that negatively affected the NFD (Ibid, 2008). These amendments included the Vide Act no. 14 of 1965, which reduced the parliamentary majority that could approve a declaration of a state of emergency from 65 percent to a simple majority (Hassan, 2002; 2008). This act also increased the period of seeking a parliamentary resolution about a state of emergency from seven to twenty one days and the duration for a state of emergency from two to three months (Hassan, 2002; 2008). The amendments also included the Vide Act no. 16 of 1966, which empowered the President to rule the NFD by decree and the Vide Act no. 18 of 1996, which replaced parliamentary involvement in the legislation of state of emergency transferring all the powers to the presidency (Ibid). These amendments nurtured grounds for indiscriminate human rights violation, technically reducing the NFD to a police state with

prescribed and prohibited zones similar to colonial concentration camps (Hassan, 2008). The NFD inhabitants faced indiscriminate punishments from state security and administration without due regard of the law. For example, any person possessing firearms faced a death sentence, while those who consulted or harboured suspects faced life imprisonment (KHRC, 1998; Hassan, 2008). Also, owning means of transport or any entry of foreigners into the prescribed or prohibited zones was punishable while death in prohibited zones was never investigated contrary to section 386 and 387 of the criminal Procedure Code that requires inquest into suspicious death (Hassan, 2008).

The 1970 Indemnity Act under Chapter 44 of Kenya's laws indemnified security and administrative personnel in the NFD against any indictment, accusation or claims of compensation arising from their actions while executing duties (Hassan; 2008). This act empowered and gave immunity to the security and administrative personnel to commit indiscriminate human rights violations including official marginalization and underdevelopment, discrimination, mass murders, rape, extra-judicial killings, illegal theft and the confiscation of private properties, and the arbitrary detention and arrests of targeted individuals and communities (Hassan, 2008). There were also two major massacres in the NFD namely the Wagalla Massacre and the Bulla Massacre, which have been discussed elsewhere in this study. Apart from massacres, there was also collective punishment and extra-judicial killings of the Somali communities in Takaba, Garse, Dandu, and Marka-mari regions of the Mandera district (Hassan, 2002; 2008). Discrimination was rife among the Somali communities especially in their quest for immigration and citizenship. For example, they were denied or subjected to excessive scrutiny in the issuance of identity cards, passports, and birth certificates provided under the Registration of Person's Act in Chapter 107 and 172 of the Kenyan laws (Laws of

Kenya; Hassan, 2008). In 1989, the Somalis were issued with a pink Identity card for ease of identification by security and administrative personnel (Ibid). The issuance of a coloured identity card was a violation of section 82 of the Kenyan constitution, which condemns all manners of discrimination (The Constitution of Kenya; Hassan, 2008).

At independence the NFD had an extremely poor infrastructure with only six kilometres of tarmacked road covering an area of 130,000 square kilometres, illiteracy was at 80 percent while 85 percent of the population lived below the poverty line with less than a dollar per day (Hassan, 2008). Today, the NFD is among the most marginalized and underdeveloped regions in Kenya with 80 percent of its budget dedicated to security and containment rather than engagement and development (Ibid). The area has poor health and education facilities and therefore limited or no productivity. Lack of government affirmative action to admit NFD residents into public institutions or to recruit them into public services despite their low grades and qualifications or a Marshall plan to facilitate the infrastructural development of roads, schools, and health centres amounts to the highest level of marginalization in the Kenyan society (Hassan, 2008). Lack of research, marketing and development institutions and boards for livestock industry, the backbone of the NFD economy, or even investment incentives for the same, is an extension of this marginalization (Hassan, 2002; Ibid). The 1990s agitation for constitutional reform and the repeal of section 2A of the constitution welcomed multipartyism in Kenya and amended section 127 of the constitution therefore repealing some of the emergency legislation that affected the NFD. The Public Security Act was repealed in 1991 and the Outlying District Act in 1997 therefore guaranteeing the inhabitants of the NFD their freedoms and fundamental rights as entrenched in Chapter 5 of the Kenyan constitution (The Constitution of Kenya; Hassan, 2008). However, despite these gains, some colonial legislation still exists; for

example, the 1933 Stock and Theft Act and the 1970 Indemnity Act (Ibid). Today, the NFD is still the least developed region in Kenya and its inhabitants continue to suffer the consequences of historical injustices and human rights atrocities committed against them. These injustices have never been addressed which justifies their continued fight for justice.

2.10 Conclusion

This discussion indicates that protracted ethnic violence, tensions, hatred, and mistrust between different ethnic groups in Kenya can be traced back to historical injustices. Colonisation, differential modernisation, and politicization of historical injustices and ethnic identities constitute key cleavages that nurture ethnic conflicts in Kenya. Historical grievances culminated in the 2008 post-election violence in which 1500 people lost their lives, 500000 people got displaced, while thousands of others suffered intensive physical and psychological atrocities (PEVK, 2008). Therefore, the 2008 disputed Presidential elections was only a symptom of deeply entrenched ethnic politics of ‘us versus them’ perpetrated by aggrieved communities. The Immigration and Refugee Board of Canada (IRBC), 2012) purports that the roots of Kenyan ethnopolitical violence can be linked to competition for scarce resources, political power, and historical injustices. While the majority of Kenyans continue to sink deeper in poverty, there is a high probability of the recurrence of full-blown ethnopolitical violence. The Human Development Index of health, income, and education ranks Kenya at 128 out of 169 countries (UNDP, 2010)³ while the 2011 Sentinel report⁴ indicates early warning signs based on unfulfilled promises, bitterness, and anger by sections of the Kenyan population. Therefore, urgent response mechanisms and positive interventionism are required to understand and address grievances across the Kenyan ethnopolitical divide in order to mitigate a relapse of ethnic

³ <http://hdr.undp.org/en/statistics/hdi>: Accessed April 15, 2014

⁴ <http://thesentinelproject.org/wp-content/uploads/Risk-Assessment-Kenya-2011.pdf>: Accessed April 15, 2014

violence. This research is part of such response; reaching out to the Kenyans, getting to know their expressed needs, and recommending appropriate interventions.

3.0 CHAPTER THREE: THEORETICAL BACK GROUND

3.1 Introduction

Despite the global proliferation of intrastate and ethno-political conflicts, there is a lack of comprehensive knowledge about patterns of ethnic conflict (Horowitz, 2000). This is because destructive conflicts are complex and emanate from diverse backgrounds (Deutsch and Coleman, 2000). Conflict is universal yet distinct in every culture; it is common to all persons yet experienced uniquely by every individual (Augsburger, 1992: 18). Ethnic questions are potentially explosive because they raise non-negotiable and non-tradable issues such as nationality, language, territorial homelands, and culture, therefore creating zero-sum conflicts and nurturing ideal materials for political entrepreneurs interested in creating or dividing political constituencies (McGarry and O'Leary, 1993: 16). This reality suggests the need for informed interventionism to mitigate the protraction of ethnic conflicts and safeguard global peace (Horowitz, 2000). Conflict is a crisis that forces us to recognize explicitly that we live with multiple realities; that we bring to each situation contrasting stories and must therefore nurture our shared reality or tolerate our differences (Augsburger, 1992: 11). About two thirds of all armed conflicts have an ethnic component and therefore understanding the conditions under which ethnic conflicts escalate to violence may facilitate the formulation of policies geared towards the prevention or reduction of the destructiveness of such conflicts when they occur (Toft, 2003:3).

From the aforementioned, it is important to understand the causes, meaning, processes and dynamics of ethno-political conflicts and how such conflicts are shaped, mobilized, and emerge (Black, 2003; Reicher, 2004). This section discusses theories of ethnic conflict, theories of transitional justice, theories of conflict transformation and peacebuilding, and theories of conflict management and resolution. All these theories are significant in this study because they

inform the questions asked in the methodology of this study, the interpretation of the field data, and the new Kenyan model proposed in this study. In other words, the rationale for selecting these theories is twofold. First, these theories are the basis for my entry into the field, meaning that they partially informed my research objectives, interview questions, and the solution proposed in this study. As a student of peace and conflict studies, these are the theories that led me to select this particular project, ask the questions I asked, and provide key insights as to how I should arrange my data. For example, the various theoretical themes used in this study including: peacebuilding and conflict transformation; conflict management and resolution; ethno-political violence; and transitional justice are the basis from which the main research topic and the semi-structured interview questions are derived. However, second, several theories were also selected because they speak directly to the experiences, criticisms, and visions revealed by my research participants, meaning that they were selected to further elucidate responses made by the study participants. In sum, my twofold approach is strongly grounded in ethnographic research and draws upon and builds theory in response to this research, but it must be acknowledged that there is also a deductive element to it because the theory provided early epistemological insights that helped to shape this project.

3.2 Theories of Ethnic Conflict

While social science has a particular antipathy towards ethnicity as an explanation of human behaviour due to dependence on mysticism and the notion that we live in a rational world of measurable certainties other accounts depict ethnicity as an important avenue of explaining conflict causation... that there is a non-rational emotional-based appeal in us through which ethnic entrepreneurs evoke symbols to connect with emotional subconscious (MacGinty, 2008: 72-73).

Ethnicity constitutes a sense of people-hood, a forum or a space that ethnic groups use to mobilize and compete for socioeconomic resources and political power (Rothchild, 1997:4). The understanding, analysis, and intervention in ethno-political conflicts can benefit from four major

theoretical perspectives, namely: Instrumentalists, Social Constructionists, Primordialists, and Assimilationists (Taras and Ganguly, 2006: 11). Instrumentalist, also referred to as Transactionalists or Circumstantialists, argue that ethnicity is an asset that can be manipulated, invented, or fabricated for the purpose of establishing power relations, nationhood, and identity (Cornell and Hartmann, 1998). Social Constructionists argue that identity formation is derived from mythical fabrications and stereotypes related to structural and historical injustices which are used to justify the violence against the enemy “others” (Petroska-Beska and Kenig, 2009: 8-28). Primordialists, also referred to as ancient hatreds (Toft, 2003) argue that ethnic identity derives from a predestined sense of nationhood based on common ancestry, kinship, and blood, which enhance the meaningfulness of guarding the peoplehood and a rejection of foreign identity (Anderson, 1991). Assimilationists holds that ethnicity would ultimately disappear (Gossett, 1997) as the global “melting pot” facilitates integration, shared culture and social relations (Cornell and Hartmann, 1998). Consequently, economic, cultural, and political globalization would compromise indigenous identity (Held, 2004) causing deep-seated fears and reactions (Atakol, 2009). However, for the purpose of this study, this discussion focuses on Instrumentalism and Constructionism because they best inform the Kenyan situation.

3.2.1 Instrumentalist Perspectives

Ethnicity can be used as an instrument by competing groups to pursue social justice and equality in terms of job opportunities, education, political representation, and economic opportunities (Batsinduka, 2009). Systematic discrimination and marginalization breed resentment, radicalization, bitterness and rebellion and hence lead to protracted ethno-political conflicts (Petroska-Beska and Kenig, 2009). Instrumentalists argue that ethnicity is a product of historical injustices, structured inequalities, and violence in which groups strive to manipulate

presenting circumstances to make up for lost glories (Casey, 2009; Hussain, 2009). Instrumentalists perceives that ethnic groups are interest groups, and identity is a resource evoked for collective mobilization (Cornell and Hartmann, 1998) in which fabrication of old stories and new myths intensifies the likelihood of ethno-political conflicts (Casey, 2009; Byrne, 2010). Instrumentalists argue that group identities are collectively employed for opportunistic goals thereby eliciting competition, opposition, conflicts, and hence establishing ethnic and racial boundaries. The identification of the “enemy” others lead to stereotypes used to validate the divides of “us” versus “them” (Byrne, 2009; Mamdani, 2001). Stereotypes nurture radicalism which sustain ethnic boundaries and hence prejudice and discrimination. Prejudice breeds demonization and dehumanization in which yesterday’s neighbours become immoral uncivilized savages (Petroska-Beska and Kenig, 2009).

Ethnic entrepreneurs, either for “offensive or defensive purposes or in response to threats or opportunities for themselves and/or their groups,” invoke selected ethnic symbols (Gurr, 2000:4) to appeal to ethnic constituencies through which ethnic identity acquires social and political significance (Hutchinson and Smith, 1996: 33). The resource competition approach asserts that the formation, politicization, and spread of ethnic identity and conflict in multi-ethnic societies in advent of scarce resources elicits a sense of relative deprivation (Hannan and Meyer, 1979: 253-277) and the rise of ethnic elites who distort ethno-cultural symbols (Atakol, 2009) in order to gain political or economic mileage for their groups or themselves (Taras and Ganguly, 2006: 12).

Wamwere (2008:97) unpacks “ethnicity” noting that if derived from ethnic pride then it is constructive (positive ethnicity) but if derived from hate and bias it is destructive (negative ethnicity). Wamwere observes that negative ethnicity never parades itself as evil; instead it

promises security, food, power, salvation, and freedom to its victims (Wamwere, 2008: 160). Once negative ethnicity thrives; it nurtures ethnic apartheid, excluding other ethnic groups from institutions of power in which the rule of law is replaced with impunity (Wamwere, 2008: 196-207). Negative ethnicity nurtures corruption whose benefits are used by the ruling elites to mobilize support from their ethnic constituencies thus: “the community does not mind to clean the bones while the leaders eat the flesh; ethnic elites steal to lead and lead to steal” (Ibid: 208). The *greed and grievance thesis* also informs instrumentalist arguments. The greed thesis relates the causation and maintenance of violent conflicts to economic disparities while the grievance thesis relates it to conflicting ideologies, ethnicization of historical grievances, human needs and intergroup competition manipulated by political entrepreneurs to mobilize support (MacGinty, 2008: 69-74). *Elite manipulation approaches* hold that political leaders actively fuel ethnic violence by using material incentives, such as hand-outs, or non-material incentives, such as manipulation of symbols, myths, histories, identity and charisma (Toft, 2003: 9). Manipulative elites contend for power by manipulating ethnic divisions using fear and hate propaganda (Oberschall, 2007: 11); they use their cultural groups as sites of mass mobilization in their quest for power and resources (Smith, 2010: 59). Demonization of ethnic opponents “who must be defeated or dominated” makes conciliation among disputants challenging (Oberschall, 2007: 11).

Instrumentalists hold that group identities constitute the core of our being; they define our individuality, values, and norms and “as long as we deny their existence and legitimacy as instruments of political expression, we are annihilating our spirituality” (Kimenyi, 1997: 30-31). Ethnic identity thrives on the basis that ethnicity has proven to be an effective channel for mobilizing and accessing state resources (Ibid, 1997: 49). To facilitate ethno-political stability and continued distribution of ethnic favours, ethnic leaders become suppliers and brokers of

wealth transfer hence entrenching preferential ethnic benefits (Kimenyi, 1997: 51-52). There exists a symbiotic relationship between ethnicity and the power elite—the elite derive most of their legitimacy from ethnic groupings and by arousing ethnic sentiment, while ethnic groups see them as their interest brokers (Banseka, 2005:203). Competition between the in-groups and the out-groups produces losers and winners. Systematic discrimination breeds resentment (Petroska-Beska and Kenig, 2009), nurtures rebellion, radicalization and hence protracted ethnopolitical conflicts (Kaufmann and Hassassian, 2009; Ratnavale, 2009).

In sum, Instrumentalist explanations can inform policy formulation that targets perceived and actual discrimination, historical injustices and structured inequalities (Glazer and Moynihan, 1970; Byrne, 2009). Representative policies based on the expressed needs of target groups can help address bitterness and vengeance arising from social injustice, systematic abuse of personal liberties and human rights (Casey, 2009). Historical injustices breaches trust and nurtures deep-seated ethnic divides as in the case of Cyprus (Atakol, 2009) and Northern Ireland (Byrne, 2009). Policy formulations should therefore target restoration of impaired capacities, inclusion, shared visions, a common future, and sustainable reconciliations (Byrne, 2009). Instrumentalism offers a fertile background in which the root causes of ethnopolitical conflicts can be understood and relevant policies implemented for mitigation purposes. The theory informs the situation in Kenya where ethnic elites use ethnicity as an instrument to benefit themselves and their own.

3.2.2 Social Constructionist Perspectives

Constructionists argue that group identities emanate from social constructions or the so-called “imagined communities” (Anderson, 1991) based on the identities that we ascribe to ourselves (asserted identities) and those ascribed to us by others (assigned identities) (Cornell and Hartmann, 1998: 72; Mamdani 2001). The driving force for identity formation constitutes

mythical fabrications and stereotypes related to structural and historical injustices such as land dispossession, humiliation, exploitation, enslavement, and annihilation (Batsinduka, 2009). These mythical stereotypes are used to justify the victim-bullies violence against the enemy “others” in terms of “what merciless, unscrupulous perpetrators they are” and “what innocent victims we are” (Petroska-Beska and Kenig, 2009: 8-28). The fabrication of stories leads to self-appraisal and demonization of the “others” thus: “We are trustworthy, peace loving, honourable, humanitarian; they are treacherous, warlike and cruel” (Ratnavale, 2009: 163-78) and justifies attacks and/or extermination of the enemy (Casey, 2009). Examples include violence by Protestants and Catholics in Northern Ireland (Byrne, 2009), the Palestinians’ *Intifada* (Kaufman and Hassassian, 2009), the Hutus genocide in Rwanda “work” (Batsinduka, 2009), Nigerian “infidels” (Casey, 2009), and the Sri Lankan Tamils’ “enemy” (Ratnavale, 2009). These social constructions nurture grievances, resistance, and opposition by peripheral groups in a bid to guard their own beliefs systems and opportunities (Cornell and Hartmann, 1998).

For constructionists, communities are construction sites, in which identities are nurtured, moulded, reinvented, and reconstructed (Hubbard et al., 2002); and individuals and groups are active agents of identity formation through a continuous process of social interaction (Cornell and Hartmann, 1998). Ethnic groups derive benefits from group membership; therefore, ethnic identities, solidarities, and boundaries persist because of a steady supply of benefits through which group members develop self-esteem, a sense of belonging, and psychological distinctiveness for in-groups and out-groups (Oberschall, 2007: 4). Constructionists contend that ethnic identities are enduring social constructions, the products of human actions and choices (Taras and Ganguly, 2006: 12) which become tools of social and political action if access to survival opportunities are “high-jacked, controlled, and determined by the potential or perceived

enemy others” (Ibid, 2006: 13). The ideology of domination is routinely transmitted via families, peers, and social institutions in which adherents are rewarded while defaulters are marginalized (Oberschall, 2007: 13). The authenticity of in-groups is employed through creation of the boundaries based on ancestry, cultural symbolism and practices, economic conditions, creation stories, biological variances and other factors (Mamdani, 2001). These boundaries validate group identities and power structures which are sustained through “the transgenerational transmission of conflict” (Klain, 2009; Volkan, 2003) therefore nurturing deep-seated identities and the concept of a common enemy which unites supposed victims within and across borders (Hussain, 2009; Senehi, 2009). These deep-seated identities ensnare the disputants to the conflict and create violence in their collective culture (Ratnavale, 2009) as well as the consciousness of common identities which is used to maximize collective benefits at the expense of others (Rothchild, 1997:4). Such groups become social units with high capacity for collective action and like in the prisoner`s dilemma ethnic leaders enforce group identity by entrenching a system of costs and benefits for conformity or non-conformity (Oberschall, 2007: 7; Kimenyi, 1997: 36).

Constructionists purport that ethnicity is nurtured via common remembrances of past experiences which when in contact with negative contemporary socioeconomic, cultural, and political forces generate new socially constructed identities, a sense of shared fate and consciousness meant to safeguard the structure of the people-hood (Rothchild, 1997:4). In his theory of ethnicity, Wamwere (2008: 118-123) observes that negative ethnicity dehumanizes, exploits, enslaves, and ultimately destroys the enemy others. For him, negative ethnicity is a process that starts with discrimination and then progresses to public prejudice, communal hate and ultimately destructive violence. Oberschall (2007: 6-7) observes that ethnic mobilization is catalysed by attachment to ethnic symbols and loyalties to political goals which create a “we-

feeling” and hence a “multiplier effect” for grievances. Negative ethnicity replaces national patriotism with ethnic patriotism thus: “ethnic patriots are the foot soldiers of negative ethnicity marching against national patriotism and national patriots” (Wamwere, 2008: 152); they suffer from superiority complex derived from social cultural value orientation “it’s not only a matter of one community feeling better and superior to another, it also applies to one community feeling worse and inferior to others” (Wamwere, 2008: 98).

Constructionists indicates that ethnic groups are willing and capable to undertake collective action in defence of collective interests. Collective myths become persuasive through public framing in an already existing political discourse embedded in culture and history in which every policy is contested in the political arena using mysticism, stereotypes, condensing symbols, and selected catchphrases that frame the issue in a particular fashion (Oberschall 2007: 6-20). These frames constitute the storyline that provides meaning to unfolding events, weaving connections between them: “Myths are not illusions, they are a jumble of real and legendary events... the minute they are absorbed, they become truer than reality itself,” forcing adherents to compromise objective truth in defence of collective self-identity (Oberschall, 2007: 23). Constructionism informs policy formulations that address destructive group identities while embracing new narratives of mutual recognition, tolerance, and shared meanings (Byrne, 2009; Rodaway, 1995; Hubbard et al., 2002). Such policies would address conflict priming identity issues and nurturing a common future.

In sum, theories of ethnic conflict and resolution form a fertile background for nurturing appropriate policies that would mitigate ethno-political conflicts. These theories also encourage policy relevant research to empower policy makers to go beyond conventional wisdom and embrace theoretical based perspectives in conflict analysis and resolution (Baxter, 2009).

Theories of ethnic conflict and resolution indicate the need for policies that acknowledge history and embrace inventive outside the box ideas based on innovative thinking and holistic approaches to the management, mitigation, and prevention of ethnopolitical conflicts (Kaufman and Hassassian, 2009). Policies on ethnopolitical conflicts would thus help in monitoring and evaluation of choices that contribute to ethnopolitical conflicts and encourage or offer alternative choices.

3.3 Transitional Justice Theories

Transitional justice is informed by theories of distributive justice, procedural justice, retributive justice, and restorative justice. Distributive justice also referred to as substantive or social justice advocates for the fair allocation of resources in terms of the amount of target goods to be distributed, the procedures of distribution, and patterns of distribution among and across the community divide (Maiese, 2003). Procedural justice on the other hand advocates that fairness, respect, and dignity for all people in the community should be entrenched in the processes of making and implementing decisions (Deutsch, 2000). Retributive justice also referred to as rectificatory, formal or corrective justice is a retroactive approach that advocates for punishment for those who violate human rights law and commit crimes against humanity (Maiese, 2003). Restorative justice focuses on repairing the harm caused by crime while holding the offenders responsible for their actions. This provides an opportunity for the affected people to identify and address their needs in the aftermath of a crime in a bid to facilitate healing, reparation, reintegration and prevention of future harm (Hurlbert and Greenberg, 2011: 269). For the purpose of this study only restorative and retributive justice will be discussed here because they best inform the Kenyan context. Before the discussion of the two theories however, it is important to introduce the concepts of *justice* and *transitional justice*.

Justice exists when people respect the human rights of others, and when there are processes in place for holding people who violate the rights of others accountable to their victims and to the wider community (Schirch, 2004: 16). Doing justice is the pursuit of restoration, rectifying wrongs, and creating right relationships based on equity and fairness; pursuing justice involves advocacy for those harmed, open acknowledgement of the wrongs committed, and making things right (Lederach, 1995: 20). The pursuit for justice in the aftermath of atrocities may strengthen the rule of law and reconciliation by confronting competing narratives of the past to prevent the relapse of ethnic disputes, instability, polarization, and new injustices (Woolford, 2011: 252). Justice should be founded on the recognition of disputants' unique norms and prejudices, accommodation of the voices of the marginalized, and a critique of the unjust social arrangements (Hurlbert and Mulvale, 2011: 30). People who cannot satisfy their material, social, or cultural needs often feel a sense of injustice; when people perceive that others humiliate or commit an injustice against them, they are often willing to fight and even die to protect their physical, social, or cultural identity (Schirch, 2004: 22). Justice is therefore essential for healing and overcoming circumstances responsible for mutual victimization, social exclusion, past grievances, and historical traumas (Daly and Sarkin, 2007: 215). However, as Hurlbert and Mulvale (2011: 14) observe, the definition of justice needs constant updating since justice is an ever changing subjective process of assessing fairness and equality for individuals or groups within specific contexts.

Transitional justice on the other hand is a process of redressing past wrongs committed in states shifting from a violent, authoritarian past towards a more liberal democratic future; it is a response to systematic or widespread violations of human rights and encompasses development and social justice (Mani, 2008). Transitional justice can be traced back to post World War II

attempts to address atrocities committed by Nazi Germany and the Japanese through the 1945 Nuremberg Trials and the 1946 Tokyo War Crime Trials (Teitel, 2003; Moghalu, 2008 : 30); the 1948 Universal Declaration of Human Rights and the 1948 Convention on the Prevention and the Punishment of the Crime of Genocide (Smith, 2007); and the 1980s democratization process, new world order, humanitarian interventions, and the responsibility to protect (Hinton, 2011). Transitional justice mechanisms represent a liberal vision and a redemptive model in which past harms may be repaired to mitigate the relapse of violence via entrenchment of the rule of law and a culture of human rights realized through legal mechanisms, commemorative projects, truth commissions, war crimes prosecutions, reparations, and memorials (Hazan, 2010). To ensure practical outcomes, groundedness, and stability, transitional justice mechanisms must focus, accommodate, and engage on-the-ground realities including local knowledge and experiences, social structures, complex histories, taken for granted assumptions, priorities, contexts, and practices (Hinton, 2011 : 17). Grounded transitional justice mechanisms are more accessible, have greater legitimacy, command local ownership, are people-centred, are more responsive to local needs and can offer restitution to those affected (Rosalind, Waldorf and Hazan, 2010 : 15-16; Brooks, 2003; Cobban 2007). In sum, well intentioned transitional justice needs to address the “messiness” of transnational templates vis-à-vis on-the-ground realities and to explore the sense of justice or the lack of such in countries emerging from violent conflicts (Hinton, 2011: 1). What follows is a more detailed discussion of the two transitional justice theories that applies more to the Kenyan context.

3.3.1 Retributive Justice

Retributive justice addresses individualized inequalities while trying to restore equality by treating equals equally and unequals unequally in proportion to their inequality (Hurlbert,

2011: 2). Retributive justice may be utilitarian or retributive. The former seeks to punish misdeeds for the purpose of future collective benefits while the latter seeks reciprocity of action based on morally correct and fully deserved punishment equal to the injustice committed (Hurlbert, 2011: 2). Daly and Sarkin observe that, while past wounds cannot be reversed or completely compensated through remorse or reparations, in the aftermath of mass atrocities justice may be achieved by the punishment of offenders through trials, social vengeance, public embarrassment, and social censure (2007: 217). Minow echoes Daly and Sarkin by noting that trials in the aftermath of mass atrocity mark an effort between vengeance and forgiveness, transferring individual desires for revenge to state bodies, facilitating acknowledgement of harms, and enabling reconstruction of impaired relationships (1998: 26).

From a critical perspective however, Woolford (2009: 11) indicates that the deterrent retributive mode of justice mostly does not help the reformation and transformation of criminals and that offenders should instead be provided with meaningful opportunities to reform themselves. Rather than using retributive measures, justice can be promoted by democracy and reconciliation via the restoration of harmony not only by addressing harm but also through education, restorative conferences and circles, counselling, and social work. This would create positive changes in human behaviour by forming relationships based on trust, mutual understanding, shared values and behaviour, and becomes a safe space for the expression of anger, rage, fear, terror, distress and anguish (Daly and Sarkin, 2007: 220). Studies suggest that we need to challenge the dominant losers-winners notion of justice that is deeply ingrained in our culture and instead strive for a win-win approach (Woolford, 2009: 11). Observations indicate that retributive justice tends to institutionalize the perpetrators therefore exposing them to greater violence, which is counterproductive to transformative restorative community integration

(Woolford, 2009: 135). In a similar observation, Daly and Sarkin note that while genuine relationships between offenders and victims cannot be restored by retribution or replaced by rehabilitation, restorative justice facilitates a conciliatory process in which offenders take responsibility for their actions, therefore empowering victims and renewing relationships (2007: 219). Similarly, Minow (1998: 40-50) observes that the failure of trials of the main perpetrators of injustices, as well as the selectivity, arbitrariness and creation of martyrs out of a few, discredits the courts and threatens any sense of fairness or rationality.

While indigenous (informal) tribunals may bridge the gaps left out by formal retributive justice, studies indicate that they are not a panacea for transitional justice either. For example, while the Gacaca courts have been at the centre transitional justice in Rwanda, they have been dismissed for making unilateral and non-participatory decisions, threatening of survivors, reduction of perpetrators' sentences, discrimination, and manipulation by the Rwandan Patriotic Front of President Paul Kagame.⁵ Similarly, other studies indicate that while the Gacaca courts have a variety of socio-cultural, economic, and psychological benefits they also have diverse weaknesses that have compromised their legitimacy. Looking at the benefits for example, the Gacaca courts are praised for various success including: economic benefits such as cost-effectiveness, accessibility, timeliness, and reduction of prison congestion; socio-cultural benefits including community ownership of the process, citizen participatory justice, open forums, social reintegration, social sanctions, and restitution; and psychological benefits including social rehabilitation, prayers and rituals, social retribution, deterrence, and restitution.⁶

⁵ The Time of Mourning: The Politics of Commemorating the Tutsi Genocide in Rwanda
https://www.gold.ac.uk/media/Ibrick_Rwanda%20Mourning_Nov2011.pdf Retrieved July 15, 2014.

⁶ Rwanda's Use of Transitional Justice After Genocide: The Gacaca Courts and the ICTR
http://www.law.ku.edu/sites/law.drupal.ku.edu/files/docs/law_review/v59/04-Westberg_Final.pdf
Retrieved July 29, 2014.

On the other side however, the Gacaca courts are widely critiqued for failing in the institution of human rights and justice. Some of the failures of the Gacaca Courts include: procedural challenges which compromise the rights of the accused; inability to find hiding and fleeing perpetrators of genocide; politicization and interference of the court process by the ruling regime; false charges of political opponents by the ruling regime; involvement of perpetrators of genocide as judges which compromised the court legitimacy; destruction of evidence that implicated the ruling regime and its supporters; involvement of judges with no knowledge of law; lack of enough time and space for the accused to defend themselves; forced participation in the Gacaca process by the ruling regime; and lack of official defense and representation of the accused which compromises fair treatment.⁷ The Rwandan victims and survivors of genocide and especially the Hutu, decry extreme impoverishment, vulnerability, and marginalization by the government that leaves them like *bapfuye buhagazi*, the ‘walking dead’⁸

Effective transitional justice should be owned up by the affected people at the grassroots and endeavor to address the expressed needs of survivors and victims of mass atrocities. This can be achieved through formulation of policies that address social economic development, equality, and justice for all, respect for human dignity, freedom of speech and expression, assurance of security for all, alleviation of fear and victimization of the ethnic others, and respect for justice and humanity. In other words, transitional justice should facilitate the implementation of inclusive and participatory policies, reforms, and activities that make a difference and positive transformation of the life of the affected target groups. As studies indicate, while tribunals often have limited success due to their disconnection from local realities (Roger, 2005), legitimate

⁷ Rwanda’s Use of Transitional Justice After Genocide: The Gacaca Courts and the ICTR
http://www.law.ku.edu/sites/law.drupal.ku.edu/files/docs/law_review/v59/04-Westberg_Final.pdf

⁸ The Time of Mourning: The Politics of Commemorating the Tutsi Genocide in Rwanda
https://www.gold.ac.uk/media/Ibrick_Rwanda%20Mourning_Nov2011.pdf Retrieved July 15, 2014.

transitional justice should ensure that the dominant discourse of global security does not compromise the needs and desires of victims of abuse (Lame, 2005). Retributive justice informs the Kenyan situation because justice ought to be done for thousands of victims of historical injustices and structural violence. However, while retributive justice focus on the punishment of the offenders, policies should be put in place to mitigate revenge and instead facilitate reconciliation, reintegration, and restoration of all the affected persons.

3.3.2 Restorative Justice

Restorative justice is defined as a “participatory practice that involves the victim, offender, and the community in resolving the harm caused by a specific crime” (Woolford, 2009: 12). It is a holistic process that includes: reconciling the harm done to a victim; restoring the offender, victim and entire community after a criminal act; and reconciling two or more disputing parties (Hurlbert and Mulvale, 2011: 19). It is also defined as a process where all parties with a stake in a particular offence come together to resolve how to deal with the aftermath of an offence and its implications for the future (Marshall, 1999: 5). However, the collective aspect is disputed by critics who argue that the parties with a stake in the offence are often not committed to the process (Ibid). Restorative justice is founded on three principles namely: (1) justice requires restoration of those who have been harmed (2) victims of harm should participate in its resolution and (3) government has a role to build, preserve, and maintain a just public order and peace (Van Ness & Strong, 2010). Restorative justice is based on four pillars, namely: embracement of participatory and inclusive conflict resolution; recognition of social problems and their root causes; the experience of agency by actively involving the target persons; and ethical practice based on doing no harm, protecting the vulnerable and creating strong relationships (Hurlbert and Greenberg, 2011: 274). Restorative justice is committed to four key values namely: (1) Encounter, (2) Amends, (3) Reintegration, and (4) Inclusion (Gerry

& Van Ness, 2007). *Encounter* entails confronting difficult and complex issues with a goal of finding a solution. Amends involves compensation or reparation for harms and losses incurred. Reintegration involves restoration of offenders back to the community. Restorative justice facilitates active participation of stakeholders in repairing harm and transforming relationships through programmes such as mediation, conferencing, circles, restitution, and community service (Van Ness & Strong, 2010). Moreover, restorative justice facilitates: the mutual healing of the victims and survivors of mass atrocities; access to social, financial, material, and emotional needs; rehabilitation and restoration of social relationships; and renewed dignity, respect, and reintegration of both the victims and the perpetrators into the community (Hayner, 2001). Restorative justice provides public spaces in which affected groups engage in dialogue, find truth, and nurture mutual understanding of the root causes of past atrocities hence creating opportunities to break the cycle of violence and facilitate mutual healing (Hutchison and Wray, 2003).

Restorative justice is different from adversarial forms of justice because it is open, participatory, empowering, satisfying and able to offer a relational healing process (Woolford, 2009: 11). Unlike formal justice, restorative justice is a social process in which justice is continually redefined and reinvented by the affected people; it is participatory, it embraces conflict, and recognizes that victims and/or offenders problems may be rooted in social problems (Hurlbert and Greenberg, 2011: 269). Restorative justice should be founded on dialogical rather than monological approaches to support critical assessments of target norms and harms and embrace mutual consensus (Woolford, 2009). Restorative justice is therefore context specific, negotiable, a living (evolving) model, and a transformative process able to provide opportunities for individuals and collectives to change their personal and social life (Sullivan and Tift, 2001:

17). While restorative justice strengthens community relationships, social capital, and new frameworks for understanding past injustices, it can also be abused by top-down negotiations or manipulative community accountability panels thereby entrenching social stigma at the grassroots (Braithwaite, 2003; Woolford, 2009: 77). Restorative justice should partially be understood as a political process because it exists in a political context; it's a form of governance and it involves negotiating competing claims of politically situated actors with diverse inclinations (Woolford, 2009: 18). However, while harm must be translated into a story to make it meaningful, trauma narratives should not be used for political manipulation as in the quasi-religious South Africa Truth and Reconciliation Commission's (SATRC) nation building project which ignored the structural problems created by apartheid and the broader socio-economic needs of its victims (Woolford, 2009: 79; Wilson, 2001; Mamdani, 2001; Acorn, 2004). Transformative restorative justice must facilitate deconstruction of arbitrary taken-for-granted economic and political interests of dominant forces, address the grievances of the marginalized groups, accommodate diversity, avoid political co-optation, forge new possibilities, and facilitate critical questioning of the status quo (Woolford, 2009: 40).

Restorative justice is not a panacea for all the shortcomings of criminal justice systems; it may be just but another form of injustice or punishment because it is founded on co-optation (Woolford, 2009; Hurlbert and Greenberg, 2011: 295). Ending a cycle of oppression requires demystifying past myths that are resistant to new narratives in order to accommodate new identities; it involves retelling and revising narratives (Daly and Sarkin, 2007: 22). Stories are necessary evils, they can heal or re-traumatize (Daly and Sarkin, 2007: 225; Hogan, 2007; Senehi, 2009). Sharing stories requires the capacity to listen and can empower former enemies to come to terms with each other's experiences (Senehi, 2009); however, the experience of

oppression may prevent people from sharing their stories for fear of re-traumatisation (Daly and Sarkin, 2007: 224). Other studies indicate that restorative justice must alter the climate of fear and provide victims and perpetrators with opportunities to recognize their common humanity through trauma narratives, social engagements, and cross-community forums (Woolford, 2009: 131). Further observations indicate that while Victim Offender Reconciliation Programs (VORP) and Victim Offender Mediation Programs (VOMP), family group conferencing, and circles cultivate ownership, they should be founded on a safe environment, adequate preparation, voluntary participation, face to face encounters, and follow up action (Woolford, 2009: 60). Woolford critiques public shaming and argues that such interventions could cause humiliation, embarrassment, and stigma, which are more typical of retributive approaches such as punishment (Woolford, 2009: 137). Instead of public humiliation restorative justice should facilitate representation, a sense of social belongingness, consultation, inclusion, affirmative action, opportunities for critical consciousness and active participation of target groups in the decision making processes (Woolford, 2009: 152). As Schirch (2004: 52) asserts, restorative justice should strive to answer some key questions such as: who has been hurt? What are their needs? Who is obligated to meet those needs? Who are the stakeholders and how can they find a solution? Restorative justice is about balance and embracement of healthy relationships, its not about restoring the former relationship but rather finding a place where justice is entrenched, maintained, and sustained (Hurlbert and Greenberg, 2011: 270). How does restorative justice inform this study?

This study indicates that many Kenyans have suffered a lot of structural violence and historical injustices in the past. Therefore, restorative justice as a journey and a transformative process should focus on addressing the expressed needs of all the affected people and at the same

time institute policy frameworks that would mitigate a relapse of such atrocities in the future. Restoration should also focus at accommodating special needs of the affected Kenyans to enable them satisfy their basic needs and life skills for sustainable livelihood. Studies indicate that apart from embracing recognition, fairness, equality, respect, and diversity, restorative justice should endeavour to empower the beneficiaries and investigate the relationship between individual problems and their social connections (Hurlbert and Greenberg, 2011: 270-271). Restorative justice binds all aspects of justice together therefore amply answering the question; what is justice?

3.4 Theories of Conflict Management and Resolution

In spite of improved knowledge in modern international conflict management methods, the 1990s have seen African conflicts become more virulent and destructive because of regional and contemporary challenges (Zartman, 2000: 4). Since human relations are abstract, formless and unpredictable, ethnic intolerance becomes challenging to manage. Therefore, ethnic social consensus based on mistrust, indifference, and fatigue leads to “social amnesia” a state of hopelessness, helplessness, and acceptance of the status quo as natural (Machira, 2010: 12). The challenge is therefore to design more effective conflict management practices that are informed by modern challenges. Conflict management should build overarching, shared identities and symbols, and provide political institutions that embrace ethnic diversities (Oberschall, 2007: 12). Conflict management should also establish an institutional framework that accommodates the conflicting interests of disputing parties in recognition of the fact that compromise outweighs any benefits that might be expected from violent confrontation (Wolff, 2006: 134-135).

While management refers to the elimination, neutralization, and prevention of conflict from eruption, cooling down a crisis in eruption, or controlling of the means of pursuing conflict, conflict resolution refers to complete elimination of the causes of underlying conflict and crisis

(Zartman, 1989: 8-9). Conflict resolution is more than the absence of war (negative peace); disputants agree to respect each other, live together through cooperation, justice, and integration (positive peace); they agree to solve their central incompatibilities and cease all violence against each other (Wallenstein, 2012: 8-10). Conflict resolution requires a win-win outcome in order for disputants to give up their demands. The following section discusses conflict management and resolution approaches including: Indigenous approaches to peacebuilding, Post-conflict reconstruction, Elicitive and Prescriptive approaches, and Human needs approaches, all of which inform this study.

3.4.1 Indigenous Approaches to peacebuilding

The role of African traditional practices in the management of contemporary conflicts should be based on their relevance, complementarity and applicability (Zartman, 2000: 9). Indigenous approaches to peacebuilding are important in conflict management and resolution because they complement dominant liberal paradigms (Faure, 2000, 161). African traditional conflict management practices are founded on a community of relationships and values which provided a reference for conduct; such practices embraced reaching out, fair treatment, equality, and reciprocity (Zartman, 2000: 224-226; Rice, 2009; 2011). Indigenous approaches to peacebuilding are unique because they: fit in situations of failed states; elicit ownership by local people; are timely and process oriented; are bottom-up, inclusive, and participatory; and accommodate psycho-social and spiritual dimensions (Boege, 2006: 11-14). Traditional approaches accommodate atonement rather than punishment in the restoration of relationships (Zartman 2000b, 222). These approaches are holistic and consensus-based (Menkhaus, 2000: 198) and are facilitated by social groups, members, gods, ancestors, and spirits all of whom are responsible and accountable to each other (Tuso, 1998, 2000; Zartman, 2000a). Conflict

management in traditional settings is community-based, highly ritualistic, participatory, spiritual, ceremonial, mutually binding and rooted in shared acknowledgement (Zartman, 2000b: 224). Rituals can be a helpful tool to assist and mark the process of transformation. They help transform people's identity from being victims of trauma to survivors of trauma. Moreover, the obligations of a ritual ensures that a peace agreement is taken seriously and that people are entering into it with honest intentions (Schirch, 2004: 54). As studies indicate, poems, murals, film, exhibitions, rituals, and novels can mediate stories as part of efforts to supplement or restore impaired communication capacities (Zeigler, 2003).

Traditional management of conflict is bottom-up and multi-level (Osaghae, 2000: 213–214); it involves interdependence and shared values (Zartman, 2000b: 226). However, critics assert that traditional approaches often contradict international human rights, are contextualized and cannot widely be applied, are oriented to the preservation of traditional order, and are open to abuse (Boege, 2006: 15-17). While traditional approaches are not a panacea for conflict management, they complement the liberal approaches and thereby nurture hybridity. Unlike western cultures, indigenous cultures perceive conflict as a communal concern; the group owns the conflict, which is mediated via third parties, and the resolution is culturally prescribed (Augsburger, 1992: 8). Therefore, “shared responsibility for the conflict becomes the basis for shared responsibility for the resolution” (Zartman, 2000: 221). The African communitarian perspective is based on the fact that the community is the custodian of values and hence community based negotiations are guided by such values in re-establishing relationships.

Justice in African traditional practices did not focus on judgement and punishment but on reconciling the conflicting parties and reintegrating the offender into the community and its norms. The council of elders that facilitated arbitration or negotiation bore collective

responsibility for the offences of their members and collectively sought binding solutions for conflicting parties. As Zartman (2000:221) asserts, African models endeavoured at reintegrating the offender back into the social fold by understanding, experiencing, and accepting his statements and performing purification rituals. Based on the offender's desire for reintegration and the society's desire for restored harmony, peace, and justice, the mediator seeks a common definition of the problem and a shared sense of justice to govern the solution towards a positive-sum agreement. African models embraced harmony as a normative goal of society whose restoration, sustenance, and maintenance was facilitated by integrative, inclusive, and conciliatory methods (Zartman, 2000: 224; Lederach, 1995). This discussion indicates that effective conflict management depends on shared values and interdependence. However, traditional approaches do not go without challenges. For example, modernization and politicization of ethnicity has broken the communitarian approach of traditional societies. Political leaders express their grievances in terms of ethnic identities and mobilize their ethnic groups as a political tool for state control (Zartman, 2000: 228). In conclusion however, if change can be grounded on communitarian values and shared responsibilities it can be more sustainable and could command ownership by the members of the community. This would help address the Kenyan ethnic challenge and nurture sustainable peace.

3.4.2 Elicitive and Prescriptive Approaches

Freedom is the indispensable condition for human completion but the fear of "freedom" which afflicts the oppressed, leads them to desire the role of the oppressor by adopting the oppressor's prescription which transforms the oppressed consciousness to conform to the oppressor's consciousness...the oppressed is adapted to the structures of domination and become resigned to it and hence unable to wage the freedom struggle (Freire, 1968: 47)

Conflict management and resolution require elicitive rather than prescriptive approaches (Lederach, 1997). Prescriptive approaches use a predefined agenda to meet predefined needs;

they are based on transferability, homogenization, and universality. In other words, prescriptive approaches constitute the cookie cutter perspectives that excludes the knowledge of locals (Lederach, 1997). Elicitive approaches are aimed at discovery, creation, and sustainability of models that emerge from contextualized needs (Lederach, 1995). Elicitive approaches respect diversity and empower local people; they are facilitative, participatory, and focus on mutual discovery (Lederach, 1995). Freire (1968: 12) proposes problem-posing education in which the commoners develop power to critically perceive their world and to resist assimilative policies and develop a cultural voice.

Conscientisation is pivotal in facilitating awareness and mobilization of local potentials (Freire, 1970). The culture of silence of the dispossessed is the product of economic, social, and political domination — “and of paternalism of which they are victims; rather than being equipped to know and respond to critical realities of their world, the dispossessed are kept in the dark through manipulative education meant to maintain the status quo” (Freire, 1968: 30). Before acquiring a positive voice, freedom requires disalienation; it is through “self-consciousness and renunciation, through a permanent tension of his freedom that man can create the ideal conditions of existence for a human world” (Fanon, 2008: 206). Education is a two edged sword; it can nurture conformity to dominant and oppressive discourses but also facilitate the freedom by which those on the periphery are empowered to critically and creatively participate in the transformation of their world (Freire, 1968: 34). An empowering education requires a dialogical practice—not just a mere conversation but an “epistemological relationship, a social process of learning and knowing which elicits epistemological curiosity” (Freire, 1968: 18). Peasants should be enlightened about social constructions that nurture oppression including language

which is often manipulated to make social inequality invisible. As Friere (1968: 20) observes, the deconstruction of the dominant ideologies of oppression is key to the freedom of the peasants.

Central to Elicitive and Prescriptive debate is the humanizing pedagogy. Dehumanization is ingrained in actions, institutions, and in the nature of colonial methods of production and exchange and because the native is “subhuman”, he is denied human rights and subjected to humiliation, poverty, and misery (Memmi, 1967: xxv). However, all human beings no matter how critically they are submerged in the culture of silence, are capable of a new self-awareness, a new sense of dignity, and a new hope if accessed to a positive-sum dialogical encounter endeavoured at critical perception of reality (Freire, 1968: 33). The deprivation of humanity through colonial apparatus of terror and hatred leads the oppressed to resign to “self-absolution” (Memmi, 1967: xxvii); the oppressed suffer self-depreciation through which they internalize oppressive dominant opinions to a level of becoming convinced of their own unfitness (Freire, 1968: 63). The struggle for humanization, emancipation and affirmation of men and women is possible only when dehumanization is not exalted but condemned as an unjust order that engenders violence on the oppressed (Freire, 1968: 44). It is only “the oppressed that can wage the struggle for a fuller humanity...who by freeing themselves can free the oppressor” (Freire, 1968: 47). Humanizing pedagogy treats both the student and the teacher as subjects in unveiling the reality, re-creating knowledge, self-discovery and genuine participation (Freire, 1968: 69). If “nationalism is not explained, enriched, deepened, and transformed into a social and political consciousness, into new humanism”, it may not address the needs of the marginalized (Fanon, 1963: xvii). New humanism is achievable via equitable distribution of wealth, moral reparation, a “right” to equitable development which embraces the racialized person who is “perceived as a threat, infection, and a symptom of social decline by the oppressive forces” (Fanon, 1963: xx).

Prescriptive approaches are heavily influenced by *colonial discourses* which perceive prescription as a tool of the oppressor that robs the oppressed of their agency (Fanon, 1963). Colonialism denies human rights to human beings whom it subdues by violence and keeps in miserable and subhuman conditions (Memmi, 1967: xxiv); oppression is “the greatest calamity of humanity...it diverts and pollutes the best energies of both the oppressor and the oppressed” (Memmi, 1967: xvii; Jeong, 2010: 12). Colonial prescriptions perpetuate a culture of conditionality, spatial compartmentalization, racial inequality, poverty, social discrimination, and victimization (Fanon, 1963: xii). Colonialism creates patriotism of the colonized in which the oppressed affirms their exclusion in national selfhood (Memmi, 1967: xxix). Oppression manifests when individuals are “hindered to pursue self-affirmation and are exploited, therefore interfering with their vocation to fuller humanity” (Freire, 1968: 47). The only cure for the pathological condition that colonization inflicts on the colonized and the colonizer alike is national liberation (Memmi, 1967: 157). In a world where oppression is “maintained by violence from above, it is only possible to liquidate it with violence from below” (Fanon, 1965: 3). The colonized revolutionary assurance stems from the discovery that “his life, his breath, and his heart beats are the same as the colonialists, that his life is worth as much as that of the colonialist” (Fanon, 1963: 10). Revolution may not have a centre but it has its own “life and a depth of unity” derived from the masses who create it, live it, inspire each other, and learn from collective experiences (Fanon, 1965: 1). Through revolution, life acquires a means to end exploitation and a new way of life; revolution breaks down the chains of oppression (Fanon, 1965: 2). As long as dominant discourses are maintained and sustained by the oppressor, the oppressed remain on the receiving end (Freire, 1968: 65). Fanon (1963: xxix) sums it up best

stating that “If the last shall be the first, it will come to pass after a murderous and decisive struggle between the two protagonists.”

Elicitive and prescriptive approaches are important in this study because they focus on emancipation, disalienation, education, and conscientization among other concepts all of which inform the oppressive and alienative Kenyan context. Kenyans need to be educated about how their rights, and how such rights have been violated in the past, and how dignity and a fuller humanity can be restored. Kenyans need to be empowered to resist the oppressive discourses in order to gain their freedom. Therefore, Fanon, Memmi, and Friere constitutes key approaches that could inform and positively help transform the Kenya situation.

3.4.3 The Human Needs Approach

The human needs approach also referred to as material based approach holds that conflicts arise due to unmet human needs. Intrastate conflicts arise from social dynamics as individuals seek to fulfil their basic needs and where power becomes a vehicle through which people gain the ability to fulfil such needs (Burton, 1997). International conflicts arise when the essential needs of ethnic, religious, ideological or national groups are threatened or frustrated. These include needs for dignity, expression, identity, meaning and purpose, safety, control over destiny, and justice – all of which are irreducible and difficult to compromise (Rothman, 1992: 46). The human needs approach maintains that peace is founded on the fulfilment of the whole array of social, cultural, and economic needs crucial to human contentment (MacGinty, 2008: 74). The human needs approach relates with identity politics in that the “deprivation of physical needs and the denial of access are rooted in the refusal to recognize or accept the communal identity of other groups” (Ibid). Relative deprivation emanating from socioeconomic or political conditions sparks competition for resources, collective action, and group mobilization among communities leading to conflict and violence (Toft, 2003: 5). Violent conflicts may also arise

due to a territorial intrinsic worth (presence of minerals and resources, infrastructure, arable land) which causes the opposing groups to use force in a bid to secure it (Toft, 2003: 6). The greed and grievance approach links protracted ethnic conflict to war economy through which the elites sustain war for profit (Berdal and Malone, 2000). Social institutions require structuring to facilitate service delivery and prevent material based human conflicts (Lederach, 1997). Home-grown approaches rather than liberal models are important in addressing the expressed local realities (Argenti-Pillen 2003; Mac Ginty, 2008). Instances of violence can be reduced by improving socioeconomic conditions, expanding education and employment opportunities, and decentralizing political power (Dayton and Kriesberg, 2009: 4). In sum, human needs approaches informs the Kenyan situation in which millions of people across the ethnopolitical divide live in deprivation and impoverishment. These approaches encourage an examination of the nature of societal institutions that regulate and possibly frustrate the fulfilment of basic needs and therefore are important in policy formulations. Policies emanating from human needs approaches would ensure that human needs are accessed to those at the periphery of the society. This would nurture satisfaction and hence the mitigation of ethnic violence that emanate from deprivations.

3.4.4 Post-Conflict Reconstruction

Social reconstruction pursues policies that encourage ethnic cooperation, equitable distribution of resources, and ethnic diversity in public institutions (Oberschall, 2007: 232; Jeong, 2005). The success of post-conflict reconstruction is dependent upon (1) the suitability of the ceasefire agreement as a framework for sustainable peace and (2) the willingness and ability of political leaders to work in good faith towards its implementation (Wolff, 2006: 175). At the political institutions level, post-conflict reconstruction embraces the restoration of law and order and an effective judicial system, an accountable government bound by the rule of law, and an

inclusive and democratic political process (Wolff, 2006: 166). Post-conflict agreement enables projects that aid the transition from war to peace, democracy, and a market economy that offers equal opportunities. This involves building acceptable, accountable, and transparent institutions that generate sustainable economic growth, civil society freedoms, and a general climate in which people trust each other, are reconciled with their troubled past, and are willing to live together peacefully (Wolff, 2006: 157). Effective post-conflict reconstruction should support the victims to cope with their traumatic past and see that justice is done or seems to be done (Wolff, 2006: 180).

Disarmament, Demobilisation, and Reintegration (DDR) and Security Sector Reform (SSR) are key in post-conflict reconstruction (MacGinty and Williams, 2009). To avoid relapse, fragile peace agreements should be accompanied by post-conflict social integration, economic development, good leadership, demilitarization, and psychosocial transformations (Dayton and Kriesberg, 2009: 5). As Gamba (2006: 55-56) asserts the manner in which the complex environment of DDR is handled “early on, in the grey period between war and peace, lies the roots of a successful transition or the making of a failed state.” Therefore, post-conflict reconstruction should access and create opportunities for affected groups including structures that can distribute them evenly (Dayton and Kriesberg, 2009: 57). DDR and SSR facilitate the transformation of former combatants through education, social and psychological support, political settlements and institutional reforms (Peters, 2007; Caplan, 2005). Key to this is conflict resolution training which targets conflict patterns and dynamics through communication skills, negotiation and mediation; capacity building programs such as skills training, small businesses, and conversion of military expenses to address human needs, research and evaluation; and long-term planning and sustainable human resources (Schirch, 2004: 57; Lederach, 1997: 47-48).

Addressing such challenges as job security; housing, education and health; safety and security; and fair allocation of resources provides occupational therapy, reduces chances of relapse of violence, reinforces trust and nurtures state's credibility in the eyes of spoiler groups⁹ (Dayton and Kriesberg, 2009).

However, DDR alone is not a panacea and must be complemented by the restoration of democratic institutions, addressing expressed grievances, and the cycle of sectarian abuse in order to alleviate uncertainties and the fear of betrayal (Keen, 2008; Lyons, 2005). The connection of financial and human capital facilitates comprehensive reintegration of former combatants and their sympathisers and deters potential threats to security (Jeong, 2005). Post-conflict reconstruction must avoid cookie-cutter liberal technologies and instead embrace contextualized *appropriate technologies* that focus on local resources and realities (Seidman and Frederick, 1992). Providing solutions to problems must not invent new gadgets, it should exploit and tap into indigenous knowledge. As Lederach (1995: 29) observes “teach people how to fish rather than give them fish and more so let them fish in their own ponds.” DDR and SSR are important in addressing the Kenyan ethnic violence in which informal armed groups such as the Mungiki, SDF, and MRC, among others, remain marginalised and impoverished at the periphery of the society.

Other theories that inform conflict management and resolution include *Federalism, Secession and Power-sharing* (Kagwanja and Southall, 2011; Osamba 2001, 2011). The normative idea behind federalism and secessions is self-determination (Kaufman, 1996: 137; Sisk, 1996: 49-53; Snyder, 2000:3 27-8). However, Oberschall (2007: 10) observes that federalism and secession face challenges because the principle of self-determination of particular

⁹ The word spoiler should be understood not as a label to a particular group, but as a behavior that undermines a peace initiative. In the Kenyan context, politicization of ethnicity by political elites can be described as spoiling.

ethnic groups may be incompatible with the principle of territorial integrity of states or other ethnic groupings. *Power Sharing* also referred to as consociational democracy (McGarry and O'Leary, 1993) could be a remedy to protracted conflicts (Doyle, 2001). Consociational principles aim to secure the rights, identities, freedoms, and opportunities of all ethnic communities, and to create political and other social institutions, which enable them to enjoy the benefits of equality without forced assimilation (MacGinty and Williams, 2009; Taras and Ganguly, 2006: 18). These theories inform the complex attempts of power sharing in Kenya, the secessionist push by the Somali in the NFD and the inhabitants of the coast, and the clamour for Majimboism by the aggrieved, marginalized, and peripheral communities across the Kenyan ethnopolitical divide.

In sum, post-conflict reconstruction may fail to achieve a stable political process due to the unwillingness or inability of elites to cooperate with the new democratic structure and/or the mismatch between the political institutions and communal aspirations (Wolff, 2006: 173). Critiques argue that unless post-conflict reconstruction succeeds in addressing underlying causes of ethnic conflict it remains a crisis management scheme trying to prevent violence or contain its spread (Wolff, 2006: 156). Post-conflict reconstruction informs conflict management and resolution in Kenya, a country where millions of adults and especially youths are impoverished and marginalized. As a result of marginalization, they result to violence in a bid to fight for justice. The formulation of restorative justice policies for the vulnerable and marginalized groups in Kenya would be key in facilitating sustainable conflict management and resolution in the country.

3.5 Theories of Peacebuilding and Conflict Transformation

Conflict transformation is to envision and respond to the ebb and flow of social conflict as life-giving opportunities for creating constructive change processes that reduce violence, increase justice in direct interaction and social structures, and respond to real-life problems in human relationships (Lederach, 2003: 14).

This section starts by introducing the concepts of *peacebuilding* and *conflict transformation*. This is followed by a discussion of selected approaches to peacebuilding and conflict transformation that inform this study. These include psycho-social approaches, integrative problem solving, and problem solving workshops. Peacebuilding developed in response to the world's most severe cases of violence including: widespread poverty; increased crime, racism, and oppression; violence against women; and wars fuelled by ethnic, ideological, and class divisions (Schirch, 2004: 8). Peacebuilding constitutes an answer to the question "what is being done about these problems?" (Ibid). Effective peacebuilding goes beyond state diplomacy; it involves addressing the root causes of problems, reconciliation, trust, and confidence building through a conflict responsive peacebuilding infrastructure (Lederach, 1997; Lederach, 2005). Effective peacebuilding facilitates resource mobilization and the revival of essential institutions that meet the basic needs of peripheral populations (Kriesberg and Dayton, 2009; Paris, 2004). For example, Schirch (2004: 63) observes that "planting the seeds of peace requires making decisions about resources required to make the dream possible, imagining who can plant the seed and nurture this dream, and proposing when, where, and how of peacebuilding." Effective peacebuilding must embrace coordinated points of contact, which involves acknowledging the multiplicity of roles, multi-level activities, and diverse strategies and approaches (Lederach, 1997: 152). Key to strategic peacebuilding is the embracement of relational skills such as active listening, self-reflection, assertiveness, creative problem solving, dialogue, negotiation, and mediation that empower people to address conflict constructively

(Schirch, 2004: 20). Peacebuilding requires envisioning positive relationships which provides the potential for breaking violence by bringing people into “pregnant moments of moral imagination, space of recognition that the quality of our life is dependent on the quality of others life, the recognition that the wellbeing of our grandchildren is directly tied to the well-being of our enemy’s grandchildren” (Lederach, 2005: 35). Peacebuilding seeks to prevent, reduce, transform, and help people recover from all forms of violence while empowering people to foster relationships at all levels of society (Schirch, 2004: 9). Therefore, peacebuilding requires a comprehensive approach to contemporary conflict, a conceptual framework that helps us to envision the overall picture and moves us towards specific action (Lederach, 1997: 152). Peacebuilding is founded on “waging conflict non-violently, capacity building, reducing direct violence, and transforming relationships” (Schirch, 2004: 26). A genuine peace must therefore address core and derivative issues, embrace win-win negotiations, create a participatory process, and focus on sustainability (Oberschall, 2007: 187; Darby and MacGinty, 2000: 7-8).

Conflict transformation on the other hand engages two paradoxes: “how do we address conflict in ways that reduce violence and increase justice in human relationships? And how do we develop a capacity for constructive interaction while at the same time addressing systemic and structural changes” (Lederach, 2003: 2). The challenge to transformation is how to create spaces that encourage people to articulate a positive sense of identity in relationship to other people, but not in reaction to them (Lederach, 2003: 56). Therefore, we need to develop a capacity to pay attention, acknowledge, understand, and address the voice of identity in order to accommodate deeply felt demands and preferred outcomes in a conflict (Lederach, 2003: 55-57). Conflict transformation involves a continuously evolving quality of relationships (Dayton and Kriesberg, 2009: 1) and requires strategies such as attitudinal change, harmonization of

perceptions, value transformation, and goal compatibilities geared towards addressing oppressive relations, reconstruction of social realities, and adjustment of human institutions (Jeong, 2010: 50-51). Transformative peacemaking is based on understanding a fair, respectful, and inclusive process as a way of life and envisioning the outcome as a commitment to increase justice, seek truth, and heal relationships (Lederach, 1995: 22). A transformational approach requires a launching platform (epicentre) which includes an understanding of various levels of conflict (the big picture); processes for addressing immediate conflicts; a vision for the future; and a plan for the change processes (Lederach, 2003: 45). Therefore, a conflict transformational approach must be short-term responsive and long-term strategic; it must be adaptive, recognizing that “conflict and change are constant but the form they take are temporary” (Lederach, 2003: 47).

Conflict transformation requires a holistic approach that focuses on social, economic and political structures of the society and addresses structural violence, injustices, and inequalities thereby facilitating reconciliation and the re-establishment of social relationships (Buchanan, 2008; Coakley and O’Dowd, 2007a). Conflict transformation facilitates trustbuilding among former disputants thereby enabling the change of attitude and perceptions about the enemy other (Jeong, 2003), as well as facilitating mutual contacts and reconciliation (Barsky, 2009: 215). Conflict transformation and peacebuilding constitute four stages of de-escalation: addressing divisive political issues; humanization and mutual acknowledgement of suffering; political representation; and celebrating the differences (Ramsbotham, 2005: 231-245). Conflict transformation broadens self-understanding, the creation of new identities, and re-perception of others as fellow human beings (Kelly, 2002). Transformative approaches address the root causes of conflicts in order to prevent relapse and also facilitate focused negotiations, development of new relationships and searches for new visions (Jeong, 2010: 41). Lederach describes conflict

transformation as a way of viewing social conflict through three lenses that empowers us to see the immediate situation, underlying patterns and context, and a conceptual framework (Lederach, 2003: 11). Therefore a transformational perspective is founded on the capacity to envision conflict positively and the maximisation of the potential for positive change (Lederach, 2003: 15). In sum therefore, conflict management and transformation in Kenya requires trusting the capacity of the system to generate options and avenues for change, pursue those that appear to hold the greatest promise for constructive change, and accommodate a multiplicity of options.

3.5.1 Psycho-social Approaches

Psychological traumas resulting from violent conflicts, humiliation, and historical injustices have lasting impacts on individuals, groups and nations (Jeong, 2005; Volkan, 2000). Trauma causes lasting physical, emotional, and/or spiritual injuries and leaves the victims with special needs and wounds (Schirch, 2004: 47). While unresolved trauma can cause fear and mistrust among former adversaries, reconciliation facilitates attitudinal changes, positive engagements and overcomes negative psychological manifestations that cause pain, suffering, and distorted identities (Hayner, 2001; Ramsbotham et al., 2005; Jeong, 2010: 214). In his *Chosen Traumas*, Volkan (1998) observes that the influence of a severe and humiliating calamity that directly affects a group creates a collective memory and a shared mental representation of the calamity. The emotional and psychological effects of violent conflicts jeopardize future relationships due to ingrained revenge motives in which “a group unconsciously defines its identity by the transgenerational transmission of injured selves infused with the memory of the ancestors” (Volkan, 1998: 48). Chosen traumas and glories are kept alive from generation to generation and are used as a rallying cry to spark new waves of violence (Volkan, 1997). A shared dilemma exhibited by victims of post-traumatic stress disorder can gradually be addressed

if sufferers “envelop their traumatized (imprisoned) self-representations (images) and externalize and control them outside of themselves” for example through advocacy, welfare, and lobbying for the rights of the victims (Volkan, 1998: 42). If traumatic mental representations and images of humiliation cannot be reversed, group members continue to “live under a large tent of victimhood” (Volkan, 1998: 47) in which traumatized self-images become “part of the group identity, an ethnic marker on the canvas of the ethnic tent” (Volkan, 1998: 45). The “work of mourning” helps victims to assimilate and adapt to a changed reality (Volkan, 1998: 36-37). Grieving enables the victims to move beyond rather than be trapped in traumatic mental images which may interfere with the completion of the cycle of mourning (Daly and Sarkin, 2007: 223). However, some mourning may not result in healing but turns into shame, guilt, and depression therefore evoking feelings of humiliation and post-traumatic stress disorder in which the trauma is re-lived (Volkan, 1998: 42).

The principles of trauma and recovery include: naming the trauma, working through emotions, finding spiritual meaning, forming meaningful relationships, re-establishing a sense of self control, and seeking the root causes of trauma (Schirch, 2004:48). Conflict transformation facilitates creative and innovative approaches for repairing, restoring, and building community capacities to overcome hatred and facilitate humanization of the other (Hayner, 2001). This process facilitates public spaces, networking, and building community bridges among conflicting parties therefore nurturing psychological transformation and the ability to deal with individual and collective trauma (Jeong, 2005; Rigby, 2001; Mani, 2002: 3-11). New relationships must appreciate a common humanity and respect for diverse identities; nurture social spaces that facilitate the expression and overcoming of grief and anger; the re-creation of social bonds through mourning and remembrance (Daly and Sarkin, 2007; Jeong, 2010: 214); and the

facilitation of cross-community contacts and rehumanization (Dayton and Kriesberg, 2009: 4). Trauma healing and recovery is aided by building relationships and reconnecting people to their own sense of self and spirituality, to other people and to the environment; it seeks physical, emotional, and spiritual healing in which people identify harm and assert their needs (Schirch, 2004: 47). The psychology of victimhood deprives people of a sense of community and self-identity; it sustains political antagonism and deep divisions derived from the mobilization of group symbols. Therefore, transformation should overcome past injustices through acknowledgement of harm, reparation, and apologies (Daly and Sarkin, 2007: 216). Hatred and fear must be overcome in order to create spaces, address grievance and prevent revenge, and encourage the reconstruction of destabilized social relationships because “recovery of lost honour and healing from emotional wounds depend on the psycho-dynamics of power relations” (Ibid). Psychosocial approaches are key in this study because they address the emotional and psychological needs of thousands of Kenyans who live in trauma, and fear, and with disabilities emanating from decades of human rights atrocities. These approaches would be key in formulating policies that would address special and expressed psychological needs of many Kenyans.

3.5.2 Integrative problem solving Approach

Effective peacebuilding and conflict transformation requires an integrated approach in order to address the complexity and diversity of conflicts (Reychler and Paffenholz, 2007) and to facilitate informed interventions (Ross and Rothman, 1999). Integrative problem solving creates an atmosphere of safety and respect, trust, integrity of relationships, remorsefulness, forgiveness, and healing (Fisher, 2001, 2005, and 2007). Such a process allows conflicting parties to address the “vicious cycle of mutual exclusiveness” therefore validating each other’s experiences and feelings (Schirch, 2004: 45-55). Within Integrative Approaches are *reflexive perspectives* in

which sustained intergroup contact transform zero-sum, “us versus them” adversarial framings into reflexive framings that address underlying needs therefore promote the idea that “we are in this together” (Rothman, 1992: 37-64). In his *Antagonistic, Reflexive, Integrative and Action* (ARIA) framework, Rothman (1992: 60-65) proposes four broad levels of interventions which could be used to analyze a conflict and induce adversaries to cooperate. The *Antagonistic Frame* constitutes the adversarial stage in which the conflict is polarized and characterized by extensive finger pointing, projection, and blaming. In the *Reflexive Frame*, disputants realize that their continued antagonism is counterproductive and identify common interests leading to resonance and mutual reflections. The *Integrative Frame* constitutes the discovery and invention that transforms the adversary into cooperation therefore facilitating mutually agreeable options. The ‘we can together’ nurtures a fertile ground of the ‘how?’ therefore opening the way for the action frame. The *Action Frame* constitutes the implementation phase in which the disputants plan what will be done, when it will be done, why it will be done, who will do it ,and how will it be done?

Using a comparative analysis of Northern Ireland and Quebec, Byrne and Irvin (2000: 41-62) uses *Social Cubism* to indicate how history, demographics, religion, economic, psychocultural, and political factors interplay to influence multi-faceted ethno-territorial politics. Byrne and Irvin (2000:55) observes that group differences, demographic patterns, and selective perceptions of disputants nurtures the feelings of vulnerable minority which makes it challenging to manage conflicts constructively. They observe that group differences, fear, and insecurity makes members of conflicting groups perceive each other as a vulnerable minorities but are at the same time viewed by others as a threatening majority therefore leading to a feeling of double minorities in need of security and recognition in their independent territorial claims (Ibid). Social

cubism facilitates the analysis and understanding of the relationship between protracted conflicts, the complex underlying factors, and hence appropriate interventionism.

In her *Convergence Framework for Critical Peacebuilding* Connie O'Brien (2007: 114-130), highlights three key considerations for effective social transformation: (1) access to holistic human needs (2) inclusive, people-driven approaches, and (3) participatory democratization processes. In a similar perspective, Rychler (2000) observes that peacebuilding is a science as well as an art and thus requires creativity for its success. Peace "architecture" facilitates (1) sustainable peacebuilding, (2) appropriate peacebuilding, (3) comparative analysis and evaluation of the peace process, and (4) roles orientation among peace architects (Rychler, 2000: 26). Rychler (2000: 27-28) identifies six guiding principles for sustainable peacebuilding: (1) a clear definition of peace; (2) assessment of available peacebuilding capacity; (3) development of a comprehensive peace plan; (4) effective implementation of a peace plan; (5) active participation; and (6) identification and dismantling of inhibitive walls to peacebuilding.

Multi-track diplomacy (MTD) constitutes another approach that informs peacebuilding and conflict transformation. Diamond and McDonald (1996:1) best describes MTD:

Like the blind man, if we feel the trunk or the tusk or the tail of the peace pachyderm, we will misperceive the true nature of this lively creature. Likewise, if we consider the animal as a whole but don't know the parts and how they each contribute, we lose the value of acquaintance with a richly complex being.

MTD is a conceptual way of viewing the process of international peacemaking as a whole elephant, as a living system. It looks at the web of interconnected parts that operate together for a common goal (Diamond and McDonald, 1996:1). Track two (unofficial diplomacy) of the MTD focuses on reducing or resolving conflict between groups by improving communication, understanding, and relationships therefore impacting on track one (official diplomacy) by preparing the groundwork for more formal negotiations (Diamond and McDonald, 1996: 2).

Track two diplomacy, however, does not cover the depth, variety, and scope of citizen involvement and hence the entrance of MTD which incorporates and defines the whole picture and consists of nine tracks namely: government (official diplomacy); nongovernmental/professional (conflict resolution); business (commerce); private citizen (personal involvement); research, training and education (learning); activism (advocacy); religion (faith in action); funding (resources provision); communication and media (information) (Diamond and McDonald, 1996:4-5). MTD nurtures collective mechanisms of networking, discussion, negotiation, decision-making, environmental action, and global citizenship (Byrne and Keashly, 2000; Diamond and McDonald, 1996). The intrasystemic relationships of various tracks of MTD informs the deeply divided Kenyan ethnopolitical divide which requires such pathways of communication, sharing of resources and opportunities in order to nurture collaborative action and mutual enrichment.

Positive Peace and Negative Peace constitutes further approaches essential in understanding peacebuilding and conflict transformation (Galtung et al., 2002; Jeong, 2000). Negative peace, which refers to the absence of war or direct violence, is pessimistic, curative, and the peace it offers is not always achieved by peaceful means (Galtung et al, 2002). Positive peace addresses structural violence therefore restoring relationships, social justice, and structures that are sustainable in which peace is achieved by peaceful means (Ibid). Positive peace is the capacity to handle peace creatively, constructively and non-violently through the entrenchment of equitable, participatory, and stable political institutions as well as economic, social, and cultural conditions that accommodate diversity (Byrne and Senehi, 2012:9; Hurlbert and Mulvale, 2011: 179). However, critics of positive peace say that it approximates to a never ending utopian wish-list that can never be fulfilled (MacGinty, 2008: 23). In sum, while this

study indicates that ethno-political conflicts are complex and are informed by diverse origins, Integrative problem solving approaches play a great role in this research because they help understand how such complexities can be solved from multidimensional perspectives. These approaches indicate important stages, processes, and networks that can be used to formulate policy frameworks and at the same time facilitate understanding and interventionism in situations of complex conflicts.

3.5.3 Problem solving workshops

Problem Solving Workshops [hereafter PSW] (Burton, 1969) also known as interactive problem solving (Kelman, 1982) or third party consultations (Fisher, 1997; 2001) provide a space for persons who unofficially represents the disputants to interact in a process of “collaborative analysis” of the problem at hand (Lederach, 1997: 46). The atmosphere of PSW facilitates change in perceptions and attitudes, and generates new ideas and creative solutions that informs the decision making process. PSW creates a space for adversaries to: talk to each other; gain insight about the other’s fundamental concerns, priorities, flexibilities, structural and psychological challenges; develop greater awareness of changes, possibility for changes, and ways of promoting positive change; learn about the importance of gestures, symbolic acts and meaningful actions in the problem solving relationship Rothman (1992: 30). PSW constitutes “informal week-long meetings of the representatives of parties in protracted, deep-rooted, and frequently violent conflict in an informal, often “academic setting that permits the re-analysis of their conflict as a shared problem and the generation of some alternative course of mutually acceptable actions, new options and self-sustaining resolutions” (Lederach, 1997: 46-47). PSW seeks to broaden participation in the process, deepen analysis of the problem and mostly involves middle-range leadership (opinion leaders) because of their knowledge to the conflict, proximity

to key decision makers, and ability to influence decision (Ibid). These workshops constitutes politically safe spaces for floating and testing ideas, encouraging interaction, and development of mutual relationships. For example, PSW facilitated spaces for key Middle-East negotiations including: the 1978 Israel-Egypt Camp David agreement and Peace Treaty, the October 1991 Madrid-Middle East Regional Peace Conference, the Oslo Palestinian-Israeli Track II unofficial communications, the 1994 Israel-Jordan Peace Treaty, and the 2005 Israel withdrawal from the Gaza Strip (Kaufman and Hassassian, 2009). Therefore, while PSW are not guaranteed to end frozen conflict they open up spaces for negotiations, ceasefire, and de-escalation of violence. PSW are therefore key in peacebuilding and conflict transformation in Kenya and can be used by opinion leaders to facilitate cross-community interactions, mediation, seminars, conferencing, and hence impact positively on peacebuilding and conflict transformation.

PSW are also informed by the works of Rothman (1992) and Lederach (2005). In his *Moving from confrontation to cooperation* Rothman (1992: 22-23) identifies four types of dialogue efforts: the *positional approach* characterised by deaf dialogue, the blame game, and an adversarial relationship; the *human relations approach* in which disputants breakdown fears and stereotypes and develops new trust and friendship, improved understanding, and a sense of partnership; *the activist approach* in which disputants use political platforms to popularise their own agendas through policy perspectives and education; and the *problem solving approach* in which adversaries engenders creative joint solutions for their conflicts. In his *Moral Imagination*, Lederach (2005: 5) wonders: “How do we transcend the cycles of violence that bewitch our human community while still living with them?” He observes that transcending violence is forged by the capacity to generate, mobilize, and build a moral imagination. A moral imagination embraces the belief in the existence of possibilities about moving beyond pessimistic beliefs in

the intractability of conflict (Lederach, 2005: 38). Imagining peace is a participatory methodology that identifies the gap between experienced peace and imagined peace and that encourages affected communities to think critically about the quality of anticipated peace. Imagining peace accommodates local opinions on idealised versions of peace (Mac Ginty, 2008: 97); it is the capacity to imagine and generate constructive responses that while rooted in destructive patterns, transcend and ultimately break their grips (Lederach, 2005: 29). PSW are important in this study because they constitute forums in which disputants or their representatives can meet and share their experiences. Such forums are key in the deeply divided society of Kenya because they can help in demystifying stereotypes in the creation of new relationships based on new understandings.

3.5.4 Conclusion

In this discussion various theories that inform ethno-political violence, transitional justice, and peacebuilding were presented. First, theories of ethnic conflict relate conflict to complex and diverse identity issues including, cultural givens (Primordialists); an asset for manipulation (Instrumentalist) mythical stereotypes (Constructionist) and the melting-pot (Assimilationists). Theories of ethnic conflict endeavour to address the meaning, implications, and solutions to such conflicts in a bid to facilitate inclusive confidence building measures, policy and institutional reforms, and a sustainable political transition (Van Der Merwe, 2009). Positive structural change can be supported by policies that show connections between social, cultural, political, economic, and ecological factors and ensuing ethno-political conflicts (Ibid). Second, retributive and restorative theories of transitional justice indicate a complex relationship between the rule of law and transitional justice in post-conflict societies. This study indicates that place-based approaches of transitional justice facilitate local engagement and ownership of the process and broader understanding of justice based on indigenous priorities and practices (Wilson, 2001;

Merry, 2006; Goodale, 2006b; Shaw, 2007). Third, conflict management and resolution theories including indigenous approaches to peacebuilding, post-conflict reconstruction, storytelling, elicitive and prescriptive approaches and human needs approaches constitute guiding formula that facilitate understanding, diagnosis, and informed interventionism in conflict situations. These approaches assist in finding the answers to such questions as: What is the conflict? What is the cause of the conflict? When did the conflict begin? Why is it a conflict? Who defines it as a conflict? Who is affected by the conflict? What is the meaning of the conflict to the affected groups? (Furlong, 2005: 2). This study further indicates that practitioners need models, conflict maps or “conceptual road map” that details why a conflict is occurring, barriers to settlement, and procedures to manage or resolve disputes (Moore, 2003:58). Fourth, peacebuilding and conflict transformation approaches including psycho-social approaches, integrative problem solving and problem solving workshops indicate that strategic peacebuilding and conflict transformation should embrace right values, the ongoing analysis of conflict, address the basic needs and rights of all, focus on long-term planning, transform whole systems, coordinate approaches and actors, empower disputants, embrace culture as a resource, and nurture innovation and creativity (Schirch, 2004: 79-80). Peacebuilding and conflict transformation approaches strives to answer these questions: “what kinds of changes and solutions are needed? At what levels? Around which issues? Embedded in which relationships?” (Lederach, 2003: 38-39). These approaches facilitate: violence reduction; the restoration of broken relationships; personal and systemic opportunities for transformation; the holistic embracement of justice, forgiveness, and reconciliation; and social empowerment (Lederach, 1995: 22-23). From a critical perspective however, the knowledge and practice of these theories may not be a panacea for peace. In his *Resentment's Virtue* Brudholm discusses the inadequacy of each possible

response to collective atrocities (2008: 6-7). He advocates for a complementary, all-inclusive process in which disputants are actively involved in sustainable reconciliation and peacebuilding. An international database on public policy and best practices based on theories discussed in this chapter could facilitate the prescription of peacebuilding policies and hence informed future interventionism.

4.0 CHAPTER FOUR: METHODOLOGY

4.1 Introduction

The purpose of this study is to explore the perception and/or experience of participants about ethno-political violence, transitional justice, and peacebuilding in Kenya. This study was carried out in Kenya between March and June 2012. The study covered all the eight provinces in Kenya. A total of 101 people participated in this study. The participants included: civil society organizations; public servants; opinion leaders representing the youth, religions, political parties, and women; bystanders, victims, and perpetrators of ethno-political violence; representatives of marginalised communities; and representatives of all ethnic groups across Kenya's ethno-political divide. Study participants were interviewed in their homes, work places, restaurants, schools, public spaces, among other places. This section discusses research methodology. A methodology constitutes a systematic, theoretical analysis of methods used to inform a particular field of study (Iriny and Rose, 2005). A methodology strives to answer questions relating to what, when, where, how, why, and who of a study? In this study qualitative interviewing and storytelling/narratives were used. The content of this chapter includes: the rationale for the use of interviews and narratives/storytelling as qualitative methodologies in this study; the scope of the study describing the study area and the study population; sampling procedures, recruitment processes for study participants, and access to study population and study area; the role of the researcher in this study; pilot testing done to authenticate the research instruments used in this study; data collection methods and the instruments used in this study; personal limitations and biases in this study; data collection procedures; and, data analysis.

4.2 Rationale for methodology

4.2.1 Narrative/Storytelling

Remembering out aloud, naming out events constitutes one of the most important ways to recover senses, a way of recovering identities—to tell a story saves the teller from oblivion, because the story builds the identity of the teller and the legacy that he or she will live for the future. In the midst of adversity the tellers' voices enable the reconstruction of contemporary history. Collective remembrance is one of the many ways to acknowledge that events did happen, that they were unjust, and that they must not happen again (Gonzalez, 2009:295).

The above quote illustrates the powerful nature of narratives/storytelling as qualitative methods in transitional justice studies. There are different types and forms of narratives, including biographies in which the researcher writes and records the experiences of another person's life, autobiographies which are written and recorded by study subjects (Casey, 1995/1996; Creswell, 2007), life histories which portray an individual's entire life, personal experience stories which constitutes the individual experience found in a single or multiple episodes (Denzin, 1989a, 2000), and oral history which consists of personal or group reflections on events and their causes and effects (Plummer, 1983). In this study, respondents were encouraged to feel free to use any form of narrative/stories that best described their perceptions and/or experiences about ethno-political violence, transitional justice, and peacebuilding in Kenya. In the following section, strengths and weaknesses of narratives/storytelling in transitional justice studies will be discussed.

One risk of storytelling occurs in the "transgenerational transmission of conflict" (Volkan, 2000; Wamwere, 2008) when adults project their feeling of enmity, anger vengeance, and trauma onto children (Klain, 2009; Oyugi, 2003). Children model themselves after their elders and inherit the conflict, attitudes, and motivations as if they were transmitted via "psychological DNA" (Klain, 2009: 259). Youths inherit hatred, and hatred breeds vengeance

where new generations mourn the past and undertake to avenge the losses and humiliation suffered by their ancestors. Memories and emotions of glories and traumas are kept alive through narratives/storytelling, poetry, songs, celebrations, festivals, and unconscious psycho-social forces (Klain, 2009; Volkan, 2000; Druckman, 2005). The transgenerational transfer of conflict was witnessed during this study too. Some of the respondents narrated how their children and youths were subjected to ethnic stereotypes, stigma, and prejudice by other children, youths, and adults, including teachers. An example of some of the stereotypes include: “Are you Kibaki people?”¹⁰ “We do not eat fish, it is for the animals from the lake”¹¹ “Your people are uncircumcised, they cannot lead this nation.”¹² “The Kalenjins are the reason why we are in IDP camps.”¹³ “The greedy and money loving animals from the mountain should not lead this country.”¹⁴ These stereotypes happen in school, church, public places, restaurants, public transit, in the neighbourhoods, among other places. The respondents in this study indicated how continued socioeconomic and political marginalization for example in terms of people inaccessibility to basic needs, services, and opportunities have contributed to an inter-generational sustenance of such stereotypes. This study provided a space for the respondents to narrate those experiences and perceptions hence offering an opportunity for timely intervention by policy workers and other actors in transitional justice and peacebuilding processes. Narrative/storytelling can elicit reflex reactions among disputants by bringing back memories of ancient wars, destruction of sacred or historically significant buildings and monuments, and

¹⁰ Kibaki is a Kikuyu and served as the third President of Kenya. Kikuyu’s are usually dismissed as gluttonous.

¹¹ The Kikuyu ethnic group refers to the Luo ethnic group who live around Lake Victoria as the animals of the Lake. The two tribes have traded animosity since independence due to socioeconomic and political marginalization of the Luo by the Kikuyu. Their children have inherited and projected hate onto the enemy others.

¹² Traditionally Luo’s are not circumcised. Circumcision is an important rite of passage for the Kikuyu, who believe in leaders from uncircumcised ethnic group. These beliefs have been adopted by Kikuyu children

¹³ The 2008 post-election violence led to a massive displacement of Kikuyu by Kalenjins from the Rift Valley. The adults have made the children inherit hatred and mistrust towards the Kalenjin

¹⁴ The Kikuyu are the most enterprising ethnic group in Kenya. However, they are dismissed by other ethnic groups as greedy and unfit to rule.

campaigns that threatened ethno-cultural, linguistic, or spiritual annihilation (Senehi, 2009). In conflict societies, narratives keep alive memories and emotions associated with them. Commemoration of past glories and traumas define and reinforce disputing groups' identities often in terms of "us" versus "them"— stories and other historical transmitters are used to socialize children, transmit ancient enmities to subsequent generations, and keep animosities alive (Carter et al., 2009; Wamwere, 2008). The distortion of old stories and the fabrication of new myths can intensify ongoing ethnopolitical conflicts. For example, in pre-genocide Rwanda, German and Belgian colonialists and Missionaries used the myths of Tutsi superiority to their own advantage (Batsinduka, 2009). In a bid to revert the "Tutsification process", Hutus introduced a new narrative by re-writing Rwandan history books, and infusing them with horrific and false stories of Tutsis enslavement and mistreatment of Hutus (Ibid). These stories were transgenerationally transmitted hence fuelling the Hutu's sense of victimisation and desire for vengeance, and therefore escalating animosities and violence (Batsinduka, 2009). In Kenya, colonial preferential policies favoured the loyalists and marginalized the opposition, a situation that was inherited and perfected by ethnic postcolonial legacies (Wamwere, 2008; Oyugi, 2003; Munene, 2001). While respondents in this study still hold onto the old narratives based on ethnic stereotypes and prejudice, they also have new narratives that can be adopted and implemented to facilitate transitional justice and peacebuilding in Kenya. For example, respondents in this study believe that historical injustices and grievances can be addressed through: ensuring peace, security, and safety for all Kenyans without discrimination; positive socialization; justice, equity, equality, and fairness; formation of national ideologies and identities; good leadership and governance; socioeconomic empowerment; and institutional and constitutional reforms. Such

narratives of hope and optimism can erase the oppressive dominant narratives of pessimism and otherness to help foster transitional justice and peacebuilding in Kenya.

Storytelling/narratives have their strengths too. Apart from fuelling transgenerational animosity, they can also be used for post-trauma healing and intercommunal reconciliation efforts (Carter et al., 2009). In this study for example, respondents narrated how participatory theatre techniques could be used to create mutual engagement and understanding between disputants by helping them sit and reason together in a bid to reconcile and transcend the cycle of violence. In post-conflict societies people need to “share their stories and heal from the past” (Byrne, 2009: 212). Storytelling can facilitate a safe way to express the pain and loss suffered and it constitutes a non-confrontational way for the former enemies to hear and internalize how they hurt each other (Senehi, 2009). Storytelling encourages inclusion, honesty, shared visions, and critical self-awareness all of which contribute to conflict transformation. Stories can foster understanding, empathy, and engender changes of heart (Byrne, 2009); they can un-demonize enemies, reduce prejudices, end stereotyping, reduce animosities, and create goodwill by shedding light on the “intangible dimensions” of ethno-political conflicts (Senehi, 2009:227).

Stories allow groups to share their ingrained identities, perceptions, and attitudes about “who they are, where they have come from, and where they are going” (Ibid). Such conversations provide a forum and create spaces for former adversaries to describe their experience, develop shared understandings, and build relationships based on trust (Byrne, 2009: 212-224). Storytelling facilitates “healing through remembering” and satisfies the paradoxical needs of moving on (forgetting) and honouring (remembering) the past (Senehi, 2009, 227-36). Storytelling has a binding power — it gives voice to all actors in ethno-political conflict resolution (Senehi, 2009). Listening to stories together: builds bonds and closes chasms of

conflict; builds community and raises disputants' consciousness; increases the willingness to resolve conflicts and inspires participation in collaborative reconciliation and reconstruction projects (Ibid). Storytelling imparts important lessons about resisting domination, sharing "power with" as opposed to having "power over" and making joint meanings (Ibid, 2009). Consequently, disputing parties are empowered to craft new narratives, shared visions and a peaceful future. A forum for new voices and alternative ideas emerges and grows. Storytelling taps into indigenous knowledge, cultural diversity, and reconciliation techniques which "trickle up" to inform senior actors about the importance of acknowledging the complexity of ethno-political conflicts, transforming intercommunal relationships, remembrance, and social justice, as well as forgiveness (Koro-Ljungberg and Greckhamer, 2005; Senehi, 2009: 227-236; Lederach, 1997). In this study, the stories and narratives from the respondents named and remembered aloud historical injustices that exist in the Kenyan society and the means of addressing such injustices. Respondents narrated how the unemployment of hundreds of thousands of youths has rendered them hopeless, helpless, and despondent after which they are labeled "outlawed groups" or terrorists. Respondents narrated how IDPs have been displaced from and dispossessed of their land and properties and subsequently reduced to beggars living in camps of despair and desperation. Political elites are described as selfish, corrupt, and self-centred. This study gave the respondents an important forum to empty their hearts and minds concerning structural violence and injustices entrenched in Kenyan society, their effect, and possible interventionism. If adopted, this study can help opinion leaders and other stakeholders to address the expressed needs of the respondents.

Narratives allow transitional justice mechanisms to undertake a much broader inquiry towards broad truth recovery and reconstruction of a comprehensive history of conflicts (Hayner,

1994, 1999, 2001; Minow, 1998). Oral sources are valuable not only because they make up for the lack of documentation but also because they allow us to penetrate other levels of interpretation, which do not appear in written history and often contradict current accepted interpretations (Gonzalez, 2009). Narratives constitute a set of perceptions, including reality and imagination, symbolism, feelings, human passion—the subjective aspects, which are much more significant than the collection of facts (Ibid). Memory, testimonies, and oral traditions are necessary sources for extending the evidence and are irreplaceable in contexts where oral cultures are the main means of producing and transmitting knowledge (Gonzalez, 2009). The narratives of life rescue not only the historical facts themselves but also the ways the subjects of history perceived them. It is in this divergence that we find the real and the imaginary symbolic feelings—the subjective aspects that are more significant than simple account of facts (Clandinin and Connelly, 2000; Ponce, 1998).

Oral narratives constitute the point of view of ordinary people; they give a voice to the voiceless, allowing them to bear witness to their own history and therefore providing a more accurate reconstruction of the past while challenging the established order (Thompson, 1988). However, it is possible for the oppressed to suffer self-depreciation in which they internalize their oppression as natural (Freire, 1968: 63). For example, some respondents could only open up completely upon assurance or knowledge that I as the researcher was not an accomplice of the hegemonic government or that I meant well for them. The deconstruction of the dominant ideologies of oppression is key to the freedom of the peasants (Freire, 1968: 20). While voices of the oppressed may be compromised by the hegemonic template in order to maintain the status quo, this study presented a neutral forum in which the respondents could freely express themselves without fear. Ending a cycle of oppression should endeavour at demystifying

oppressive narratives which are resistant to new narratives in order to create spaces for new identities. The process to embrace the complexity of our experience depends on how we tell, listen and revise narratives (Daly and Sarkin, 2007: 225). Narratives helps researchers to capture ‘history in the process’, understand the ‘micro sociology’ of power and interpersonal relationship that inform us about the ‘why’ of human decisions and actions (Thompson, 1988).

Stories provide colour, texture, and give life to historical graphics in written documents that emanate from dominant discourses that are constituted by deforming filters and mediated in a manner that ignores the expressed needs of the subordinate groups (Gonzalez, 2009). Narrative studies gives life to individual histories, a future of self-definition, the penetration of people’s social and historical complexity, and allows construction of a more complete, rich, and dynamic tale (Thomson, 1988). A narrative is a living thing; it is always a work in process, in which the narrator reviews the image of her own progress (Ibid). Narratives/stories assist the informants to express their natural ways of structuring and expressing their ideas or memories, their evocation of the past and the freedom of their memory (Gonzalez, 2009). This facilitates recording the past, making sense of it, and offering the victims not just a repetition of their own words of suffering but an explanation of why and how such terrible events came about (Cherry, 2009). Narratives present factual and moral truth that tell what happened, why it happened, and who is responsible, hence “narrowing the range of permissible lies” (Hayner, 2001: 25).

At this point, it would be important to provide supportive evidence of success stories of storytelling/narratives. In Northern Ireland, a place characterised by decades of protracted violence between the Catholics and the Protestants, storytelling has been instrumental in providing spaces within which people build relationships and connects with each other (Senehi, 2009). In Northern Ireland, storytelling has nurtured the social construction and production of

meaning, shared power (“power with” as opposed to “power over”), de-silencing of experience, sharing knowledge, breaking of stereotypes, and articulation of identity and understandings (Ibid: 228-229). Studies indicate that storytelling in Northern Ireland has facilitated interpersonal relationships, conflict mitigation, relaxation, reflection, and unthreatening context at all levels of negotiations which motivated the stakeholders to get more engaged in the peacebuilding process (Senehi, 2009:230). Storytelling in Northern Ireland nurtured a space of safety, respect, openness, and inclusion which facilitated mutual understanding, interpersonal interaction and sustainable bonds within the community. Another example of a success story about storytelling/narratives is that of Macedonia a country where children born since 1991 were socialized and grew up blinded and restricted to the knowledge of “us and them.” Search for common grounds (SFCG), a conflict prevention and conflict resolution NGO ventured in Macedonia in 1991. During the 1999-2004 Macedonian conflict, SFCG launched digital/electronic storytelling through “Nashe Maalo”, a children TV, aimed at teaching intercultural understanding, cultural awareness, and conflict prevention and resolution skills (Tongeren, 2005:189). The main assumption of SFCG was that, “with so little contact across the ethnic divide, children perception of their own country and its people were based on stereotypes, misinformation, or simple ignorance” (Tongeren, 2005: 190). Increasing children knowledge on cultural diversity of their country was based on the assumption that “if negative attitude derive from negative knowledge, positive knowledge should stimulate positive changes in the audience beliefs and attitudes. Preventing conflict with the ‘other’ was predicated on better understanding of the ‘other’, thereby averting the potential escalation of conflict based on misunderstanding” (Tongeren). In other words, it was hoped that children who watched Nashe Maalo would no longer view the “other” as strange, threatening, less worthy, or someone to be viewed with

suspicion, but rather that the “other” would be viewed as someone who might be different , but who shared common bonds of citizenship and membership in a common society” (Ibid, 2005:190). In the long run, digital storytelling in Macedonia contributed to behaviour change which in turn impact on social interactions and positive social dynamics in the Macedonian community. By 2004, a field survey indicated that Nashe Maalo was the most widely recognized TV in Macedonia which greatly influenced the change of behaviour and attitude and promoted mutual understandings and hence sustainable peace in Macedonia.

In sum, narratives/storytelling as used in this study provided the respondents with an important forum that helped them to narrate what could not have otherwise been possible elsewhere. Once the trust was developed and assurance made all respondents from all walks of life, including politicians, whistle-blowers, youths, IDPs, the clergy among others, opened up with a lot of passion and love for their country, expressing hopes that their information would contribute to the welfare of Kenya. When the respondents were asked to answer the study questions in the form of a narrative or a story they became emotionally and physically connected to the past, the present, and the future; sometimes they seemed to remove themselves from the physical and communicate in the spirit or the subconscious. The content of the narratives and stories were rich, powerful, and connected with the expressed needs of the respondents.

4.2.2 Qualitative Interviewing

Away from the positivist generalization of variables and testing of a hypothesis, qualitative research facilitates validation of data in which the respondents are provided a space to communicate their experiences, feelings, and thoughts fully (Cuevas and Rojas, 2009). In this study qualitative interviewing was used to gather data about the Kenyan ethnic problem and possible remedies from the respondents. The research was through the use of twelve semi-structured questions outlined later in this chapter. The respondents were asked one question at a

time and allowed to freely give their answers. When necessary, questions were asked in different ways to facilitate understanding. At the root of in-depth interviewing is an interest in understanding the lived experience of other people and the meaning they make of that experience (Seidman, 2006). Therefore, interviewing is motivated by an interest in other people's stories, a process that makes storytelling a meaning making process. Stories told during the interviews constitute details of experience from people's consciousness. It is this process of selecting constitutive details of experience, reflecting on them, giving them order, and thereby making sense of them that makes interviewing important in transitional justice studies. Interviewing is a tool of research that requires skills beyond those of ordinary conversation; it is a philosophy and an approach to learning guided by a researcher; an intentional way of learning about people's feelings, thoughts, and experiences (Rubin, 1995). This study provided a space for the respondents to tell stories or narrate their experiences and/or perceptions about protracted ethnopolitical violence, transitional justice and peacebuilding in Kenya. My interest in respondents' stories and narratives motivated them to open up about historical injustices, their needs, hopes, and fears. Qualitative interviewing gave the respondents the freedom and a forum in which to air their views therefore bridging the gaps of the freedoms and forums that were denied, violated, and compromised elsewhere in society.

Interviewing as a qualitative research method has numerous strengths. Interviewing represents the very heart of what it means to be human — the ability of people to symbolize their experience through language (Seidman, 2006). This is important in transitional justice studies because to understand human behaviour means to understand the use of human language. The very guiding themes of qualitative interviews are characteristic of its strength and relevance in transitional justice studies (Rubin and Rubin, 1995). Interviewing focuses on understanding

culture— the special and shared meanings of members of a group (Hummel, 1991; McCall, 1990). While culture is about how people interpret the world around them, by developing shared understandings, giving people the rules of operating in their world, interviewing facilitates the deconstruction of cultural taken-for-granted realities (Schultz, 1967); it is like asking the fish to describe the water in which they swim in (Rubin, 1995). Since cultural assumptions are embedded in the language that people use, interviewing facilitates recognition and the exploration of words and their rich connotative or symbolic meanings (Ibid). In this study, respondents came from diverse backgrounds of a multicultural society. Care was taken to ensure that the interviewing process was accommodative of all study participants. For example most interviews were carried out in English and Swahili, which are the formal and national languages respectively. However, respondents who could not use either of the two languages used their ethnic languages in which an interpreter was used to translate. It was useful to learn the cultural values and norms of various communities, including greetings, prayers, sitting arrangements, and general conduct, before entry into the cultural setting. This helped in the accessibility, creation of rapport, and allowed respondents to speak freely.

Qualitative interviewers are not neutral, distant, or unemotionally uninvolved actors, but active participants in an interviewing relationship (Rubin and Rubin, 1995). Interviewing facilitates humour, empathy, and emotions, which are important tools for research and which impacts on both the researcher and the participant (Ibid). Qualitative interviewing assists one to find out about what others feel and think about their worlds; it facilitates understanding of experiences and the reconstruction of events in which one did not participate (Rubin and Rubin, 1995). Through hearing and learning, interviewing facilitates the extension of intellectual and emotional reach across time and space therefore helping to explain how and why culture is

created, evolves, and is maintained (Ibid). It is vital to provide a safe space that allows victims of mass violence to talk about what happened, what is happening now and how they understand and experience the past. Interviews assist in the reconstruction of a life history emanating from extreme violence and human rights abuses, thereby opening up a space for the subjects to share feelings that have been denied or suppressed (Gonzalez, 2009). Interviewing accommodates active listening, interest, attention, and interpretation of words, phrases, gestures, looks and means of expression and it constitutes establishing sincere dialogue through which healing and transitional justice are possible (Gonzalez, 2009). As an emotional actor in this study, care was taken to ensure that humour, empathy, and emotions of different kinds were controlled in order to contribute positively to the end result. In various cases, respondents could break down in tears as they narrated historical injustices and humiliations such as displacements, disinheritance, dispossession, and loss of their loved ones and properties in the course of ethno-political violence. In such cases, participants were informed about the availability of counselling and guidance resource centres to which linkage and referral could be facilitated for emotional support. Active listening, assurance, encouraging gestures, and a show of interest in respondents' stories was very helpful in ensuring the success of the interviewing process.

Qualitative interviewing focuses on hearing data, thus enabling the understanding of the contextualized meaning which forms a basis for empowering participants (Rubin and Rubin, 1995). It facilitates what Geertz (1973) refers to as "thick description"—the ability to listen and hear the meaning, interpretations, and understandings that give shape to the worlds of the interviewees, rooted in the interviewees' firsthand experiences. Qualitative interviewing allows us to share the world of others, to find out what is going on, why people do what they do, and how they understand their worlds (Rubin and Rubin, 1995). This forms the material that

researchers gather up, synthesize, and analyze as part of hearing the meaning of data and in facilitating interventions. On a critical note however, it is argued that it is never possible to understand another individual perfectly, because to do so would mean entering into their stream of consciousness and subjective understanding and experiencing what they experience (Schultz, 1967). Consequently, it is important to recognize the limits of our understanding of others, while still striving to understand them through their actions (Ibid). In this study for example, while I as the researcher could not completely understand the subjective meaning of the respondents' stories and narratives, I could tell when they told the truth due to the emotions that run through the process.

Interviewing facilitates access into the context of people's behaviour thereby providing a way for researchers to understand the meaning of that behaviour. In in-depth interviewing, it is assumed that the meaning people make of their experience affects the way they carry out that experience (Blumer, 1969). While people's experience can be understood by examining personal and institutional documents, interviewing goes a step further by facilitating the understanding of the meaning people make of their experience (Seidman, 2006). Interviewing is thus helpful for understanding the subjective meaning as exhibited in transitional justice studies due to its ability to create bridges into the worldviews of the participants and in deconstructing the meaning of their symbols and metaphors (Seidman, 2006; Schultz, 1967). To understand what people say, interviewers need to pay attention to the symbols and metaphors with which people describe their worlds, hearing the taken-for-granted assumptions of interviewees and trying hard to understand the experiences that have shaped these assumptions (Rubin and Rubin, 1995; Schultz, 1967). In the course of the interviewing process, respondents could invoke symbols and metaphors that connected to their identities. These included symbols and metaphors of sacred

trees, mountains, community leaders, land, freedom, supernatural beings, among others. The emotions related to the loss of such symbols through historical injustices was interpreted as a source of great humiliation and as a root cause of protracted ethnopolitical violence in Kenya.

Interviews facilitate social advocacy in which researchers engage with social problems using information, explanations and theories that are grounded in the details, evidence, and examples from the field (Rubin and Rubin, 1995). As critical social researchers, interviewers are committed to explore, discover, understand, reveal and act on social problems (Ibid). For example, feminist researchers are committed to the problems of dominance and submission as they affect women. While quantitative approaches restrict participants to yes-or-no options, qualitative interviewing allows *talking back* as a political act (Hooks, 1989) that gives a voice to those who have been silenced. Interviewing facilitates learning about others in which understanding is obtained from what the conversational partner says and from the relationship between the researcher and the interviewee (Rubin and Rubin, 1995). The information from the respondents in this study has been used to formulate a grounded approach for conflict transformation, peacebuilding, and conflict resolution in Kenya. This is in respect to the fact that the expressed needs of the respondents if addressed and implemented facilitates ownership and sustainability of the peacebuilding process.

The ability to interpret the understandings of others' worldviews is a great strength of interviewing. The interpretive approach enables the emergence of meaning through interaction unlike in quantitative research that dismisses the significance of context by standardizing questions and responses, thereby leaving little room for participants' voices (Rubin, and Rubin, 1995). Qualitative interviewers are interpretive social scientists committed to understanding how people understand their worlds and how they create and share meanings about their lives (Rubin

and Rubin, 1995). Interpretive interviewing facilitates figuring out what events mean, how people adapt, and how they view what has happened to them and around them. The interpretive feature of interviewing accommodates the complexity of human life, time and context as important aspects of a constantly changing world (Ibid). The interpretive social researcher examines meanings that have been socially constructed and consequently accepts that values and views differ from place to place and from group to group (Rubin and Rubin, 1995). Interviewing as a qualitative method accommodates the diversity of realities in the social world (Rubin and Rubin, 1995). This is based on the fact that there is not one reality out there to be measured but a diversity of realities; objects and events are understood differently by different people, and those perceptions are the realities that social science should focus on (Ibid). To reconstruct and understand the interviewees' experiences and interpretations, interpretive researchers seek rich and thick descriptions of cultural and topical arenas that they are studying and try to develop an empathetic understanding of the world of others (Geertz, 1986). In this study, the diversity of social realities in terms of perceptions and experiences of ethno-political violence, transitional justice, and peacebuilding in Kenya have been accommodated. In the data presentation and analysis chapters the social realities of respondents have been incorporated into major themes that have been used to formulate a grounded approach that informs the Kenyan ethno-political challenge. If adopted, the grounded approach could address the Kenyan ethnic challenge.

Interviewing has its own weaknesses too. For example, interviewing takes a great deal of time and resources (Seidman, 2006). The researcher has to conceptualize the project, establish access, and make contact with participants, interview them, transcribe data, work with the materials, and share the learned lessons (Ibid). While quantitative research is dismissed for turning humans into numbers (Seidman, 2006), there are serious moral issues involved in

qualitative research. For example, interviewing is challenged for turning people into subjects so that their words can be appropriated for the benefit of the researcher (Seidman, 2006). Interviewing is thus viewed as a form of exploitation (Patai, 1988). Research should not be used by people in power in guise for reforms or for the fulfillment of researcher's personal advancement and thus participants should receive an equitable share of the benefits of research (Ibid). It is important for the researchers to answer the big question: research for whom, by whom, and to what end (Seidman, 2006). However, in a critical rejoinder, qualitative research cannot be dismissed as exploitative when all the ethical concerns have been addressed and when the study participants willingly and without coercion accepts to be part of the research process.

Another weakness of interviews is the inability to discern the validity and reliability of the data gathered through interviewing:

How do we know that what the participant is telling us is true? And if it is true for this participant, is it true for anyone else? And if another person were doing the interview, would we get a different meaning? Or if we were to do the interview at a different time of the year, would the participant reconstruct his or her experience differently? Or if we had pieced different participants to interview, would we get an entirely dissimilar and perhaps contradictory sense of the issue at hand? Interviewing is thus challenged on issues of validity, reliability, and generalizability that researchers confront (Seidman, 2006: 23)

Interviewing is critiqued as blurring with advocacy due to its inherent efforts of finding solutions to people's problems (Forester, 1983; Thomas, 1993). It is challenging to separate the researcher and the researcher roles (Adler et al., 1986). While interviewing is based on the premise of learning about the world of others, the real understanding may be elusive and even when the interviewer may seem to be speaking the same language the words they use may have different cultural connotations and subjective meanings (Rubin and Rubin, 1995). It is argued that the depth of understanding required to do qualitative interviewing makes it difficult for a qualitative researcher to remain value free or neutral towards the issues raised (Bowman et al., 1984).

However, the strengths of interviews exceed weaknesses. While these criticisms abound, qualitative interviewing remains a powerful means of accessing social realities from the respondents. While the issues of reliability, validity, and generalizability may not be fully realized, qualitative interviewing opens spaces, forums, and freedoms in which the respondents are able to express themselves fully without caveats. The content of the end product is more powerful, richer, sustainable, and it commands the ownership of the respondents. This means that the end product if implemented could more adequately address the expressed needs of the target beneficiaries.

4.3 Scope of the Study

This study covers all the eight provinces of Kenya, namely Central, Coast, Eastern, Nairobi, North Eastern, Nyanza, Rift Valley, and Western, to ensure the accommodation of the voices from all 42 ethnic groups that are distributed across Kenya. The initial plan was to have twenty respondents from each of the eight provinces adding up to a total of 160 participants sampled out of 40 million Kenyans. However, due to time and space only 101 respondents were interviewed, translating to thirteen participants per province in five provinces and twelve participants per province in three provinces. The participants included: civil society groups and public servants; opinion leaders representing youth, religions, political parties, and women; bystanders, victims and perpetrators of ethno-political violence; representatives of marginalised communities; and representatives of all ethnic groups in Kenya. For the purpose of gender inclusion, the final study population constituted approximately an equal representation of males and females i.e. fifty men and fifty one women drawn from across the Kenyan ethno-political divide. The purpose for the incorporation of all the above outlined regions and groups in this study was to ensure representation, accommodation, and inclusion. Transitional justice, conflict resolution, and peacebuilding is more likely to be embraced, sustainable, and long lasting if the

expressed needs, grievances, and concerns of all target groups are addressed. The accommodation of all groups and regions also helps one to understand ethnic stereotypes that are ingrained across the ethnopolitical divide which further assists in nurturing new narratives of peace and harmonious living. It is important to point out that to a limited scale or in a few occasions the area of origin seemed to affect how the study participants recommended about the way forward for peacebuilding, conflict resolution and transformation in Kenya. Two examples can be sighted. First, the respondents who advocated for the secession of the coastal region from the rest of the country are coast residents. The historical injustices and marginalization that they have suffered since independence including unfulfilled promises by post-colonial regimes as discussed in the context chapter have motivated them to agitate for secession. Second, most of the respondents who advocated for Majimboism or federalism are the supporters of the Orange Democratic Movement who have suffered political marginalization by the ruling Jubilee Alliance. However, in general, most of the study responses were not influenced by the origin of study participants. All that the majority of the respondents wanted was a united, harmonious, and peaceful Kenya where everyone's expressed needs are satisfied.

4.4 Sampling Procedures, Recruitment, and Access

Stratified and purposive sampling and snowballing were used to select the participants of this study. Stratified sampling ensured the representation of all study strata constituting the eight provinces of Kenya. Purposive sampling facilitated coming up with equal numbers of principle/key informants selected from each of the eight strata and representing the gender, ethnic, cultural, religious, and political diversity of each province. While the initial key informants and primary contact persons in each province ranged from one to three persons, snowballing was used to acquire new leads for principle informants. The sampling procedure was carefully administered to ensure that the final study population was representative of gender,

race, sex, class, religion, geography, ethnic groups, political parties, and other sectors constituting the diversified face of Kenya. Full explanation about the nature of the research and the expected roles of the respondents was done through one on one briefings. Potential participants were also informed that participation in the research was completely voluntary and that participants were free to disengage at any time if they so desired. All the youths involved in this study were over 18 years of age and are considered adults in the Kenyan context and thus required no consent from their parents. The initial group of key informants were recruited through emails, telephone calls, letters, visitation and referrals. Access was possible through an introduction letter from the University of Manitoba, an introduction letter from the Ministry of Education in Kenya, community gatekeepers and their agents. Participants were met via scheduled appointments at agreed venues and times. Appropriate venues were chosen to facilitate confidentiality and a productive interviewing process.

4.5 The Role of the Researcher

As a researcher, my role was that of an independent interviewer. I explained to the potential study participants about their roles in the study. I also asked them about their expectations and in response explained the limits of the study. We read the ethical rules and regulations together and each participant stated they understood and accented to the interview process. I ensured that the study participants were recruited knowingly, willingly, and without coercion. I conducted the interviews, probed, and explained technical terms to facilitate understanding and the active participation of each person. Understanding was also enhanced by repeating and/or asking questions in different ways, using Swahili, the national language of Kenya, English, the formal language of Kenya, or some of the other forty-two ethnic languages of Kenya, nine of which I am conversant with and others which required the use of local interpreters. A key advantage during my study was my prior experience with Kenyan ethnic and

cultural diversity, having been born, raised, and educated in the country up to the bachelors level. Another advantage as a researcher was that, though I studied masters in Germany for my master's degree, I flew to Kenya for my master's research in the multicultural sprawling slums of Kibera in Nairobi. During my master's research, I was able to interact with individuals and groups representing Kenyan ethnopolitical diversity in the cosmopolitan slums.

4.6 Pilot Testing

Pilot testing was done on the first day of my field study. Prior to the pilot test I took a day to train, update, and answer questions from my two research assistants about the content, process and objectives of the study. I also explained to them their roles as research assistants, which included helping in taking notes, reviewing interviews, and planning ahead. The research assistants were graduate students in the college of humanities and social sciences who had a good understanding about research. A great advantage of having both research assistants is that they were Kenyans by birth and understood the foundation of my study. The pilot test was gender inclusive and involved four adults including two youths. The pilot tests were done confidentially in a central venue in Nairobi. Two of the tests were completed in the morning session while the other two were done in the afternoon. Each of the four pilot test sessions took approximately one hour. The pilot tests involved asking each respondent the twelve study questions one at a time. The participants were given time to respond to each question as fully as possible. The purpose of the pilot test was to establish the utility and dependability of the research questions in terms of eliciting responses that addressed my research topic. The pilot test also helped to establish whether the respondents understood the research questions in their primary form or whether there was a need to re-structure the questions to facilitate better understanding. I assessed the respondents' understanding by gauging the compatibility of their

answers to the study questions. It was much like mathematics: One would expect $1+1=2$; so if someone indicates that $1+1=3$ then as a researcher I would know that there is lack of understanding in the concept of additions. In such a case, I endeavoured to reframe the question in a different way to facilitate understanding. After the pilot testing, it was established that all questions brought forth responses that addressed the key research questions. The pilot study indicated no immediate need for re-structuring any of the study questions. However, there were a few instances during the pilot testing that the reframing of some of the questions was done to facilitate better understanding of the issue by study participants in order to help them make informed responses.

4.7 Data collection method and instruments

Qualitative interviewing was used as the primary data collection method. The data collection instruments consisted of twelve semi-structured and open-ended questions. These questions were meant to elicit responses that relate to thematic areas that form the core of this research and were designed to help achieve the purpose of this study which is: “to explore the perception and/or experience of participants about ethno-political violence, transitional justice, and peacebuilding in Kenya.” Therefore, the purpose of this research constitutes the backgrounds from which the research questions were formulated. In this study, audio recording was used after permission was sought and granted by individual respondents. A total of 900 pages of transcribed data were done. To preserve the identity of the respondents’, pseudonyms were used. No respondent shared a name with another, therefore if “David” is quoted a number of times in different sections in the course of data presentation and analysis, it is the same “David.” Data was transcribed verbatim which ensured the preservation of originality. Qualitative interviewing allowed the use of observation to compliment the spoken word and relate the spoken words to bodily expressions, feelings, and attitudes. The main research question used in this study reads:

What are your perceptions and/or experiences about ethnopolitical violence, transitional justice, and peacebuilding in Kenya?

To obtain further information that addresses the main research question and the purpose of this study, the following probing questions were used.

1. *What is your perception and/or experience about the root causes of ethnopolitical conflicts in Kenya?*
2. *How can the root causes of ethnopolitical conflicts in Kenya be addressed?*
3. *How can trustbuilding be nurtured across the ethnopolitical divide in Kenya?*
4. *What is your perception and/or experience about peace and sustainable peacebuilding in Kenya?*
5. *What is your perception and/or experience about justice in the Kenyan context?*
6. *What is your perception and/or experience about the Truth, Justice and Reconciliation Commission of Kenya as a form of transitional justice?*
7. *What is your perception and/or experience about the International Criminal Court as a form of transitional justice in Kenya?*
8. *What is your perception and/or experience about Indigenous approaches to peacebuilding as forms of Transitional Justice in Kenya?*
9. *What is your perception and/or experience about giving testimonies, forgiveness, and amnesties?*
10. *How can healing and recovery from past humiliation, trauma, and historical injustices be achieved?*
11. *What should be the way forward for transitional justice and sustainable peacebuilding in Kenya?*
12. *What are your greatest hopes and your worst fears for your future and the future of your country?*

4.8 Personal Challenges, Limitations and Biases

A handful of challenges were experienced in the course of this study. First, the two computer software for data analysis i.e. Atlas.ti and HyperResearch did not function as expected. After about two months of unsatisfactory trials, the idea of using computer software for data analysis was abandoned and manual analysis was adopted. Second, various applications for the funding of the field research were unsuccessful. Therefore, the field research was independently funded and was faced with a lot of financial constraints. Improvisations on transport, accommodation, and food were made to facilitate savings. Third, due to the large volume of data collected, the transcription and analysis of 900 pages of data was tedious, expensive, and time consuming.

It is always challenging to avoid research bias, especially when dealing with emotive issues arising from a multi-ethnic society like Kenya where the researcher is affiliated and identifies with some groups. This was felt especially when I interacted with victims of ethno-political violence from the Kikuyu tribe to which I belong, who were living in deplorable conditions in IDP camps having been dispossessed of their properties and displaced from their homes. Feelings of bias were also felt when I interacted with the chest-thumping and self-confessed perpetrators of ethnic violence who were un-remorseful and uncommitted to transitional justice mechanisms. While the researcher's bias could not be avoided, it did not affect the outcome of the study; neutrality was maintained in all circumstances. This means that all the data collected remained in its original form and was not affected by my own inclinations. Also, sampling procedures were inclusive of the ethno-political diversities irrespective of their affiliations and inclinations. In other words, as a researcher, I remained non-judgemental and non-condemnatory of the study participants irrespective of their social, ethnic or political leanings, feelings, and perceptions.

4.9 Data Collection Procedure

The data collection procedure involved making appointments with the target respondents, explaining their roles and the content of the interview. This procedure helped in preparing the field time schedule. Before the beginning of every interview, there were brief self-introductions and engagements in informal chatting. This was meant to build rapport with the respondents; an important step towards relaxation and warming up before getting the ball rolling. Each interview took approximately one hour. After every day of interviewing, the activities and challenges of the day were reviewed with the help of my research assistants and recorded in my field notes. The agendas for the consecutive interviews were also set.

4.10 Data Analysis

Data analysis was done manually when after two months of trying out two computer software: *HyperResearch* and then *Atlas.ti* failed to get good results. For example a computer software cannot detect when respondents use different terminologies to refer to similar concepts or when the use of similar themes is not systematic and/or consistent. As a researcher, all my data is well known to me and I have a strong attachment to it. Therefore, it was discouraging when a computer software gave results that were not reflective of the reality experienced in the field. Therefore, manual data analysis ensured that important details were not left out. Coding was used in my data analysis in order to identify key thematic areas which arose inductively and that informed the core research question and hence the purpose of this study. The research questions used in interviewing partially informed the categories of codes and themes used in this study. As Bogdan and Biklen asserts; “Particular research questions and concerns generate certain categories” (2007: 173). The responses of participants to the research questions address these thematic categories which also relate to and inform the theories used in this study. Therefore, the theoretical framework in this study is both inductive and deductive. Inductive or

top-down (based on theories) because it partially started with broad themes such as ethnopolitical violence, peacebuilding and conflict transformation, transitional justice, and conflict management and resolution that formed the framework of the research topic. Deductive or bottom-up (grounded in experience) because some of the theories and the proposed solution in this study are derived from the responses of the study participants. The coding categories generated from the research questions in this study include: causes of ethnopolitical conflicts; addressing or managing ethnopolitical violence; trustbuilding; sustainable peacebuilding; justice; Truth, Justice and Reconciliation Commission; testimonies, forgiveness, and amnesties; trauma, healing, and recovery; the International Criminal Court; Indigenous approaches to peacebuilding; the way forward; and people's hopes and fears. Due to the high volume of field data (900 pages), data analysis and presentation constitute three chapters of approximately thirty to forty pages each. Each of the three chapters constitutes a major theme derived from one or several of the twelve questions outlined below:

The first data Chapter reads:

The Root Causes of Ethnopolitical Violence in Kenya (The Kenyan Challenge)

This chapter is derived from the following research question:

1. *What is your perception and/or experience about the root causes of ethnopolitical conflicts in Kenya?*

The second data Chapter reads:

Peacebuilding, Conflict Management, and Resolution (The Kenyan Solution)

This chapter is based on the following four questions which basically focus on peacebuilding, conflict management, and resolution.

2. *How can the root causes of ethnopolitical conflicts in Kenya be addressed?*
3. *How can trustbuilding be nurtured across the ethnopolitical divide in Kenya?*

4. *How can sustainable Peacebuilding be nurtured across the ethnopolitical divide in Kenya?*
5. *How can justice be nurtured across the ethnopolitical divide in Kenya?*

The third data chapter reads:

Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)

This chapter is derived from the following seven questions which basically focus on transitional justice, reconciliation, and conflict transformation:

6. *What is your perception and/or experience about the TJRC as a form of transitional justice?*
7. *What is your perception and/or experience about giving testimonies, forgiveness, and amnesties in the Kenyan context?*
8. *What is your perception and/or experience about the ICC as a form of transitional justice in Kenya?*
9. *What is your perception and/or experience about indigenous approaches to peacebuilding as forms of transitional justice in Kenya?*
10. *How can healing and recovery from past humiliation, trauma, and historical injustices be achieved?*
11. *What should be the way forward for transitional justice and sustainable peacebuilding in Kenya?*
12. *What are your greatest hopes and your worst fears for your future and the future of your country?*

The table below summarizes how the probing questions link to the three major thematic areas and theoretical approaches used in this study:

Table 2. Ethnopolitical violence, transitional justice and peacebuilding in Kenya: Linking research questions, central themes, and corresponding theoretical approaches

	Research Questions	Key thematic areas	Major theoretical frameworks
1	What is your perception and/or experience about the root causes of ethnopolitical conflicts in Kenya?	The Root Causes of Ethnopolitical Violence in Kenya (The Kenyan Challenge)	Theories of ethnic conflict (Instrumentalist and Constructionist)
2	How can the root causes of ethnopolitical conflicts in Kenya be addressed?	Peacebuilding, Conflict Management, and Resolution (The Kenyan Solution)	Theories of conflict management and resolution (Indigenous approaches to peacebuilding, post-conflict reconstruction, Elicitive & prescriptive approaches and human needs approaches)
3	How can trustbuilding be nurtured across the ethnopolitical divide in Kenya?	Peacebuilding, Conflict Management, and Resolution (The Kenyan Solution)	Theories of conflict transformation and peacebuilding (psycho-social approaches, integrative problem solving and problem solving workshops)
4	What is your perception and/or experience about peace and sustainable peacebuilding in Kenya?	Peacebuilding, Conflict Management, and Resolution (The Kenyan Solution)	Theories of conflict transformation and peacebuilding (psycho-social approaches, integrative problem solving and problem solving workshops)
5	What is your perception and/or experience about Justice in the Kenyan context?	Peacebuilding, Conflict Management, and Resolution (The Kenyan Solution)	Theories of conflict transformation and peacebuilding (psycho-social approaches, integrative problem solving and problem solving workshops)
6	What is your perception and/or experience about the TJRC of Kenya as a form of transitional justice?	Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)	Theories of transitional justice (retributive and restorative justice)
7	What is your perception and/or experience about the ICC as a form of transitional justice in Kenya?	Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)	Theories of transitional justice (retributive and restorative justice)
8	What is your perception and/or experience about Indigenous approaches to peacebuilding as forms of Transitional Justice in Kenya?	Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)	Theories of transitional justice (retributive and restorative justice)
9	What is your perception and/or experience about giving testimonies, forgiveness, and amnesties?	Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)	Theories of transitional justice (retributive and restorative justice)
10	How can healing and recovery from past humiliation, trauma, and historical injustices be achieved?	Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)	Both Theories of transitional justice and Theories of conflict transformation and peacebuilding
11	What should be the way forward for transitional justice and sustainable peacebuilding in Kenya?	Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)	Both Theories of transitional justice and Theories of conflict transformation and peacebuilding
12	What are your greatest hopes and your worst fears for your future and the future of your country?	Transitional Justice, Reconciliation and Conflict Transformation (The Kenyan Future)	Both Theories of transitional justice and Theories of conflict transformation and peacebuilding

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4.11 Conclusion

This chapter discusses the methodology used in this study. The chapter begins by justifying the use of narrative/storytelling and interviewing in my research. In this chapter we learn that while stories can evoke “the trans-generational transmission of trauma”, “destructive collective memories”, and conflict (Volkan, 2000; Senehi, 2009) they can also facilitate post-trauma healing and intercommunal reconciliation (Carter et al., 2009; Byrne, 2009; Senehi, 2009). Qualitative interviewing helps respondents to communicate their experiences, feelings, and thoughts (Cuevas and Rojas, 2009; Seidman, 2006) shared meanings (Gonzalez, 2009) and to deconstruct taken-for-granted cultural realities (Schultz, 1967; Rubin, 1995). However, interviewing is critiqued for being costly (Seidman, 2006), for turning humans into objects (Seidman, 2006), and for its inability to discern validity and reliability (Seidman, 2006). Interviewing is also seen as a form of exploitation (Patai, 1988).

This research involved 101 participants who represented the cultural and ethno-political diversity of the Kenyan society. Stratified, purposive, and snowballing sampling procedures were used. Recruitment and access were facilitated through introductory letters from the institutions of learning, the ministry of education, and community gatekeepers. My main method of research was interviewing. Being a citizen of the target country and having a command of nine local languages was an added advantage. The implementation of this study will benefit conflict transformation, transition justice, and peacebuilding in Kenya. This study complied with all ethical issues relating to human subjects. Pseudonyms were used to identify respondents for confidentiality purposes. A pilot project was conducted to ensure dependability of the research instruments which included twelve semi structured and open ended questions. Audio recordings were used to collect information from 101 participants producing 900 pages of transcribed data.

While personal biases could not be avoided, they did not affect the outcome of the study. Data was analysed manually after experiencing the non-dependability of computer software. Due to the high volume of data, this study constitutes three data chapters of 35 to 40 pages in length.

5.0 CHAPTER FIVE: THE ROOT CAUSES OF ETHNOPOLITICAL VIOLENCE IN KENYA (THE KENYAN CHALLENGE)

5.1 Introduction

This is the first of the three data analysis and presentation chapters. The chapter discusses the responses of the study participants to the field question outlined below:

1. *What is your perception/experience about the root causes of ethnopolitical conflicts in Kenya?*

The respondents had varying experiences and/or perceptions pertaining to the root causes of ethnopolitical violence in Kenya as summarized in Table 3 below.

Table 3. The Root Causes of Ethnopolitical Violence in Kenya¹⁵

Percentage of Respondents	The Root Cause of Ethnopolitical Violence
35	Colonial and post-colonial legacies of leadership and governance
25	Historical Injustices
15	National Ideologies and Identities
15	Institutional and Constitutional Crisis
10	Formal, Informal, and Civic Education

In terms of colonial and post-colonial legacies of leadership and governance, 35 percent of the respondents decried the abuse of leadership and governance and the rule of power as the key precipitating factors for protracted ethnopolitical violence in Kenya. Another 25 percent of the respondents insist that historical injustices constitute the main causes of ethnopolitical violence. Some of the historical injustices mentioned by the respondents relate to socioeconomic and political inequalities, as well as land issues relating to displacement, distribution, and resettlements. About 10 percent of the respondents relate ethnopolitical violence to formal,

¹⁵ It is important to illustrate and provide an explanation of how the responses from the study participants were categorized in order to arrive at percentages in various tables presented in the data analysis chapters. In the Table above, each of the 101 study participants gave one or more answers to the outlined question. For example 25 participants indicated that the root cause of ethnopolitical violence is historical injustices. To get their percentage, I divided 25 (those who gave this particular answer) by 101 (total participants) multiplied by 100 (to get percentage); i.e. $(25/101 \times 100)$ which is equal to 24.75 percent and rounded to 25 percent. It is important to note that a participant may be in more than one category or even in all five categories above.

informal, and civic education in which various forms of education are used to alienate, stereotype, or marginalize some segments of the society. National ideologies and identity issues are cited by 15 percent of the respondents as causative factors of ethnopolitical violence. The last category, comprising another 15 percent of the respondents, relates protracted ethnic violence to institutional and constitutional crisis. The issues are discussed in more detail here below.

5.2 Colonial and Post-Colonial Legacies of Leadership and Governance

The colonial administration used preferential treatment to divide and rule the Kenyan people, which nurtured a preferential system that placed the privileged loyalists at the centre and the disgruntled, marginalized and disloyal people at the periphery. This situation continued in the post-independence era, leading to grave power imbalances and continued resentment, antagonism, and protracted violence in pursuit of justice (Rothchild, 1997:6). As Thomas, a 45 year old opinion leader from a minority ethnic group asserts:

The scramble for Africa left us divided; it affected the voice of unity. We inherited the constitution as a political ideology, as an extension of neo-imperialism and neo-colonialism. Any leader who opposes western ideologies such as democratization is labelled a dictator who deserves to die...Colonial and post-colonial regimes made us believe that we are all different. Colonial preferential education and infrastructural development benefited some regions making them have a head start while others lagged behind. Post-colonial regimes exacerbated disparities and inequality especially in land distribution and resettlements. Kenyans fought colonialism as a family, but the fruits of independence are being enjoyed by a few while others are condemned to socioeconomic and political oblivion, leading to a sense of ethnic betrayal, mistrust and tensions.

The post-colonial regimes nurtured colonial compartmentalization of the centre and the periphery, giving rise to the emergence of a black class of bourgeoisie who ripped the resources of the country and further marginalized the disadvantaged peripheral ethnic groups (Rothchild, 1997: 9). Instrumentalist perspectives indicate that systematic discrimination and marginalization breed resentment, radicalization, bitterness and rebellion and hence protracted ethnopolitical conflicts and violence (Petroska-Beska and Kenig, 2009). As Emily, a 50 year old leader of a

community based organization observes, ethnic animosity in Kenya could be attributed to the colonial preferential system of administration:

The whites capitalized on our hospitality and illiteracy to sign treaties...using divide and rule, they rewarded the loyalist with employment, leadership, education, and power while stereotyping, marginalizing, and punishing the opposition. The perception of us versus them was born and later inherited and adopted by post independent political elites. Ethnicity is a political tool used for the benefit of political elites and their ethnic supporters. If you mention Kibaki you are touching on a Kikuyu, if you touch Kalonzo you are against the Kamba, if you mention Raila, then it is the Luo and so on.

The above quotation reflects Constructionist approaches in which mythical stereotypes of *us versus them* are used to justify the violence against the enemy others (Petroska-Beska and Kenig, 2009: 8-28). However, while the above observations could be true, colonialism cannot be blamed entirely for the Kenyan ethnic curse. Many other countries, such as Malaysia and Singapore, were colonised and achieved independence at the same time as Kenya but managed to develop and overcome the ethnic challenge (Kuruville et al. 2002; Page, 1994; Yew, 2000). What did these countries do that Kenya did not? Nyerere, the first President of Tanzania successfully condemned tribalism, corruption, and encouraged religious tolerance (Ibhawoh and Dibua, 2003; Yang, 2008). Today, Tanzania is a model of good leadership and governance compared to many other African countries. The challenge of Kenyan leadership and governance is perhaps better expressed by Daniel, a 63 year old community leader from North Eastern Province in his contribution below:

Since independence politicians have played an ethnic card to divide this nation along ethnic lines. Our politicians inherited and adopted the colonial divide and rule now used by political leaders to benefit their own ethnic groups. Kenyatta uplifted the Kikuyu and pushed non-compliant ethnic groups to oblivion. Moi's 24 years rule demonized the Kikuyu, targeted their business empires, and rewarded his semi-literate Kalenjins with public service jobs. When Kibaki took power, he sacked the semi-literate Kalenjins from public service and surrounded himself with Kikuyu advisors. The atrocities committed by Kenyatta and Moi are perceived to have been committed by their ethnic groups. In 2007, Raila played the ethnic card to set the other tribes against the Kikuyu. He used an analogy

of a snake that wants to eat the eggs of democracy that were about to be hatched and urged the marginalized ethnic groups to either kill the snake or face oblivion.

Daniel's assertion again borrows from Constructionists who take communities as construction sites, in which identities are nurtured, moulded, reinvented, and reconstructed (Hubbard et al., 2002). Constructionists argue that individuals and groups are active agents of identity formation through a continuous process of social interaction (Cornell and Hartmann, 1998). The Kenyan challenge is to replace the ethnic card with the nationalism card. Ethnic leaders enforce ethnic group identity by entrenchment of a system of costs and benefits that coincides with either conformity or non-conformity; like in the *prisoner's dilemma*, collective choices are determined by costs and benefits (Kimenyi, 1997: 36). To end ethnic conflicts we must embrace multi-ethnic nationalism and collective humanity founded on the belief that all ethnic communities are equal, and that all citizens must share a common home, resources, and freedom equally since exploitation, oppression, and degradation of anyone anywhere is a negation of our common humanity (Wamwere, 2008: 260-261). But as Robert, a 65 year old Muslim religious leader asserts, the Kenyan ethnic challenge could be rooted in unresolved historical issues:

During the Lancaster constitutional conference of 1960-1963 a number of issues were never resolved including the northern frontier and the coastal strip...the coastal strip was the property of the sultanate of Zanzibar...since this was a very strategic area for independent Kenya, the British government purchased it to become part of the British protectorate and potentially part of independent Kenya. The coastal people were to be given title-deeds and carry on with their cultural activities but people from up country took over the land, businesses, and jobs at the coast leading to the emergence of rights movements. In northern Kenya, the Somali wanted to secede to Somaliland because of historical and cultural reasons, an issue that was dismissed by Kenyatta leading to the 1966/67 Shifta war. Independence saw systematic displacement of people from their ancestral areas and the unfair distribution of land.

While the state is "the organized machinery for making and carrying out political decisions and for enforcing the laws and the rules of the government," the state should embrace and facilitate

distinct leadership roles, rules of social interaction, and the identification and satisfaction of collective needs (Danziger, 2005: 113). A threat to a “homeland” is a threat to identity which can be a source of deep-seated fears and reactions (Atakol, 2009). Constructionists hold that the driving force for identity formation constitutes mythical fabrications and stereotypes related to structural and historical injustices such as land dispossession, humiliation, exploitation, enslavement, and annihilation (Batsinduka, 2009). However, while secession and federalism could play a key role in eliminating ethnic differences or the management and resolution of protracted conflicts, it may be challenging to agree to such demands because the principle of self-determination of a people may be incompatible with the principle of territorial integrity of states (Oberschall, 2007:10; Kagwanja and Southall, 2011; Osamba 2001, 2011). The Kenyan ethnic challenge has been exacerbated by skewed power-sharing, as Benedict a 47 year old member of parliament from the Coalition for Reforms and Democracy asserts:

Actually, the 2007 ethnic violence started in 2003 with the betrayal of the NARC revolution when Kenyans got rid of Moi and voted in Kibaki. Despite great expectations, the MOU to change the constitution in 100 days was betrayed by Kibaki’s PNU, which was part of the coalition government. Kibaki’s PNU and cabinet made unilateral decisions and side-lined other coalition parties. Perceived as arrogant betrayers, the Kikuyu-dominated government was further implicated in major financial scandals. Also the unilateral appointment of the electoral commission by Kibaki’s hardliners: a commission that helped him rig the 2007-2008 Presidential election. All this precipitated the violence.

Why has consociational or power sharing governance failed in Kenya? The post conflict reconstruction approach indicates that consociational democracy aims to secure the rights, identities, freedoms and opportunities of all ethnic communities, and to create political and other social institutions which help them to enjoy the benefits of equality without forced assimilation (McGarry and O’Leary, 1993: 36; Kagwanja and Southall, 2011; Osamba 2001, 2011). On the contrary, NARC was used as an instrument to benefit some ethnic leaders and their communities

while marginalizing others in terms of sharing resources, opportunities and services. As instrumentalists reminds us, ethnic groups are interest groups while identity is a resource evoked for collective mobilization (Cornell and Hartmann, 1998). The Kenyan challenge could perhaps be addressed by an overhaul of the executive, judiciary and the legislature, as Alexander a 63 year old community leader from Central Province asserts:

We need to pursue the implementation of the new constitution, the separation of powers between the executive, judiciary, and legislature.... How do you explain a case where the President is above the law and controls the attorney general at will? Presidentialism has corrupted our justice; the arms of government serve the interest of the presidency. The framework of our justice system is good, but the way it is used is bad; sometimes the courts and judges abuse their office by obeying orders from above. People who peddle drugs, those who wreck our economy are protected by the law. We need an overhaul in all arms of the government.

While Alexander's observation is genuine, the overhaul of Kenyan governance is challenging because the colonial and postcolonial regimes facilitated the integration of ethnic groups through coercion. Therefore, the African nation state neither embraced institutional arrangements that define the relationship between ethnic groups nor represents a social contract that advances liberty and freedom, which explains protracted ethnopolitical violence (Kimenyi, 1997: 45). The above discussion indicates that colonial and post-colonial legacies have contributed significantly to ethnopolitical violence in Kenya. How do we move forward? The answer to this question is best summed up by Nasong'o and Murunga (2007: 4), who assert that true democracy is founded on institutional guarantees including: (1) freedom to form or join organisations; (2) freedom of expression and movement; (3) universal adult suffrage; (4) eligibility to seek public office for all; (5) free and fair political competition; (6) free access to information; (7) free and fair elections; (8) accountable social, public, and political institutions; and (9) freedom of political opposition.

5.3 Historical Injustices

According to study participants in this research, the land issue, socioeconomic inequality, inequity, and unfairness constitute major structural issues, historical injustices, and grievances that cause ethno-political violence in Kenya. These are discussed in more detail below.

5.3.1 The Land Issue

Land ownership in Kenya is a great source of identity. However, colonial and post-colonial displacements, the disproportionate allocation and distribution of land led to the dispossession of the ancestral land belonging to some ethnic groups, the most affected being the Kikuyu, Kalenjin, Giriama and the Maasai (Ahere, 2012:27-40). As Mercy, a 36 year old director of a local peacebuilding initiative asserts, this behaviour nurtured resentment and violence:

Traditionally, the Kalenjins inhabited the Rift Valley province while the Kikuyu inhabited the white highland in the central province. When the British came, they displaced the Kalenjins and the Kikuyu from their land and settled them in concentrated camps. After independence, Kenyatta and his powerful elites inherited the white highlands leaving the Kikuyu landless. Even though you could prove that your grandfather was buried there, you had no right to the land because the disinheritance was supported by a paper, a title deed. The headache was where to resettle the Kikuyu. Moi allowed Kenyatta to settle the Kikuyu in the Rift Valley in exchange of the vice Presidency. This spelt political oblivion for Kalenjin politicians who feared the growing Kikuyu population. After Kenyatta's death Kalenjin politicians fueled Kikuyu eviction for fear of their growing population and political supremacy. This culminated in ethnic animosity between the two communities.

In his theory of indivisible territory, Toft (2003: 1) observes that no matter how barren, no territory is worthless if it is a homeland. Constructionists hold that a territory is not only a divisible, quantifiable object but also an indivisible and romantic component of a group's identity (Ibid). The Kenyan land issue is complex and can easily be understood in this sequence: (1) most ethnic groups lost their land through colonial displacement; (2) post-colonial elites grabbed the former colonial settlements; (3) those in the concentration camps did not have anywhere to return to; (4) some ancestral lands including vast sections of the Kalenjin Rift

Valley lay vacant because those displaced had not returned; (5) the post-colonial regime redistributed land and awarded title deeds without considering the original owners; (6) some ethnic groups bought land on a willing seller willing buyer basis outside their ethnic regions; (7) the end result was double ownership of land with some ethnic groups claiming ancestral roots and others claiming government resettlement or private purchase; and (8) the ethnicization of politics resulted to ethnic violence and the evictions of the “enemy others.” This complexity is partially explained by Patrick, an 80 year old son of a former Mau Mau freedom fighter in the following observation:

Kenyatta gave out land to Kikuyu in the Rift Valley without consulting the indigenous populations. But some Kikuyu bought land from Kalenjins but at throw away prices only for the latter to realize they were cheated. Moi rallied the Kalenjin in the Rift Valley against the Kikuyu using stereotypes, “you need to remove these Madoadoa” (stains or patches). He also said that one day; the donkeys will pass the horses meaning the Kalenjin will take over from the Kikuyu. Moi sowed the seeds of hatred and animosity between the Kalenjin and the Kikuyu. He said that he will *Fuata Nyayo* (follow the footsteps) of Kenyatta whose legacy benefited the Kikuyu and sidelined other tribes. Ironically, this meant he was to benefit the Kalenjin at the expense of the Kikuyu and other non-supportive groups. The land problems have nurtured a class revolution, a justice revolution, and the uprising of militias such as the Mungiki in central Kenya, Kalenjins in the Rift Valley, the SDLF in western Kenya, and the MRC at the coast comprising of marginalized ethnic groups. This is because land is sacred to every ethnic group in Kenya and must be defended at all costs.

Constructionists purport that ethnicity derives from common remembrances of past experiences which when in contact with negative contemporary socioeconomic, cultural, and political forces generate new socially constructed identities, a sense of shared fate, and a consciousness meant to safeguard the structure of the people-hood (Rothchild, 1997:4). The complex question of land has caused irreconcilable differences (Byrne and Irvin, 2000) among Kenyan ethnic groups. Smith outlines four factors that inform the formation and survival of ethnic groups: “the acquisition of a territorial homeland; a history of struggle with the enemy others; existence of organized religion; and development of a strong belief in ethnic choseness” (Smith, 1993: 55).

How can the Kenyan land problem be resolved? Compensation? Maybe and maybe not! As Rose Johnston and Slyomovics (2009: 14) posit, “How can a monetary sum compensate for the loss of life or a way of life, or land and resources meant to support the generations to come?” While compensation is a product of negotiation and compromise, it constitutes an imperfect reflection of the economic value of damage, injury and loss and is arguably a form of reparation that have the greatest gap between reparation and justice (Ibid). Colonial and post-colonial disinheritance of land led to disparities in development, income, education, livelihood, and infrastructure. This has impoverished large sections of the population which traditionally depended on land for livelihood, leading to protracted ethnic violence. From the aforesaid therefore the government needs to address land disinheritance as a priority issue.

5.3.2 Socioeconomic inequalities

Socioeconomic inequalities and inequities continue to polarize Kenyans along ethnic lines. These include poverty and insecurity, as Lilian, a 66 year old opinion leader from the minority ethnic groups observes:

We may have no physical war but our inside is at war. What cushions the very poor from sinking below a level where they cannot access their basic needs? Do we have legislations that cater for the less fortunate in the society? Do our law enforcement agencies respect the rights for the poor people? Does the government facilitate legal representation for the poor? If any of your answer is no, then we have no peace in Kenya, we are actually at passive war within our society. Peace comes with satisfaction of basic human needs; rights to ownership of properties; equal distribution of resources; and addressing the special needs of marginalized communities.

However, from a critical perspective the main question is: who is to address all the above-mentioned concerns? The government? Donor agencies? Civil society? Philanthropists? Every democratic government is obligated by law to cater for the needs of its citizens. Yet democracy, as MacGinty (2008: 50) posits, can be Janus-faced; while it can facilitate citizen empowerment, inclusion, and good governance, it can also be used as a tool for reinforcing societal inequalities,

penalising minorities, and awakening dormant conflicts. This could be worse in situations of deep-seated ethnic polarization. Instrumentalists argue that ethnicity is a product of historical injustices and structured inequalities in which groups strive to manipulate presenting circumstances to make up for lost glories (Casey, 2009; Hussain, 2009). Ethnic groups are linked by the consciousness of common identities and use their uniqueness to maximize their access and benefit from the state's socioeconomic and political resources and services (Rothchild, 1997: 4). This process creates a society of the haves and the have-nots and hence ethnic violence, as Wycliffe, a 51 year old member of the National Cohesion and Integration Commission notes:

The root cause of the Kenyan problem is plain old greed. Our country has immense resources but because of capitalism, many Kenyans cannot meet their basic needs, we are a society of the have and the have-nots, emulating colonial legacy as a model. If people are deprived of their basic needs and sources of livelihood and we have a whole group of poor people, you can misuse them the way you want because you have money and power; you can erode their dignity pushing them to become militias....The marginalization of the have-nots makes them want to fight for justice. The politicians corrupt the have-nots in order to shut the mouths of those shouting the most; the vicious cycle of poverty and conflicts is suppressed but not resolved. The conflict will surely relapse again.

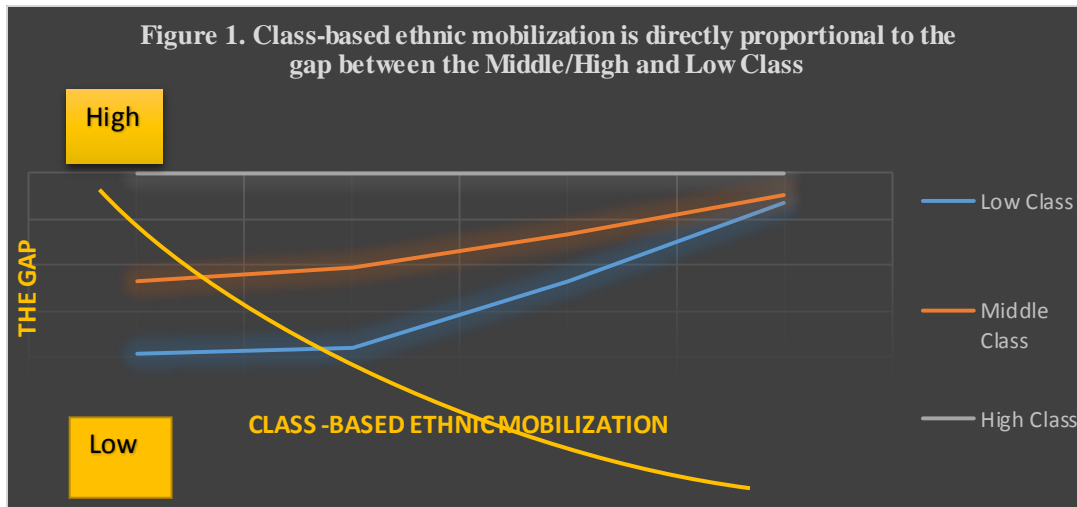
The instrumentalists' *greed and grievance thesis* relates the causation and maintenance of violent conflicts to political manipulation, economic disparities, the ethnicization of historical grievances, and intergroup competition and mobilization (MacGinty, 2008: 69-74). In highly divided societies, the exclusion and inclusion of ethnic groups in socioeconomic and political development determines access to basic needs, prestige, and the identity of the state as belonging to some and not to the others (Kimenyi, 1997: 30). Ethnopolitical violence arises not from ethnic diversities but from the ethnicization of poverty through biased socioeconomic and political institutions and disproportionate services that perpetuate ethnic dominance and preferential treatment (Machira, 2010: 13). The greed and grievance thesis indicates the challenge of overcoming intergroup competition and political manipulations due to ingrained conflicting

ideologies and historical grievances (MacGinty, 2008: 69-74). In an interesting contribution however, Hannah, a 44 year old public service officer describes the Kenyan challenge as a class rather than ethnic struggle:

These conflicts arise from the state of poverty that most Kenyans live in...most people who fight live below the poverty line; there is no middle class fighting against each other. If we can deal with poverty the political conflicts and violence will be minimal...Our system of political economy distributes resources and power among different ethnic groups unequally. Ethnic elites use their ethnic groups to increase their negotiation for political power with other groups. Our ethnic conflicts are rooted in our lopsided political systems which encourage hostile competition for resources...ethnic groups must have their own in a leadership position in order to access power. Competition for leadership becomes a matter of life and death and hence ethnopolitical conflicts.

The instrumentalists' *elite manipulation approaches* hold that political leaders actively fuel ethnic violence by using material incentives, such as hand-outs, or non-material incentives, such as manipulation of symbols, myths, histories, identity and charisma (Toft, 2003: 9). The idea of classism is echoed by Marxists, who argue that class interests inform social, economic, and political consciousness and the collective identity of ethnic groups (Cornell and Hartmann, 1998). Therefore, the local autonomy of ethnic groups is replaced by political elites in which ethnic competition for resources and power dominates the political landscape and where ethnic groups become interest groups seeking to maximize the welfare of their members through ethnopolitical brokers (Kimenyi, 1997: 46). Instrumentalists argue that elites use their cultural groups as sites of mass mobilization in their competition for economic opportunities, social status, political power, social justice, and resources (Smith, 2001: 54). If classism is the cause of ethnic strife and polarization, the solution could be to minimize the gap between the middle/high and the low class. This could reduce ethnic mobilization as illustrated in Figure 1 below.¹⁶

¹⁶ The figure below is a general representation of the feelings of some respondents. See for example the contribution of Hannah above and the ensuing discussion.



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5.3.3 *Justice in Kenya*

Historical injustices and grievances are maintained and sustained by a lack of justice. Thus, understanding the concept of justice can inform us about injustices. Theories of restorative justice indicate that doing justice is the pursuit of restoration, rectifying wrongs, and creating right relationships based on equity and fairness; pursuing justice involves advocacy for those harmed, open acknowledgement of the wrongs committed, and making things right (Lederach, 1995:20). But this is contrary to the Kenyan situation, as Denis, 25 year old and one of the more than a million jobless youths indicates:

We do not have justice in Kenya. I graduated from the University but one year down the line I am unemployed, I can't meet my basic needs; however some of my former classmates got employed immediately after they graduated from school either because they could bribe to get a job or they knew somebody high up in the ladder. Since I do not have money and I know no one in a powerful position, I do not have any hope of getting employed....Look at IDPs, what justice is there for them? There is no justice, after they gave testimonies no follow up was made. In as much as the justice system is being reformed, it has not addressed the common person, if my land was grabbed and I am still an IDP where is justice? The government must ensure that justice is felt in all spheres of life.

Distributive justice is committed to bridging the gap of relative deprivation through fair allocation of benefits, services, goods and resources across the community divide (Deutsch, 2000). For the Kenyans who feel like Denis, there is no reason that would prevent them from using all means to fight for justice. Justice theories indicate that people who cannot satisfy their material, social, or cultural needs often feel a sense of injustice and humiliation and often are willing to fight and even die to protect their physical, social, or cultural identity (Schirch, 2004: 22). The challenge is how to integrate justice in such a highly ethnicized society as Kenya. As Kimenyi posits, the political integration of ethnic groups is not sustainable given the strong desire for ethnic identity, independence, and diversity; marginalized groups will merge to fight injustice while the groups at the core will fight to maintain the status quo and therefore integration must be based on mutual consent (Kimenyi, 1997: 53). However, Kimenyi's *mutual consent thesis* could be compromised in a situation where justice has been commodified and is only accessible to the highest bidder, as Hannah, a 44 year old public service officer asserts:

Justice continues to be unavailable to the majority of Kenyans because it has been commodified and commercialized for auction to the highest bidder. Our justice system is very much influenced by the corrupt elites who can afford to bribe and manipulate it for their own benefit. You do not get justice unless you have money, unless you have a powerful relative or friend. For the masses, justice is the satisfaction of their basic needs; for the elite justice matters when their interests are threatened. When a poor man steals a chicken to feed his starving family he faces the full force of the law but when a rich man funds ethnic war that kills thousands he gets away with it. The poor man needs justice but the rich man needs law because he can hire the best lawyers in order to buy justice.

Distributive justice advocates for a fair share and fair treatment of individuals within a society including accessibility to the things needed in order to live a secure and dignified life (Hurlbert and Mulvale, 2011: 19). Hannah's quote above indicates that justice in Kenya is an amorphous term; it's Janus faced— justice for the rich is different from justice for the masses. The challenge remains how to reconcile the two 'justices' into a justice founded on human rights. As Schirch

(2004: 16) posits, justice exists when people respect the human rights of others and when there are processes in place for holding people who violate the rights of others accountable to their victims and to the wider community. In another perspective, Patrick, an 80 year old son of a former Mau Mau freedom fighter argues that justice should be based on culture and the expressed needs of affected groups:

What justice can equal lost life or permanent disablement? Who can bring back my relatives who were killed or a body part that I lost? There is a conflict between the cultural perception of justice and the legal rational perception of justice. The cultural perception of justice can only be achieved if people are accessed to their cultural and communal needs and freedom to exercise their values and norms. The injustices meted against various ethnic groups should be addressed. Special needs of all affected groups should be addressed. We should have a TRC and not a TJRC because justice (**J**) follows a certain legality of law and law does not compromise or engage reconciliation; reconciliation and restoration occurs outside the court, in our cultural context.

Restorative justice connects with the rights based approach to development, which emphasizes social justice, equity, and empowerment by integrating the principles of international human rights into policies and processes of development (Hurlbert and Mulvale, 2011: 177). Patrick's assertion constitutes an interesting observation concerning the role of **J** in the Kenyan TJRC. Is the TRC entirely without justice? Or is Justice (J) silent within the concept of TRC? From a critical perspective, does the inclusion of (J) in a Kenyan TJRC indicate that any justice was done to the affected people as expected? Could the omission of (J) have meant that justice would not be done? Or is the inclusion of (J) a political camouflage, a smokescreen to hoodwink the masses? The cultural perception of justice constitutes a strong foundation for the ownership of justice. Restorative justice theories indicate that justice should be founded on the recognition of our unique norms and prejudices, an acknowledgement of our ethnocentrism, the accommodation of the voices of the marginalized and a critique of unjust social arrangements (Hurlbert and Mulvale, 2011: 30). This echoes Hinton, (2011: 17) who observes that justice is

always connected with locality and that transitional justice mechanisms should address the on-the-ground realities, including local knowledge, social structures, complex histories, and taken-for-granted assumptions. From another perspective however, Julia, a 30-year-old youthful lawyer and human rights activist argues that justice should be defined not only from the cultural level, but at all levels:

We should empower all structures for justice distribution and provision; how are the roles and responsibilities designed? How are the resources distributed? How responsible, accountable and transparent are the systems of leadership and governance? Is hard work commensurate with remuneration? Is the distribution of resources gender based? Are women given equal opportunities as men? Is there fair accessibility to public opportunities and services? Can youths access job opportunities impartially? I have two orphans under my care who applied for Medical Training College and I was asked to pay \$500 as a bribe. More bribes were required to access popular courses like clinical nursing or clinical medicine; so if you are a poor Kenyan who cannot afford to bribe, it looks like you have no future however bright you are. What we have is a culture of the rich.

Procedural justice advocates for fairness, respect, and dignity in processes that are used to address the expressed needs of target groups. Fair procedures translate to transparency, accountability, representation, involvement, participation, impartiality, neutrality, and consistency in delivering services, as well as in making and implementing decisions, which nurtures trust and ownership of the process by target beneficiaries (Buttram et al., 1995: 272-273). Julia's questions above reflect the injustices that face marginalized Kenyans. These are concerns that precipitate ethnic tensions and violence because they compromise the values, attitudes, and capacities for respect, cooperation, and harmonious relationships that would otherwise support reconciliation in a highly ethnicized Kenyan society. The state has the responsibility to control and manage national resources and facilitate a framework of just institutional relationships to emerge (Nasong'o and Ayot, 2007: 170). As Daly and Sarkin (2007: 215) assert, justice is essential for healing and overcoming the circumstances responsible for mutual victimization, social exclusion, past grievances, and historical traumas. Justice requires

addressing individualized expressed needs because as Figure 2 below indicates, justice means different things to different people. Therefore, the implementation of justice should be community based in order to be sustainable and to command the ownership of the local people.

Figure 2. Respondents' concept of Justice



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5.4 National Ideology and Ethnic Identity

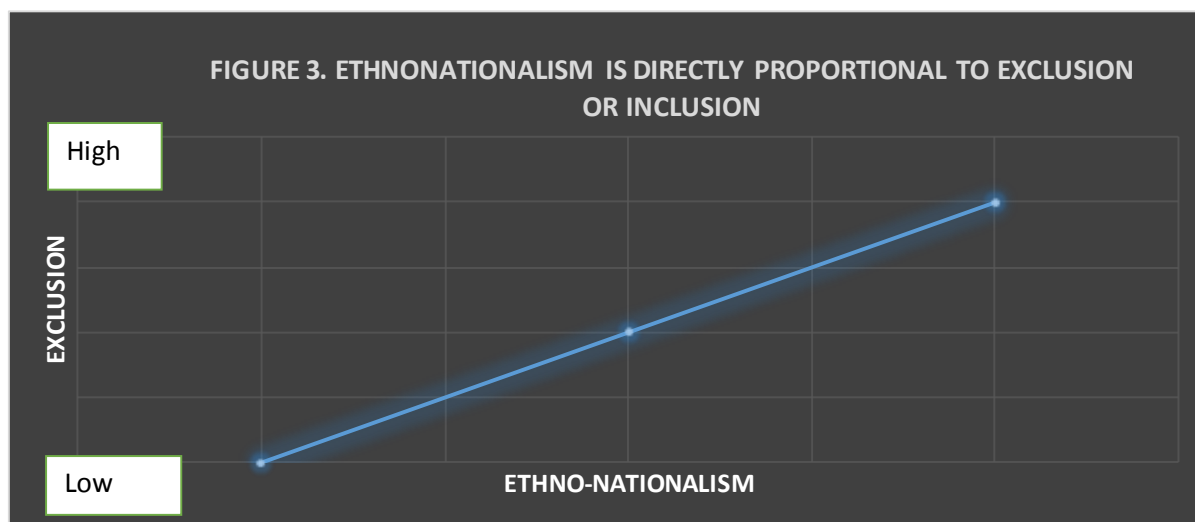
National Ideology and ethnic nationalism are two competing frameworks that have sustained and maintained protracted ethnopolitical violence in Kenya. Instrumentalists hold that ethnic groups are sites of mass mobilization in which ethnicity as an asset is manipulated, invented, or fabricated for the purpose of establishing power relations, nationhood, and identity (Cornell and Hartmann, 1998; Smith, 2010). In Africa, identifying with one's ethnic group is highly valued; resources are mobilized to ensure continued loyalty among group members, children are socialized to conform and honour certain values and norms, while hostility towards

out-groups is reinforced and normatively sanctioned (Kimenyi, 1997: 27). While members of different ethnic groups prefer to associate with their own group, it is not only futile to deny the existence of ethnicity but also to attempt to homogenize groups that want to retain their identities (Ibid, 1997: 30). This push and pull between ethno-nationalism and state-nationalism is a precipitating factor of ethnic violence. In his observation, Paul, a 67 year old former political prisoner, likens ethno-nationalism to religiosity and hereditary patronage:

The biggest problem is that we are a tribes-first nation. You can exploit people very easily when you mention tribe, it is like religion. If you want to divide the people try to exploit the fact that we are different and therefore you cannot trust the others or their culture... Our political practice has been more of a hereditary patronage based on selfish perceptions that as long as one of us is in power then we have power and when one of us is attacked, then we are all attacked and that is what causes ethnopolitical violence. Kenyans vote along ethnic lines because ascending to leadership is seen as a means to wealth, political power and prestige for a particular ethnic group and there is fear that if other ethnic groups ascend to power marginalization would occur. Negative ethnicity is not a root of violence but an ideology of the alienative system; once it takes over the minds of the people, it becomes the primary motivator of conflict, it informs the conflict, it rationalizes the conflict, and engenders the conflict. Like religion negative ethnicity justifies the immorality of those who embrace it. Karl Marx said religion is the opium of the poor, I say negative ethnicity is the opium of the marginalized led by their political demi-gods.

Constructionists contend that ethnic identities are enduring social constructions, the products of human actions and choices which become tools of social and political action if access to survival opportunities are “high-jacked, controlled, and determined by the perceived enemy others” (Taras and Ganguly, 2006: 12-13). Paul’s assertion above indicates that ethno-nationalism is motivated by hopes and fears for the future in terms of competition over scarce resources with enemy others. In highly divided societies, the exclusion and inclusion of ethnic groups in socioeconomic and political development determines access to basic needs, prestige, and the identity of the state as belonging to some and not to others (Kimenyi, 1997: 30). As Figure 3 below indicates, inclusion and access to expressed needs could reduce or resolve ethno-

nationalism and hence ethnic violence. Similarly, exclusion and denial of expressed needs could escalate ethno-nationalism and hence violence.¹⁷



Created by Peter Karari

From another perspective, Caroline a 42 year old member of parliament from the Coalition for Reforms and Democracy traces ethnic identity and violence to the preferential colonial ideology of divide and rule:

Our conflict is sustained by a jungle society inherited from British colonialism and founded on greed that divides people in terms of insiders and outsiders, carnivores and herbivores, the notion that “this belongs to us.” The ideology of this jungle society you can say is everybody for himself, God for us all; it’s survival for the fittest which obviously will have the animals in power resulting to the tactic of dividing other vulnerable animals to allow effective exploitation...Political parties are tribal in nature, undemocratic and speak for particular groupings. Ethnic values influence the interpretation of worldviews therefore eliciting emotions, prejudice and violent conflicts. Your grandfather will tell you that we never associate with these people and this is passed on informally to other generations. It becomes a value, a norm, a belief. Value based conflicts are very emotive and difficult to resolve and so political elites mobilize them for selfish goals.

¹⁷ The figure above constitutes a general representation of feelings of some respondents about the relationship between ethno-nationalism and exclusion/inclusion. See for example Paul’s contribution above and the ensuing discussion.

Constructionists hold that ethnic groups derive benefits from group membership; therefore, ethnic identities, solidarities, and boundaries persist because of a steady supply of benefits through which group members develop self-esteem, a sense of belonging, and psychological distinctiveness for in-groups and out-groups (Oberschall, 2007:4). The existence of the jungle society described by Caroline above is a major precipitating factor for ethnic conflicts in Kenya. Kenyan post-colonial politics is situated within the conflict of authoritarian colonial statist ideology and the anti-authoritarian post-independence legacy of ethnic nationalism. The conflict of these two legacies calls for state reform in order to realize the socioeconomic, cultural, and political rights of all Kenyans (Nasong'o, 2007: 37). Benson a 32 year old civil rights activist relates ethnic violence to the lack of a national Kenyan ideology and the dependence of conflicting foreign ideologies:

Ethnic conflicts has to do with a country in transition, striving to develop unity amidst the challenges of diversity and the politics of scarcity of resources; perceived injustices, inequality, inequity; and lack of a strong ideology that forms the basis of the Kenyan political landscape. The airlifts to USA and Europe were meant to invest in the diversity of intelligentsia but the benefactors got indoctrinated with British, American, and the Moscow schools of thought that have left Kenya in mess of foreign ideologies and a lack of a home-grown ideology that would inform national development as stipulated in sessional paper number 10 of 1965. Foreign ideologies drew Kenya into a mixed economy and later a liberal economy catalysed by the collapse of the Soviet Union and the onset of the western backed World Bank and IMF structural adjustment programme, the collapse of the local economy, impoverishment, and hence ethnic violence.

Kenyans across the ethnopolitical divide are ensnared in deep-seated identities that have nurtured the collective culture of conflict and violence. Constructionists hold that the consciousness of common identities is used to maximize collective benefits at the expense of the enemy others (Ratnavale, 2009; Rothchild, 1997: 4). However, Benson's observation above raises some key questions: While a national ideology could be ideal for the Kenyan state, do we have sociopolitical structures that support such an ideology? Can a national ideology be nurtured in

the midst of ethno-nationalism? How can the conflicting schools of thoughts and foreign ideologies that inform our political landscape be reconciled? Arguably, if ethno-nationalism emanates from conditions where the essential needs of ethnic groups are threatened or frustrated, then national identity and ideologies could be nurtured by addressing needs for dignity, expression, identity, meaning and purpose, safety, control over one's destiny, and justice—all of which are irreducible and difficult to compromise (Rothman, 1992: 46; Burton, 1986, 178). Similarly, Bella a 50 year old community women leader from Nairobi Province observes that inclusion and access to services and opportunities could be key in reducing ethnic emotions and violence:

Since independence there are some tribes that have assumed that leadership is theirs for the taking because their ethnic numbers can easily vote in their tribal leaders and vote out minority groups...the minority groups feel that they will never have the opportunity to benefit from socioeconomic and political power. When any of the major ethnic group takes over power, it becomes their turn to eat, to favour their own, appoint their own, and benefit their own. The minority groups are always at the receiving end, vulnerable and marginalized because of the tyranny of numbers. Hate speeches and negative ethnic stereotyping from political leaders raise emotions and make people perceive others as enemies.... The Kenyan war is a class war as opposed to an ethnic war. What happened in 2007 after the two principles agreed? The war ended. So it was not an ethnic war but two people fighting; they have the power to call the war on or off.

Bella's observation raises interesting issues of concern: the need for inclusion in political leadership; equal distribution of resources; the tyranny of numbers; hate speech; and classism. Such concerns can be addressed through the appreciation of a common humanity and respect for the diversity of identities and human rights, thus nurturing a social space that facilitates the expression of grief and the recreation of social bonds (Daly and Sarkin, 2007; Jeong, 2010: 214). Strong legislation against hate speeches and stereotyping needs to be formulated and implemented. The tyranny of numbers could perhaps be addressed by using the delegates system of voting while affirmative action could be used in the distribution of political positions.

5.5 Institutional and Constitutional Crisis

Conflict management should build overarching, shared identities and symbols, and provide political institutions that embrace ethnic diversities (Oberschall, 2007: 12). Human needs approaches indicate that social institutions require structuring to facilitate service delivery and to prevent material based human conflicts (Lederach, 1997). Field responses in this study indicate that institutional and constitutional gaps contribute to ethno-political violence in Kenya. Structural violence is prevalent when systems, institutions, or policies meet some people's needs and rights at the expense of others (Schirch, 2004: 22). Human needs explanations encourage an examination of the nature of societal institutions that regulate and possibly frustrate the fulfillment of basic human needs (Mac Ginty, 2008: 74). In her contribution below, Adelaide a 37 year old civil society activist posits that ethnic violence emanates from dysfunctional constitutionalism:

The colonial constitution failed to embrace a Kenyan national vision, the principles of good governance and the rule of law, and hence violence. Kenya has been a crisis driven country that addresses the symptoms and forgets the roots, we cut the tree and forget the stumps from which the devil tree shoots out again...why don't we have many conflicts in Europe and especially in England? The constitution in England is an adaptation of ancient tradition. They have perfected their monarchy values and traditions. If we reach out to our traditions, we are told they are primitive, ethnic, tribal! So they impose their political ideologies from which conflicts arise....If our new constitution is implemented it could check manipulative political leaders. We need political, economic, and legislative justice to enable fair and equitable public resource distribution and avoid suspicion and mistrust. Why are the top government positions dominated by people from the same ethnic group, this is political injustice; we must embrace impartiality to nurture a sense of belongingness among all.

The above quotation invites a critical question: while Kenyan ethnic violence is partially blamed on an inherited British constitution, why don't we have ethnic violence in England where the same constitution is being used? Functional constitutionalism derives from political will, responsible leadership and governance. Institutional building needs to focus on the establishment of a system of governance that is appropriate for the particular conflict and that is created in a

way most suitable for the particular conflict situation (Wolff, 2006: 166). Such institutions should be designed and developed through a fair and honest negotiation process. The choice of appropriate democratic institutions, forms of devolution, autonomy, electoral systems, legislative bodies, and judicial structures are vital ingredients in addressing intractable conflicts (Nasong'o, 2007). Perhaps the following quotation provides the best answer as to why ethnic violence exists in Kenya and not in other places that share the same constitution:

We have borrowed the American Presidential system but ignored the checks and balances that make the President accountable to the Americans. We have borrowed the parliamentary system from Britain but none of the parliamentary practices that makes the British parliament effective. We borrowed a bill of rights from the Universal Declaration of Human Rights but added in all the exceptions to rights that were common in Stalinist countries...we now have a presidency without checks, a parliament without teeth, and a Bill of Rights that reads more like a Bill of exceptions rather than rights (Murunga and Nasong'o, 2007:176).

This observation indicates that the Kenyan constitution requires comprehensive reforms to seal the gaps that nurture political misuse and abuse of democracy and power. Democracy requires viable, efficient, and legitimate institutions founded on a strong civil society, civic political culture, and economic conditions (Wolff, 2006: 175). However, as Margaret, a 31 year old manual labourer observes, a lack of political will is a great impediment in the realization of legitimate institutions:

A major challenge of building sustainable peace is the lack of a peacebuilding policy to curtail political ambitions that nurture conflicts. There is no good will from politicians to build or sustain peace because it goes against their efforts to mobilize ethnic animosity. The NCIC through an act of parliament is mandated to investigate and recommend the prosecution of perpetrators of hate speech. But holding senior politicians to account is very challenging because they are the ones who passed the act and have powers to repeal it if one of their own is summoned. We can only recommend but not prosecute. All the cases that we have recommended for prosecution have been dismissed.

The above quotation indicates the challenges of achieving legitimate and democratic institutions in autocratic regimes (Munene, 2001: 6). For post-conflict reconstruction to succeed, political

liberalization and full scale democratization may have to take a second place behind institution building (Wolff, 2006: 175). The post-conflict reconstruction approach emphasizes the importance of building acceptable, accountable, and transparent institutions that generate sustainable economic growth, civil society freedoms, and a general climate in which people trust each other, are reconciled with their troubled past, and are willing to live together peacefully (Wolff, 2006: 157). Transitional justice programs should embrace new legal and judicial systems that integrate the needs and desires of local people, and cultures and institutions based on international human rights (Schirch, 2004: 53). This could help in building sustainable peace in Kenya.

5.6 Formal, informal, and Civic Education

The track five component of MTD emphasizes the importance of research, training, and education in the generation and transfer of information about issues of peace and conflict, peacemaking and conflict resolution, and the formulation of a policy framework (Diamond and McDonald, 1996:70). The assumption is that the more we learn the more we are capable of collectively addressing our challenges. However, education in its various forms could be a necessary evil. As research indicates, memories and emotions of glories and traumas can be kept alive through storytelling, poetry, songs, celebrations, festival, and unconscious psycho-social forces (Klain, 2009; Volkan, 2004). Other observations indicate that while stories can evoke “the transgenerational transmission of trauma”, “destructive collective memories” and conflict (Volkan, 2000; Senehi, 2009), they can also facilitate post-trauma healing and intercommunal reconciliation (Carter et al., 2009; Byrne, 2009; Senehi, 2009). In her contribution, Naomi, a 54 year old community women leader from Nyanza Province perceives negative socialization as a great determinant of ethnic violence:

We grew knowing other tribes as animals and our children must be socialized to treat others as humans, we are the only people who can teach our children that other tribes are not animals, they are people like us, they are human. We should let our children interact, visit each other, play together, and let our schools embrace our national language, values and symbols. Ethnic languages must be banned from schools because they create barriers, that feeling of the otherness....trust comes with addressing injustices; the MRC in Mombasa and Mungiki in Central are fighting because they have been denied a fair playground. Our leaders must address the grievances of the youth, the constitution talks of integrity, we need to support our national values, so long as we treat each other fairly; trustbuilding will slowly trickle in. We need to sit together, have everyone participate and be involved.

While the above assertion is important, the reversal of the psychological harm done via negative socialization is a challenging process that may take decades. Psychosocial approaches likens inherited conflict, attitudes, and motivations with those transmitted via “psychological DNA” (Klain, 2009: 259). In *Chosen Traumas*, Volkan (1998: 47) observes that people can either overcome traumatic mental representations, feelings of humiliation, and traumatized self-images over time or choose to live under the tent of victimhood. The school system also contributes to negative education, as Jacob a 35 year old an elementary school teacher posits:

From early age the kids can be heard saying “Mum I want to top the class.” Our education has focused on cognitive performances and failed to appraise other abilities within our children and individuals in the community. Apart from cognitive abilities, we should recognize kids who are most obedient, best in sports, best timekeepers, best in recycling, best in volunteer activities among other unique performances in order to help them develop those potentials. Instead, poor performing kids are humiliated and called names such as *mkia* (tail) while the best kids are praised and showered with gifts. The best in the cognitive sense get the best scholarships, go abroad to further their education and eventually get the best jobs and the best standards of living. We should ensure the holistic valuing of all levels of abilities i.e. psycho-motor, cognitive and affective skills in our children and society....In the 80s the national school’s enrolment required that 25 percent of students are local and 75 percent from the rest of the country. This was a very good initiative to establish peaceful coexistence. Ethnic politics during the Moi regime reversed the quota system into 75 percent local and 25 percent from outside. This has led to increased stereotypes and hence violence.

The Kenyan education system was inherited from the British and was tailored to divide and rule the Kenyan people. The post-colonial regimes failed to reform the constitution for political

interests. The quota system of education that was intended to promote inter-ethnic interactions also succumbed to ethnic politics. The scenario described above is partly a failure of leadership and governance and a precipitating factor for the clamour of devolved governance based on geoethnicity (Kimenyi, 1997: 26). Ethnic politics and classism have also affected access to education institutions and the quality of education, as Silas, a 45 year old an adult literacy educationist observes:

While the University pass mark may be B+, with a C+ you can get university education if you come from the 'right' ethnic group or family. For example you can pursue a law degree with a C+ as long as you have \$8,000. How many Kenyans can afford this amount of money? We have great disparity in terms of resources. We do not actually have forty two tribes in Kenya, we have two major ones; the haves and the have-nots. The rich use the poor for their benefits and the poor are ready to be used in order to survive...some regions have education better facilities than others. Some children grow up knowing that their colleagues in other regions receive better education, go to better universities, further their education abroad, are better prepared, better polished for life, will get better jobs, and a better life. This nurtures a feeling of ethnic discrimination, mistrust and tensions.

In a similar assertion, Rhoda, a 75 year old retired civil servant, decries the cycle of poverty and marginalization that is derived from preferential treatment in education:

If we have a hundred PhDs in a certain county and none in another then you tell people that the only way up the ladder is education, then some communities will never make it. There are some counties that will only have two or three people competing for the seat of governor because they are the only ones who have the required academic qualification. Other counties shall have overwhelming competition because everyone qualifies. Rising to power through the academic ladder have left out many communities in the past. Rich ethnic groups get exotic education and within a few years get their PhD while the poor toil back home. How can the two groups compete? Somebody gets an A and joins a local university, another gets a D+ goes to India and gets his bachelors, goes to Oxford and gets his masters and a PhD in a few years. Back home, the poor struggle, they riot, they are sent home, waste time, and by the time they get a bachelors, their wealthy counterparts are back with a PhD and rise up the socioeconomic and political ladder faster than the poor and hence the disparities and the fight for justice.

Instrumentalists contend that ethnicity can be manipulated by competing groups to pursue social justice and equality in terms of access to key services and opportunities (Batsinduka, 2009).

Consequently, systematic discrimination and marginalization breed resentment, radicalization,

bitterness, rebellion and hence protracted ethnopolitical conflicts (Petroska-Beska and Kenig, 2009). Colonial and post-colonial preferential policies provided opportunities such as education to some ethnic groups resulting in different levels of modernization across regions and therefore eliciting feelings of unequal treatment, discrimination, and ethnic antagonism (Kimenyi, 1997: 44). This is a trend that successive regimes have maintained for ethnopolitical reasons. As Kenya embraces transitional justice, Esther, a 27 year old youth leader in the Coast Province poses important questions relating to civic education:

Are our people informed about the process of transitional justice? Where is this information on justice? Who has it? Who should initiate it? Kenyans need to be informed about the transition process, about their role and expectations. To be informed is to get empowered...the media should be reformed to embrace positive news, sensitize people about the dangers of hate messages and educate them on peaceful coexistence. We need to have a more community media that addresses grassroots peace efforts by opinion leaders, civil society and the commoners. Kenyans should be educated to embrace patriotism in order to boost unity and trust; when I was in school we used to sing all the verses of our national anthem, it was so strong, so binding, so educative, today we sing only one verse may be to save time. Our national anthem should be a tool to foster peace.

The above quotation indicates the importance of investment in elicitive approaches to education. In this chapter, we have learnt that elicitive approaches respect diversity and empowerment of the local people. As opposed to prescriptive approaches, elicitive approaches are facilitative, participatory, and focus on mutual discovery (Lederach, 1995). Elicitive approaches embraces problem-posing education in which the masses develop power to critically perceive their world, resist assimilative policies, and develop a cultural voice (Freire, 1968: 12). Political will and access to social forums, spaces and platforms is key to the success of civic education. Civic education can be facilitated through restorative conferences and circles, counselling, and peace forums. This is essential in entrenching positive changes in human behaviour by forming relationships based on trust, mutual understanding, shared values and behaviour and a safe space for the expression of anger, rage, fear, terror, distress, and anguish (Weine, 2006; Daly and

Sarkin, 2007: 220). Esther's concern about Kenyan's lack of interest in the national anthem could perhaps be explained by the strain between ethno-nationalism and nationalism. Instrumentalists explain that the politicization of ethnic identity (ethnic nationalism) in multi-ethnic societies ensues when various ethnic groups compete for scarce resources in which they develop a sense of relative deprivation in terms of perceived or actual discrepancy between value expectations (received) and value expectancies (deserved) in society (Hannan and Meyer, 1979 : 253-277). The government needs to address negative socialization as a national crisis.

5.7 Findings and Conclusions

The focus of this chapter is the causes of ethno-political violence in Kenya. In this chapter, data about the perceptions/and or experiences of respondents about the causes of ethno-political violence in Kenya were presented and analyzed. According to the respondents, ethno-political violence in Kenya emanates from five major causes namely: Colonial and post-colonial legacies of leadership and governance; historical injustices; negative socialization and education; national ideology and identity; and institutional and constitutional dysfunctions.

On colonial and post-colonial legacies of leadership and governance, respondents indicated that colonial and post-colonial legacies of leadership and governance perpetuated preferential social, economic, and political structures that have nurtured inequality and divided the Kenyans along ethnic lines. According to study participants, preferential administration nurtured ethnic hatred, mistrust, and hence protracted ethnic violence. The respondents describe political elites as manipulators who mobilize ethnic constituencies for their own political benefits. According to the respondents, to maintain, sustain, or further their political mileage, elites create ethnic tensions, sham consociational agreements, systematic displacements, and unfair distribution of resources, positions, and services that favour their own while marginalizing

the actual or perceived enemy others. Respondents also decried the adverse effect of colonial and post-colonial compartmentalization and preferential administration that benefited some regions and ethnic groups and marginalized others. Studies indicate that preferential treatment in Kenya resulted in relative modernization across the ethnopolitical divide and therefore comparative advantage in the control of socioeconomic and political control of independent governments due to privileged access to financial and human capital (Kimenyi, 1997: 44). This nurtured a sense of discrimination, exclusion, and hence ethnic violence. Therefore, ethnicity or “a sense of peoplehood” has become a forum or a space that ethnic groups use to marshal, strategize, mobilize, and compete for socioeconomic resources, political power, contracts, awards, safety, and security for the welfare of their ethnic members (Rothchild, 1997: 4). Respondents pointed out the need to implement the new constitution, reform public and national institutions, restructure of leadership and governance, and adopt policies that caters for justice and the welfare of the marginalized and minority groups.

Other causes of ethnic violence related to governance and leadership as indicated by respondents include ethnic-based Presidentialism and the use of the ‘ethnic card’ by political leaders to mobilize and benefit their own while dominating and marginalizing others. This is supported by studies which indicates that the ideology of domination is routinely transmitted through social structures in which beliefs, prejudices, and stereotypes are perpetuated (Oberschall, 2007:13). The dominant groups feel that their good fortune is deserved and that the exclusion of the minority is justified (Ibid). Still on leadership and governance, respondents indicated skewed consociational democracy in Kenya as another cause of ethnic violence. Research indicates that consociational democracy should be founded on: coalition governance and executive power sharing; formal and informal separation of powers and checks and balances

within the structures of the government; special minority representation; multipartyism, equal representation in the parliament; federalism and decentralization of power; the empowerment of ethnic groups to veto negative legislations; ethnic group autonomy to run private affairs; and constitutionalism (Taras and Ganguly, 2006: 18). Study responses indicate that the failure of consociational democracy in Kenya and other states emerging from protracted ethnic violence has led to its critique. Some theorists argue against the principle of proportionality in the allocation of positions and resources in consociational arrangements and instead advocate for “ethnically blind policies” that benefit all disadvantaged groups regardless of ethnicity in order to reward inter-ethnic cooperation and foster identities other than ethnicity (Horowitz, 1990; Oberschall, 2007:199). However, other theorists hold that consociational principles can succeed if based upon the acceptance of ethnic pluralism. Consociational approaches should aim to secure the rights, identities, freedoms and opportunities of all ethnic communities, and to create political and other social institutions which allow them to enjoy the benefits of equality without forced assimilation (McGarry and O’Leary, 1993: 36).

Respondents in this study also point out that historical injustices constitute major precipitating factors for ethnic violence. Respondents decry land displacement and dispossession as a key cause of ethnic violence. One of the major grievances of Militia groups such as the Mungiki, SDLF, and MRC is land alienation. With land being a major source of ethnic identity, respondents indicate that such groups are ready to sacrifice their life in order to defend their ancestral heritage. Respondents also indicate social economic inequalities that have created a society of the haves and the have-nots as another cause of ethnic violence. Respondents advocate for equal distribution of resources, services, and opportunities; equal distribution of political power; satisfaction of basic needs; and extension of justice among all Kenyans. Study

participants also emphasize on the need to focus on special and expressed needs of the marginalised groups. Studies indicate that ethno-regional and contextual disparities are manifested in the unequal distribution of resources in which differential treatment and development induce feelings of exclusion, vulnerability, and marginalization and hence ethnic violence (Rothschild, 1997: 6). According to the respondents, colonial and post-colonial displacements, the disproportionate allocation and distribution of land, which is both a source of identity and as a resource, are a major cause of ethnic violence in Kenya. As Kimenyi (1997) observes, ethnic identity is above all other things founded on geo-ethnic or territorial identity. Nothing identifies the ethnic group better than its standing place. Geoethnicity constitutes historic identification of an ethnic group with a given territory, an attachment to a particular place, with a sense of place as a symbol of being and identity (Ibid). As study participants points out, ethnic violence has also been fueled by economic inequalities and injustices related to the access, provision, and distribution of justice, resources, opportunities, and services.

Other causes of ethnic violence according to study participants include; lack of accountability and transparency, misrepresentation and marginalization, ethnicization of poverty, preferential treatment, and the lack of legislation needed to address the needs of the less fortunate in the society. The respondents say that these conditions have nurtured the feelings of exclusion, tensions, and hence violence. Studies indicate that historical injustices contribute significantly to ethnic consciousness due to ethnic disparities, and the preferential and discriminatory administration of services as exhibited in disproportionate access to natural resources, social and educational services, employment, and infrastructural development (Rothchild, 1997: 6). Therefore, policies derived from theories of ethnic conflict and resolution should address the

diversity of injustices and impunity while implementing confidence-building measures, institutional reforms, and sustainable political transition (Van Der Merwe, 2009).

The respondents also mentioned negative socialization and education as major causes of ethnopolitical violence in Kenya. Respondents also relate ethnic violence to formal, informal, and civic education. Through the socialization process ethnic groups learn to hate the ethnic others based on ethnic stereotypes and prejudices. This leads to mistrust, dehumanization, and demonization which are easily mobilized to rationalize and cause chaos against the perceived enemy others. Respondents advocate the need to address these protracted stereotypes by nurturing national values that would facilitate trustbuilding, embracement of ethnic others, and humanization. Respondents indicate that national values can be nurtured through integrated schools; cross-community interaction; and the use of ethnic and national media outlets to advocate for peace, unity, and harmony. Theorists argue that ethnic crystallization and survival are motivated by increasing cultural and civic socialization, the intellectual production of an intelligentsia within ethnic groups, and the development of ethnic nationalism as an ideology (Smith, 1993: 53-55). There is a need to invest in a humanizing pedagogy (Freire, 1968: 69), to re-tell our stories and consciously unveil the reality, re-create knowledge, and facilitate self-discovery (Senehi, 2009). Track five of the MTD indicates the importance of investing in research, training, and education which is key in the generational transfer of information and hence appropriate policy formulation (Diamond and McDonald, 1996: 70). This study also proposes the embracement of problem-posing education in which the commoners develop their power to perceive critically the way they exist in the world therefore giving an opportunity to those in the peripheries to resist the imposition of assimilative policies and develop a cultural voice (Freire, 1968: 12).

Study responses shows that ethnic nationalism and identity as causes of ethnic violence have traversed both colonial and post-colonial regimes in Kenya. Both have hindered the development of a national Kenyan ideology and the continued dependence of the people on conflicting foreign ideologies. Respondents decried protracted negative ethnicity as having been maintained and sustained by negative ideology and ethnicity. They described negative ethnicity as having nurtured hereditary patronage and the distribution of social, economic, and political privileges to ethnic constituencies. The result is an alienative system rationalizes and perpetuates ethnic tensions and hence ethnic violence. Respondents indicate that identity conflicts emerge when a group, in response to unmet basic needs, resolves to strengthen its collective influence and to struggle for political recognition. Statistics indicate that about two-thirds of contemporary armed conflicts can be defined as identity conflicts in which groups formally organize to promote collective identity (Lederach, 1997: 8). Yet, as theorists argue, ethnic identity is not a problem in itself, it is what leaders and their followers make of it that determines whether there will be ethnic violence (Wolff, 2006: vii). The challenge is how to create spaces and processes that encourage people to address and articulate a positive sense of identity in relationship to other people (Lederach, 2003: 56). Study observations concurs with studies that indicate the need to develop a capacity to see and hear identity when it appears, be attentive to the voice of identity, as well as acknowledge, understand and address the voice of identity (Lederach, 2003: 57).

Still in this chapter, institutional and constitutional dysfunctions emerge strongly as causes of ethnic violence in Kenya. Respondents related ethnopolitical violence to constitutional and institutional crisis which has compromised the principles of good governance and the rule of law. According to respondents, structural violence has been perpetuated by constitutional and institutional policies that engender autocracy, impunity, and marginalization of large segments of

the population thereby justifying the fight for justice. Supporting these observations, studies indicate that ethnic violence in Kenya is directly or indirectly linked to institutions that have nurtured absolute or relative poverty, discrimination, inequality, the breakdown of the rule of law, and unequal access to the means of production and services (Ahere, 2012: 27-40; Njogu, 2007: 133). A democratic transition involves negotiation of new rules of governance entrenched in institutional structures that guarantee fair competition and guard against elitism, factionalism, ethnocentrism, and the systematic manipulation of the process by the incumbent regime (Nasong'o and Murunga, 2007: 12).

In sum, the causes of ethno-political violence presented in this chapter are various. They include: structural, i.e. geoethnicity; political, i.e. discriminatory institutions and contentious inter-group politics; socioeconomic, i.e. preferential access to resources, services, and opportunities; and cultural, i.e. historic injustices and grievances. Understanding the causes of ethnic conflict can facilitate the design of appropriate socioeconomic, cultural, and political institutions and therefore provide a basis for stable political governance and leadership. Since ethnic groups are constituted of people with common ties, they constitute key units in representation and decision making processes. Various theories have informed the responses of the study participants in this chapter. These are: theories of ethnic violence including, instrumentalist and Constructionist; theories of conflict management and resolution including, elicitive and prescriptive approaches, the human needs approach and post-conflict reconstruction; transitional justice theories including restorative justice; and theories of peacebuilding and conflict transformation, including psychosocial approaches.

6.0 CHAPTER SIX: PEACEBUILDING, CONFLICT MANAGEMENT, AND RESOLUTION (THE KENYAN SOLUTION)

6.1 Introduction

This is the second of the three data presentation and analysis chapters. In this chapter responses of the study participants are presented and analyzed based on the following field questions:

2. How can the root causes of ethnopolitical conflicts in Kenya be addressed?
3. How can trustbuilding be nurtured across the ethnopolitical divide in Kenya?
4. How can sustainable peacebuilding be nurtured across the ethnopolitical divide in Kenya?
5. How can justice be nurtured across the ethnopolitical divide in Kenya?

The respondents had varying experiences and/or perceptions about how the root causes of ethnopolitical violence in Kenya can be addressed. This is summarized in Table 4 below.

Table 4. Respondent's Perceptions about How to Address Ethnopolitical Violence in Kenya

Percentage Respondents	How can the Root Causes of Ethnopolitical Violence be addressed?
25	Socioeconomic Empowerment
20	Good Leadership and Governance
15	Institutional and Constitutional Reforms
15	Peace, Security, and Safety
15	Justice, Equity, Equality, and Fairness
5	Positive Socialization and Education
5	National Ideologies and Identities

Created by Peter Karari

Moral, social, and institutional dysfunctions characterize societies emerging from protracted ethnic wars. This is reinforced by ethnic identity, an attachment to collective myths and symbols offensive to other groups, deep-seated grievances, and identity politics. As Oberschall (2007: 231) asks, how does institutionalized cooperation and a culture of tolerance get started in such a social milieu? This chapter attempts to address this complexity by focusing on respondents' perceptions about how best to address the root causes of Kenyan ethnopolitical violence. About 25 percent of the respondents opine that the Kenyan solution would be socioeconomic

empowerment of the marginalized and vulnerable ethnic groups. Another 20 percent of the respondents hold that good leadership and governance are key to alleviating causes of ethnic strife. A further 15 percent indicate that the country requires institutional and constitutional reforms in order to rise above ethnic violence. A similar percentage of respondents observe that ethnopolitical violence can be addressed by nurturing justice, equity, equality, and fairness across the ethnopolitical divide. A further 15 percent of the respondents maintains that Kenyans requires assurance of peace, security, and safety in order to cease warring. About 5 percent of the respondents indicate that positive socialization and education could easily address ethnic strife in Kenya. Finally, 5 percent of the respondents hold that ethnic violence can be addressed through the embracement of national ideologies and identities. In the following discussion each of the outlined subjects in the table above are discussed in the order in which they are presented.

6.2 Socioeconomic Empowerment

A human needs approach maintains that peace is founded on the fulfilment of the whole array of social, cultural, and economic needs crucial to human contentment (MacGinty, 2008: 74). Economic explanations of armed conflicts dismiss the ethnic factor as a cause of ethnic violence and relate such conflicts to poverty, economic crisis, unemployment, corruption, and a failed state with gangs of militias competing and controlling scarce natural resources (Oberschall, 2007: 12; Collier et al, 2003). Post-conflict reconstruction perspectives indicate that sustainable peace encompasses empowerment, equity, and security that embraces the needs of all people at the centre of development processes while protecting the life opportunities of future generations and the natural systems on which all life depends (Hurlbert and Mulvale, 2011: 177-178). The land issue in Kenya is a priority concern, as Robert, a 65 year old Muslim religious leader observes:

The Ndung'u report on land injustices in the country was never implemented or made public. The government must embrace dialogue with affected groups such as the Mungiki and MRC and critically identify the root causes of conflicts. Instead of listening to aggrieved groups the government has instead used military operations against unarmed civilian. Why are the MRC at the coast saying, "The Coast is not Kenya?" The indigenous population at the coast are squatters in a land where their forefathers were born, lived and buried. The Coast people want to secede from the rest of Kenya because their resources have been dominated by people from outside. So unless we deal with land issues forcefully, confront them effectively, and decisively, conflicts will persist. We must address the complex issue of land by adopting land policies that alleviate past injustices and accommodate unique land traditions of our communities, such as communal land ownership. If we are going to have some equity in land distribution and ensure that everybody benefits from the power structure then we will be 80 percent healed. The Ndung'u report should be disseminated and implemented.

Human needs approaches indicate that relative deprivation emanating from socioeconomic or political conditions sparks competition for resources, collective action, and group mobilization among communities leading to conflict and violence (Toft, 2003: 5). Therefore, relative deprivation should be alleviated in order for peace to be nurtured. In a similar assertion, Damaris, a 52 year old professor at a local university condemns land grabbing by multinational companies (MNC) that have left the commoners impoverished, humiliated, and as squatters in their own country:

We have MNC companies and political elites with millions of acres of land in Kenya for instance the soda ash company in Magadi, Delamere, and Delmonte. Why is this land not reverted to jobless and landless Kenyans? Unfortunately the leading political leaders are land owners so none of them can address the land issue...In the Rift Valley we have double ownership of land comprising the indigenous people, those resettled by past regimes, and those who bought land privately. For example the Ogiek indigenous people in the Rift Valley were displaced, by settlers and relocated to the forest. Later settlers sold the Ogiek's land to other Kenyans and at the same time the government gazetted the forest. The Ogiek had to leave the forest but to nowhere. Can the Jews recover from humiliation? It is not possible! I was born at the coast, my ancestral land was grabbed, I am now a squatter with no hope for my children, how do I heal from this humiliation? Perpetrators must show remorse; yes we grabbed your land but we are willing to share it with you. We need a proper government policy and dialogues to facilitate post-conflict reconstruction.

The quotation above indicate the complexity of the land issue in Kenya. Ethnopolitical violence arises not from ethnic diversities but from the ethnicization of poverty, through biased socioeconomic and political institutions, and disproportionate services that perpetuate ethnic dominance and preferential treatment (Machira, 2010: 13). Human needs and post-conflict reconstruction approaches propose that instances of violence can be reduced by embracing access and distributive justice relating to land, improving the socioeconomic conditions of the marginalized people, and decentralizing political power (Dayton and Kriesberg, 2009: 4). The secession of the coast region is difficult given its significance as a gateway not only to Kenya but also to the larger East and Central Africa regions. While revoking the ownership of land by MNCs must be procedural and legal, colonial treaties that extended such ownership to 999 years should be reviewed. The land issue in Kenya can be addressed through formulation of policies that will alleviate historical injustices and the grievances of the affected indigenous populations. From another perspective, Nathaniel, a 53 year old internally displaced person, highlights the plight of the IDPs as a major socioeconomic concern that requires urgent address:

Why alternative land for IDPs and yet these people had their own land that they rightfully owned. Why can't the IDPs go back to their land? It is a win-lose situation, the perpetrators have won by displacing the victims. Why do you want to relocate me from point A to B, yet point A is my history, and that is where I was born, grew up, went to school, and even got married, how do you erase that kind of history unless you want to kill me? Take me back to my home, let me face the reality, face the perpetrators. It does not make sense spending more money to buy land; why not spend that money to build more secure communities and mechanisms for reconciliation and sustainable peace....IDPs resettlement must be implemented holistically, accompanied by subsidiary needs like farm tools, seeds and other material and financial resources. The government must focus on the long-term—after resettlement, then what? The government and civil groups need to start small support groups and sharing circles especially for survivors of rape and disablement.

Post-conflict reconstruction approaches advance the need to address such challenges as: job security; housing, education and health; safety and security; and fair allocation of resources to

victims of atrocities (Dayton and Kriesberg, 2009). Such interventions provides occupational therapy, reduces chances of a relapse of violence, reinforces trust and nurtures a state's credibility in the eyes of the affected groups. Addressing the IDPs challenge is complex due to the diversity of their expressed needs. The IDPs challenges are derived from political patronage, safety and security, disproportionate reallocations and resettlements, the satisfaction of immediate and long-term needs, and the proliferation of imposters (those pretending to be IDPs in order to benefit unfairly) (Klopp, 2006: 65-75). For example, returning to one's original homes might be compromised by retraumatization, safety and insecurity issues while relocation to alternative land amounts to one's loss of identity. A sustainable solution would perhaps constitute individualized interventions to cater for the diversity of needs. Likewise, Moses, a 46 year old peasant farmer, points out the need to address agro-ecological imbalance and inequity as pivotal in alleviating ethnopolitical violence in Kenya:

The government has failed to pay attention to our agro-ecological heritage, the fact that some places are ecologically deficient and require special development. Agro-ecological disparities leads to differential development and hence resource based conflicts. Such conflicts can be resolved by the introduction of alternative lifestyles via special projects such as boreholes, irrigation, and drought resistant crops. Investment in education and white collar jobs will also ensure less dependence on pastoralism. So we should not fight for equality, for never shall we be equal; what we should fight for is equity which demands that everybody gets a fair share equal to their inputs. As my grandfather told me, our hand has five fingers all of which are different. The thumb is thick and short, the last finger is thin and equally short, the middle finger is average and long and neither of the remaining two fingers is exactly like the other. We need policies that ensure good standards of living for all Kenyans as a critical ingredient for sustainable transitional justice and peacebuilding.

Post-conflict reconstruction approaches indicates the importance of avoiding the cookie-cutter liberal technologies and instead investing in contextualized *appropriate technologies* that tap into indigenous knowledge, local resources, and realities (Seidman and Frederick, 1992). This of course requires civic education and collaborative action between the locals and the change

agents. In his contribution, Wycliffe, a 51 year old member of the National Cohesion and Integration Commission holds that access and equity are key to peacebuilding:

Access and equity to resources such as education, land, food, and job opportunities for all is key in addressing ethnic conflicts. Sharing resources equally ensures openness and breaks the status quo of one group having all political stakes. We need to fight greed, and be ready to share. Equity, equality and fairness should be national inclusive but community specific in order to address the diversity of needs among Kenyans. We need a policy that gives a fair chance to all ethnic groups to access public opportunities. We need to embrace affirmative action, merit and quotas to favour ethnic groups that were not privileged by colonial and post-colonial regimes. We need to have some jobs that do not require academic certification to cater for ethnic groups not privileged to have good education.

While equity is key to addressing differential development, it requires political will, and the implementation of institutional and constitutional reforms. Effective socioeconomic and political development requires the embracement of a bill of rights in order to ensure equity and equality across the ethnopolitical divide (Nasong'o, 2007: 52-53). But how do we nurture good institutions and a constitution in a hegemonic state? Post-conflict reconstruction perspectives suggest that good institutions and constitutions require upholding four key principles of democracy: decentralized decision making processes guided by devolved socioeconomic and political institutions; the replacement of liberal democracy with social democracy to facilitate socioeconomic and political rights; and upholding individual and collective rights to nurture freedom and rights to socioeconomic, political and cultural expression, and participation; and enabling incorporation and hence inclusive participation, representation, and access to equitable distribution of resources and services (Nasong'o and Murunga, 2007:6). In her contribution, Catherine a 45 year old member of parliament from the Jubilee Alliance believes that the Kenyan challenge can be addressed via a bill of rights:

Peacebuilding must address humanity through a bill of rights...the government must address colonial and post-colonial preferential development and embrace national development based on the special needs of Kenyan communities. Colonial development was meant to serve capitalistic colonial interests and was concentrated around the white highlands and the railway line...we should develop philanthropy, the attitude of humanity where I can give to people not because they have worked for me but because they exist at the time that I exist. Rich families in Kenya live in luxury; the monthly budget for their dog is \$125 while that of their house help is \$35. A sense of humanity will enable us reach out to each other, share and make the life of others more bearable.

So long as ethnic groups are linked by the consciousness of common identities and use their uniqueness to maximize their access and benefit from the state's socioeconomic and political resources and services (Rothchild, 1997: 4), how can a common humanity be nurtured across the Kenyan ethnopolitical divide? Humanity derives from a genuine redress of historical injustices and inequities embedded in the power asymmetry. The *Integrative Frame* of the ARIA Framework emphasizes the importance of discovery and invention that transforms adversarial relationships into cooperation therefore enabling mutually agreeable options (Rothman, 1997). Disputants embrace the notion that 'we can together' which nurtures a fertile ground of the 'how?' opening the way for the action frame. Mutual agreements and actions facilitate coexistence and a shared community in which grievances can be expressed without relapsing into cycles of violence (Daly and Sarkin, 2007: 215). In another observation, John, a 34 year old youth leader and political activist maintains that addressing youths' vulnerability and marginalization is key to solving ethnopolitical violence in Kenya:

We must address the unemployment of youths. According to the 2009 international labour statistics, 64 percent of Kenyans are unemployed and 80 percent of those unemployed are youth. The population census indicates that 72 percent of Kenyans are youths below the age of 35 years and live below the poverty line; they are dehumanized and cannot meet their basic needs. I know many families that sleep hungry. Poverty and unemployment has caused the rise of militias in every community, young people who can only secure their livelihood through hooliganism, the gang mentality. Give these youths Ksh. 100 (approx. \$ 1) and tell them to kill, they will; in the last post-election violence some youths received Ksh. 500 (approx. \$5) for a head of a member of an enemy group. We must invest in infrastructure to ensure that millions of disfranchised youths participate and are involved in the development of our country because they are most vulnerable to political manipulations that cause conflict.

The above quotation indicates the need to actively address the expressed needs of youth. Being treated as inferior in terms of services and resource allocation leads the discriminated group to question the political system that allows such discrimination while developing alternative coping mechanisms that often lead to violent conflict (Wolff, 2006: 67). Peacebuilding, economic growth, and development requires states assurance of political and civil rights founded on transparency and accountability (Bekoe, 2006: 11). Social reconstruction during peacebuilding has to pursue policies that provide inducements for ethnic cooperation, the equal distribution of resources, and ethnic inclusion in public institutions and programs (Oberschall, 2007: 232). Armed and violent youths in Kenya exist due to impoverishment, vulnerability, and marginalization. Disarmament, Demobilisation, and Reintegration (DDR) and Security Sector Reform (SSR) are key in post-conflict reconstruction (MacGinty and Williams, 2009). To avoid relapse, post-conflict societies should embrace social integration, economic development, good leadership, de-militarization, and psychosocial transformations (Dayton and Kriesberg, 2009: 5).

6.3 Good Leadership and Governance

Boutros-Ghali's 1992 Agenda for Peace asserts that there is an obvious connection between democratic practices such as the rule of law and transparency in decision-making and the achievement of true peace and security in any new and stable political order (Rogers, 2008:

43). Good leadership and governance derives from the ability of the government to administer policies effectively and transparently, to adopt democratic principles and honour human rights and the rule of law, thereby engendering socioeconomic growth, political stability, and development (Bekoe, 2006:11). How can good leadership and governance be nurtured in Kenya? As Zacharia, a 52 year old member of the Independent Electoral and Boundaries Commission observes, good leadership requires intolerance to impunity and the embracement of the rule of law:

Every vessel that floats on water relies on its pilot. We need to get good leadership to sail the Kenyan vessel to the Promised Land. It should start with cleaning our political house; corrupt leaders must either reform or be removed from office. Our leaders must demonstrate a high level of responsibility, truth, objectivity, integrity, and to uphold the rule of law. We need a leader who is intolerant to impunity. People want justice now and not tomorrow. If justice fails, then it leads to jungle law which translates into survival for the fittest. Therefore, the priority should be a total respect of the rule of law, because it is from the rule of law that we manage our institutions.

This assertion is echoed by Simon, a 56 year old member of parliament from the ruling Jubilee Alliance who emphasizes the need to have an inclusive, people-based and national leadership:

Martin Luther King Jr. walked so that we can run. But how many Kenyans are ready to carry the cross and visions of our liberation heroes? The greatness of a nation can only be realized when a leader becomes a servant. The leaders should embrace the worm's eye view and not the bird's eye view; their shoulders should bear the burden of Kenyan ethnic diversity. We need new ideologies customized to the diversity of our nation. Our leaders must be men and women of integrity willing to enforce the rule of law and implement our constitution...we need national leaders who embrace inclusive ethnic development. We need leadership that will create jobs, foster unity, and nurture nationalism.

Post-conflict reconstruction approaches indicate that good leadership can be nurtured by restoration of democratic institutions, addressing expressed grievances and the cycle of sectarian abuse in order to alleviate uncertainties and the fear of betrayal (Keen, 2008; Lyons, 2005). While national leadership devoid of impunity is desirable, the challenge is how to get such leadership in a society saturated in ethnic prejudice and ethnic nationalism, where the philosophy

of every new leadership embraces the concept of *it's our time to eat* (Wrong, 2010). An ethnic dictatorship nurtures ethnic apartheid which excludes ethnic others from the institutions of power, leadership, governance, and public service; the rule of just law is replaced with impunity which suspends democracy and maintains the status quo (Wamwere, 2008: 196-207). Addressing ethnopolitical violence in Kenya requires the identification and prescription of consensus-based constitutional remedies, socio-political institutions, political tolerance, democratic culture, and governance that accommodates the expressed needs of ethnic diversity (Machira, 2010: 19). Perhaps strong institutions of governance could address the Kenyan ethnic problem, as Luke a 40 year old political analyst and human rights activist observes:

We need a government committed to fairness and justice in order to fight impunity, transit to justice, and build peace. We need strong institutions that guarantee justice; if people feel that they are treated justly and that their voices are heard, peace will come. The rule of law and democratic practices should be enforced to guarantee fairness and avoid a state of anarchy. A bill of rights should be embraced to ensure equity and fairness across our ethnic diversity. The National Cohesion and Integration Commission (NCIC) and the Independent Electoral and Boundaries Commission (IEBC)¹⁸ should ensure that early warning and response systems are in place. A country can only be built through the dreams of its own people. It is dangerous if a country does not dream. It's even worse for a country whose people do not sleep so that they can dream. But how can people sleep in a situation of protracted conflicts. Our institutions must nurture spaces to enable our people to dream. We need a total rebirth of our governance systems in order to realize our national dreams.

Manipulative hegemonies will strive to maintain the status quo rather than provide institutional and democratic spaces for governance. As prescriptive approaches indicate, the culture of silence of the dispossessed is the product of economic, social, and political domination (Freire, 1968). Politics should be institutionalized through proper constitutionalism in order to break from the authoritarian past and nurture a space for a democratic future. Good governance is founded on effective socio-political institutions guided and guarded by good constitutionalism that facilitates

¹⁸ NCIC's mission is to facilitate and promote a Kenyan society whose values are harmonious and non-discriminatory for peaceful co-existence and full integration of its people. IEBC's mission is to conduct free and fair elections and to institutionalize a sustainable electoral process

spaces for equity and fairness in the distribution of resources and community values (Nasong'o, 2007: 53). From another perspective, George, a 32 year old youth leader in central province, observes that good leadership and governance requires equitable devolution of national resources:

What we need is not a more governed but a better governed country; mechanisms that are less administrative but more productive. It is not about increasing the number of supervisors but increasing the quality of supervision. Kenyans must entrench inclusive and productive devolution. Devolution of governance should ensure equitable share of national resources to meet counties' developmental needs. Good governance entails fighting impunity, the politics of the belly, and the philosophy of it is our turn to eat; it entails real justice, affirmative action, equality and equity across the ethnopolitical divide.

The ongoing devolution of governance however can be critiqued in the sense that it follows ethnic boundaries; in other words, ethnicity is institutionalised. The concept of 'this is ours and that is theirs' is an impediment to the equitable distribution of natural resources and a curse that could precipitate a relapse into ethnic violence. The state has the responsibility of controlling and managing national resources and fostering socioeconomic, political, and institutional relationships (Nasong'o and Ayot, 2007: 170). In the process of making and implementing political decisions, enforcing the laws and the rules of governance, the state should embrace good leadership, rules of social interaction, identification and satisfaction of collective needs (Danziger, 2005: 113). As integrative problem solving approaches indicates, effective peacebuilding and conflict transformation requires a holistic approach in order to address the complexity and diversity of conflicts and therefore satisfy the collective and special needs of disputants (Reychler and Paffenholz, 2007). From another perspective, Charlotte, a 33 year old social worker in the sprawling Kibera Slums in Nairobi observes that political parties are key to good governance:

We need to revoke ethnic political parties and have policies that govern the formation, structure, and the conduct of political parties; we need a few parties that embrace a national appeal. This will reduce mistrust because when a candidate wins, it is the national majority and not the ethnic majority that wins. In the past, when an ethnic candidate won or lost it was a win or a loss of a particular ethnic group. This will nurture national leaders and help alleviate tribal factions. Harsh penalties should be imposed on leaders who engage in hate speeches. People should elect leaders who embrace integrity, transparency and accountability to their constituents as entrenched in chapter 6 of our constitution. This requires civic education and socioeconomic empowerment. Leaders should facilitate cross-community peace rallies. We need an administrative mechanism that embraces ethnic diversity to cater for geoeological and geopolitical challenges.

Ethnic parties exist to preserve ethnic nationalism and the benefits attached to the same. Therefore, national party systems can be nurtured if the benefits attached to ethnic nationalism are decentralised and accessible at the national level. Strong political parties are founded on their institutionalization and an environment that nurtures a democratic and participatory political culture (Oloo, 2007: 94). The challenges of the institutionalization of political parties in Africa constitutes a hostile political environment that features: non-existent or deficient party visions, missions, manifestos and ideological foundations; non-existent or deficient institutional and policy frameworks; the absence of internal party democracy; a lack of openness under authoritarian party leadership; a lack of funding, resources, and limited public financing; political patronage, ethnic divisions, and state intimidation (Oloo, 2007: 102; Wanjohi, 2003: 249). Addressing these gaps could nurture a national party system in Kenya. Yet, Lilian, a 66 year old opinion leader from the minority ethnic groups observes that inclusion and strong institutions are pivotal in addressing the Kenyan ethnic challenge:

Those who hold political power tend to benefit more than those not in power, that is why political power is fiercely contested; 'our turn to eat' for those in power, is always an accepted fact. You have been there, you have been unfair, you have benefited; you step aside so that we can also get a chance to eat. The distribution of an infrastructure such as good roads, schools, hospitals, water and electricity tend to be associated with political power. If we have strong legislations, institutions, and visionary leaders who serve every Kenyan equally, without favour then it would not matter who is at a position of power and I think 80 percent of our problem will be solved. The rule of law must be enforced, you commit a crime it does not matter which ethnic group you come from or what position you hold, you should be taken to court and if found guilty punished according to law.

The above statement echoes instrumentalists who argue that elites use their cultural groups as sites of mass mobilization in their competition for economic opportunities, social status, political power, social justice, and resources (Smith, 2001: 54). In a similar argument, Samson a 50 year old homeless man in Kibera Slums in Nairobi, observes that ethnic problems in Kenya can be addressed by embracing an ethnic balance in the distribution of opportunities:

Our political leaders surround themselves with people from their own ethnic groups therefore creating mistrust among other groups. If you are the President, your chief advisor is from your village; your driver is from your village, your bodyguard is from your village, all the top positions within the presidency are from your village, what message are you sending to the rest of the Kenyans? Political appointments to major positions in the civil service and parastatals alike should embrace an ethnic balance and not just on merit but in terms of equity and equality. One of the grievances of the Coast people is that the Port Authority is dominated by people from outside and yet that is one of their major resources.

The above quotation elicits the following question: Who will provide the spaces and forums required for strong legislation and institutions? MTD, integrative problem solving and problem solving workshops emphasize the importance of involving Middle-Range Leadership in facilitating reconciliation and peacebuilding. Apart from being known to top-level leadership, they have significant connections with the grassroots communities and unlike top-level leadership, they have a greater flexibility of movement and action, and a wide network of relationships across the human and physical geography of the conflict (Byrne and Keashly, 2000;

Diamond and McDonald, 1996; Lederach, 1997: 41-42). On the other hand, the involvement of top-leadership in reconciliation and peacebuilding efforts is crucial because they are highly visible, powerful, publicized, and influential (Lederach, 1997: 38-40). Grassroots leadership too is key in reconciliation and peacebuilding initiatives because they represent the masses and have the expert knowledge of local politics (Lederach, 1997: 43). In general, key leaders at all levels are important for peacebuilding because they have authority, influence, and opportunity to make important decisions that can reduce violence, address expressed needs, and create a critical mass to facilitate desired change (Schirch, 2004: 70). From the foregoing, therefore, good leadership and governance are key to the Kenyan solution.

6.4 Institutional and Constitutional Reforms

Intrastate conflicts arise from inequity in resource distribution, coercive authorities that favour the interests of dominant groups while marginalizing peripheral groups, and institutional structures that maintain and sustain the status quo (Rothman, 1992: 38). Post-conflict reconstruction approaches indicate that true democracy is founded on institutional guarantees including: freedom to form or join organizations; freedom of expression and movement; universal adult suffrage; legibility to seek public office by all; free and fair political competition; free access to information; free and fair electioneering; functional social-political institutions; and freedom of political opposition (Nasong'o and Murunga, 2007: 4). Institutional guarantees are key in addressing the Kenyan ethnic challenge as Christopher a 72 year old community leader from Nyanza Province observes:

If we put value on national institutions and appreciate regional diversities and peculiarities, pull each region to meet its minimum then we can build and sustain peace. The new constitution and especially devolution will decentralize governance and development such that people will exercise their potentials from any part of the country thus enabling regional balance and peace. Freedom of movement and ownership is a very strong part of our constitution, now that we are devolving, nobody will be forced to

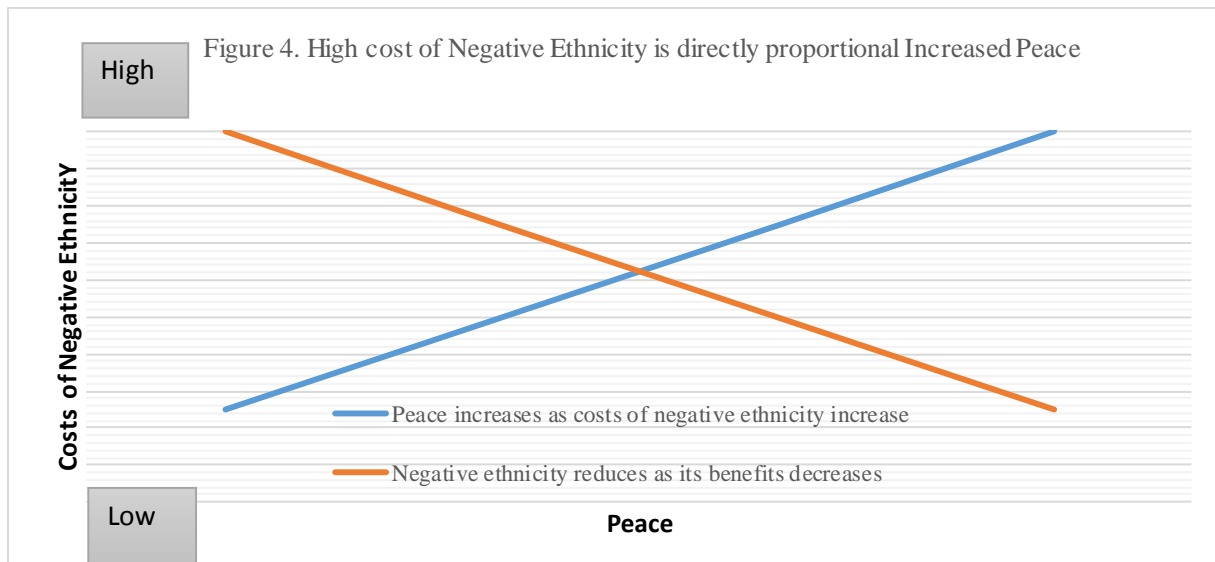
relocate to ancestral Counties.... Every county system has a role in creating justice for a particular region and then from that we can build the national system of justice. We now need grassroots initiatives to cater for multi-ethnic representation. The county governments will enable equitable distribution of resources to ensure that everyone has access to basic needs and hence peace; people fight due to physical, material, ideological, and moral scarcities.

Post-conflict reconstruction approaches argue that restoration of law and order, an effective judicial system, an accountable government bound by the rule of law, and an inclusive and democratic political process, are key in addressing ethnopolitical conflicts (Wolff, 2006: 166). A critique of the Kenyan devolved county governance however is the ethnic-based administration and distribution of positions. While the constitution recommends that at least 30 percent of county governance constitute other ethnic groups rather than the indigenous ethnic group, this has been compromised by ethnic political intrigues. Perhaps what is required in Kenya is not ethnic integration within the devolved counties but a national peace policy, as Jackson a 75 year old veteran politician argues:

We need a peace policy to affect the coordination of peace activities in the country and help change the attitude of Kenyans. Important also is to create a linkage between peace and development to help communities in arid and semi-arid areas. If there is no development then there is no peace...mass action is not the best when the majority glorify impunity. It happened 2000 years ago in Israel when people freed Barnabas and crucified Jesus because the majority were glorifiers of impunity. This is the danger of democratizing a country full of people who treasure impunity because they elect equally corrupt leaders. Democracy is about the majority will, and if the majority says let us kill, it becomes a law.

Critiquing Jackson's assertion, while a peace policy is desirable in Kenya, it requires political and institutional spaces that would sustain and maintain it. Instrumentalists argue that ethnopolitical conflicts derive from discriminatory practices in which proper institutional arrangements to resolve disputes do not exist. Effective post-conflict reconstruction can be achieved by decreasing the benefits of ethnicity and at the same time increasing the costs of ethnicity. In other words, interethnic conflicts escalate when political institutions increase the

benefits of ethnicity and lower the costs of discrimination (Kimenyi, 1997: 60). This theorization could be presented in the form of a Figure 4 below.¹⁹



Created by Peter Karari

A peace policy would therefore be nurtured if we increase the costs and reduce the benefits of negative ethnicity. On the other hand, sustainable peace and development is only possible if ethnic nationalism is replaced by state nationalism in which resources, opportunities, and services trickle down to benefit everyone in the society equitably. Post-conflict reconstruction theorists indicate that protracted conflicts in Africa derive from diversified multi-ethnic nation states entangled in high levels of material poverty and an uneven spatial and social development dominated by authoritarian and corrupt governments (Nhema and Zeleza, 2008: 6). Supported by economic momentum, a peace process can resist violent shocks meant to derail it (The Portland Trust, 2007, 2009). The concept of democracy is Janus-faced; while it instils fairness and justice, it can easily be abused if the majority embrace impunity. As discussed earlier, perhaps a better form of democracy should accommodate socialism and humanism. In his observation, Benedict a 47 year old member of parliament from the Coalition for Reforms and Democracy feels that the

¹⁹ The figure above constitutes a general representation of the discussion ensuing from the respondent's contribution about the need for a peace policy in Kenya.

new National Cohesion and Integration Commission (NCIC) could address the Kenyan ethnic challenge:

We bank on the NCIC vision to build a peaceful, harmonious, and integrated Kenyan society. NCIC involvement in conflict analysis and early warning, capacity building and training, media and communication, and national peace coordination through peace forums and peace committees is key to the Kenyan peace. While ethnic groups are ascribed to particular regions in Kenya, integration ensures the possibility of all ethnic groups to live together in harmony. It involves the sharing of a vision without feelings of competition. Integration is key to trustbuilding.

Effective post-conflict reconstruction should support the victims to cope with their traumatic past and see that justice is done (Wolff, 2006: 180). While the NCIC is a good institution that could address the ethnopolitical challenge in Kenya, it faces a few impediments. We need to ask ourselves: who formed the NCIC and with what purpose? Who constitutes the NCIC? Is the NCIC representative of all the Kenyans across the ethnopolitical divide? Does the NCIC have any jurisdictional powers to implement its findings or is it another smokescreen instituted by the hegemonic state to hoodwink Kenyans? The NCIC is a toothless tiger, since it can investigate but not prosecute. The NCIC recommendations for prosecution can be rejected by the government if it implicates the powerful political elites. To be effective, the NCIC should be empowered to address impunity independently without manipulation or intimidation by the government. Post-conflict reconstruction approaches indicate that ethnopolitical conflicts can be addressed through decentralization of institutional decision-making processes, which facilitates autonomy, ownership, freedom, identity, and therefore effective planning and implementation of policy frameworks (Kimenyi, 1997: 63). In her contribution, Agnes a 47 year old community women leader from the Rift Valley Province asserts that the full implementation of the new constitution is pivotal in addressing ethnopolitical violence:

Full implementation of the constitution and institutional reforms is the greatest thing for every Kenyan because it touches on every bill of right including integrity, justice, economic welfare, and general development. If you import a train let's say from Japan you must first make a railway line on which it will run. Similarly, our constitution must be fully implemented for change to happen in Kenya. The judiciary needs a lot of reform and support so as to gain credibility. Most of the perpetrators of the past post-election violence have never been prosecuted. If the judiciary plays its role, transitional justice and peacebuilding can become feasible.

Post-conflict reconstruction approaches (Wolff, 2006: 180; Dayton and Kriesberg, 2009: 57) and integrative problem solving approaches (Rothman, 1992:60-65; Byrne and Irvin, 2000:41-62; O'Brien 2007: 114-130; Diamond and McDonald, 1996; Galtung et al., 2002; Jeong, 2000; Hurlbert and Mulvale, 2011) emphasize the importance of accessing and creating opportunities for affected groups including structures that can distribute them evenly. The Kenyan constitutional implementation process has however been compromised by ethnic politics in which legislators vote for bills based on their political and ethnic backgrounds. This leads to the lack of passage of key bills and/or passage of bills whose articles have been mutilated to cater for selfish ethnopolitical interests. For example, while chapter six of the constitution of Kenya was meant to provide for leadership integrity, the majority of Kenyan legislators mobilized to delete clauses related to a declaration of wealth and the independence of the ethics and anti-corruption commission.²⁰ Therefore, the effective implementation of the constitution requires political willingness, which is unfortunately lacking in the Kenyan context. It is therefore important to continue engaging the government using different forums including civil society groups, NGOs, CBOs, religious groups, middle-range leaders who can easily access both the top and the grassroots leaderships (Lederach, 1997), and other stake holders in the constitutional and institutional reforms process. Continued civic education, collaboration, and net-working between the government and various stakeholders is key in nurturing political willingness.

²⁰ The Star. 2014. Cabinet dilutes bill on integrity: <http://www.jambonewspot.com/cabinet-dilutes-bill-on-integrity/> Accessed: March 26, 2014

6.5 Peace, Security, and Safety

Protracted violence creates and reinforces an environment of insecurity that threatens identity, hence creating a tendency toward self-protection (Lederach, 2003: 57). Therefore it is imperative that measures are taken to address perceived or actual insecurity. The presence of justice in Kenya and the ownership of resources by all Kenyans across the ethnopolitical divide could play a major role in nurturing peace, as Abigail a 53 year old community women leader from Central Province observes:

Peace is not the absence of war but the presence of justice. Peace can be nurtured through the socioeconomic empowerment of all people. If you want to eradicate the theft of bicycles in a village, ensure that every family owns a bicycle. If you are the only one who enjoys peace then others will make your world unpeaceful. You may argue that we can share the few bicycles we have, but sharing is not sustainable, ownership is, if we all own glass houses we will be careful not to throw stones. The sense of ownership is a big factor in nurturing peace; ownership of resources nurtures the ownership of peace process.

Integrative approaches indicates that positive peace is key in addressing structural violence and therefore in the restoration of sustainable relationships and social justice (Galtung et al, 2002). However, ownership of resources and hence the ownership of peace cannot thrive in the midst of ethnic polarization, discrimination, and humiliation. Providing security, building legitimate political institutions, and reviving the economy are important and necessary steps in facilitating a successful process of post-conflict reconstruction (Wolff, 2006: 179). As Benedict, a 47 year old member of parliament from the Coalition for Reforms and Democracy asserts:

Sustainable peace can be achieved if the government decentralizes development, decongests the centres, and facilitate a feeling of equality and inclusion into the modern system. Vision 2030²¹ is focused on modernizing some sections of the country; these super highways make Kenya look like Hong Kong or Singapore but where is the model of North Eastern where pastoralists are dying of famine? We need to invest in alternative lifestyles for Kenyans faced with natural disasters emanating from climate change. Unless the government addresses the needs of marginalized parts of the country, this idea of a Nairobi that looks like Kuala Lumpur is wrong.

Integrative approaches facilitate the analysis and understanding of the relationship between protracted conflicts, the complex underlying factors, and hence appropriate interventionism. Byrne and Irvin (2000: 41-62) use *Social Cubism* to demonstrate how history, demographics, religion, economic, psychocultural, and political factors interplay to influence multi-faceted ethno-territorial politics. Peacebuilding requires an understanding of the local context in order to know what the conflict is all about, what needs to stop, what divides and connects people, and what fosters vulnerability to conflict (Schirch, 2004: 21). Addressing despondency is key to peacebuilding, as Naomi, a 54 year old community women leader from Nyanza Province opines:

We must domesticate the process of peacebuilding and break the chain of despondency. If your grandfather was a slave, most probably your father is a slave due to two factors, a slave can only marry a slave and give birth to a slave and the lineage of slavery continues. Therefore, if I am a slave I do not have dignity because dignity is a product of peace. If you want to bring peace in the cattle-rusting region, you must actively involve the cattle rustler, let them offer a solution. Peace is impossible in a state of deprivation. Peace is sustained by structures that nurtures equality in access to resources and power. No justice, no peace; peace is a product of access to what you need to survive and live comfortably with.

A post-conflict agreement supports projects that aid the transition from war to peace, democracy and a market economy that offers equal opportunities to all disputants (Wolff, 2006: 157). However, the chain of despondency is challenging to break in the midst of collective fears. The

²¹ Kenya Vision 2030 constitutes a national long-term development blue-print to create a globally competitive and prosperous nation with a high quality of life by 2030 that aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment. The vision is anchored on three key pillars: economic, social and political governance. (<http://www.vision2030.go.ke/>).

collective fears about the future, assimilation into the dominant system, or for physical safety and survival sustain and maintain ethnic violence (Taras and Ganguly, 2006: 26). Psycho-social approaches suggest that trauma causes lasting physical, emotional, or spiritual injury, and leaves the victims with special needs and wounds (Schirch, 2004: 47). While unresolved trauma can cause fear and mistrust among former adversaries, reconciliation facilitates attitudinal changes, positive engagements, and overcomes negative psychological manifestations that cause pain, suffering, and distorted identities (Hayner, 2001; Ramsbotham et al., 2005; Jeong, 2010: 214). Moreover, peacebuilding is a process that requires sacrifice, as Naomi, a 54 year old community women leader from Nyanza Province observes:

Peacebuilding is like making baby steps; we can't say we have the best proposals or methods, it is about waking up and falling, look at the rose flower, it's very beautiful but for you to get it you must be prepared to be pricked by its thorns. Peace requires sacrifice, listening to each other, reminding each other that peace is important, we must be our brother's keeper, envision a brighter future together, forget about me and think about us as a nation...positive peace requires equal distribution of resources, a genuine participation in the national agenda setting, and strengthening of our national institutions.

Integrative problem solving approaches indicate that peacebuilding processes cannot exist in a vacuum, they must be founded on a strategy, principles, coordination, and planning. According to Schirch (2004: 79-80) the HOW of strategic peacebuilding requires embracement of the right values, ongoing analysis of conflict and violence, addressing peoples basic needs and rights, long-term planning, transformation of hegemonic systems, the coordination of approaches and actors, socioeconomic empowerment, and innovation and creativity. Post-conflict reconstruction theorists observes that addressing such challenges as employment and job security, investment in housing, education and health, safety and security, and fair allocation of resources, reinforces the state's credibility in the eyes of spoiler groups (Dayton and Kriesberg, 2009: 57). In her

contribution Isabel, a 35 year old chairlady of a merry-go-round women group opines that ethnic violence can be addressed by waiting for its ripeness:

At times we should allow these conflicts to continue. Let people fight and fight until they are tired. Then they will say, let us sit down and reason together. Like in football, each team thinks it is better than the other until they assemble in the same field and after ninety minutes the scores determine which team is stronger. The same can apply to communities. They will sort each other out, respect each other, and unite in finding a mutual solution.

Integrative approaches indicate that conflicts are ripe for negotiation when power is roughly balanced and there is wide awareness of the key underlying issues (Schirch, 2004: 75). Ripe moments are characterized by mutual painful stalemates when unilateral solutions are blocked and bilateral solutions are conceivable (Zartman, 1989: 10). Ripeness constitutes a place on a long slope where the “ins” start to slip and the “outs” start to surge (Ibid). From a critical perspective however, waiting for ripeness might incur heavy cost on the life, economy, and the future of a society. As Michael, a 43 year old victim and survivor of ethnic violence observes, reconciliation rather than waiting for ripeness could be the solution:

We need reconciliation programs that are owned by warring communities and led by indigenous peace ambassadors and opinion leaders. If we introduce foreign models as symbols of peace, we divorce the process from grassroots ownership. We must invest in peace dialogue, embrace special needs and cultures of our people, and sign local peace agreements about co-existence.

Local ownership of reconciliation programs and inclusive and participatory peace dialogues is key in resolving people’s feelings of exclusion. Psycho-social approaches indicate that historical injustices perpetrated against the vulnerable minority nurtures collective fears resulting in a “siege mentality” through which some groups push for unification while others advocate for secession (Byrne and Irvin, 2000: 55). Breaking the cycle of the siege mentality and nurturing a sense of shared identity requires addressing oppressive policies, mutual suspicion of treachery, histories of inter-community violence, and symbolism (Ibid, 2000: 57). From the foregoing

therefore, peace, security, and safety are key ingredients in addressing ethnic violence. A close scrutiny of the responses indicates that peace means different things to different people, as summarized in Figure 5 below. It is therefore imperative that a peacebuilding process accommodate this diversity.



6.6 Justice, Equity, Equality, and Fairness

Responses in this study indicate that the pursuit of justice, equality, equity, and fairness constitutes a formidable foundation for addressing ethnopolitical violence in Kenya. Restorative justice theories indicate that the pursuit of justice in the aftermath of atrocities may strengthen the rule of law and foster reconciliation by confronting competing narratives of the past to prevent relapse into ethnic disputes, instability, polarization, and new injustices (Woolford,

2011: 252). This is confirmed by Beatrice a 58 year old community women leader from Western Province in the following way:

Our national anthem reads “Oh God of all creation bless this our land and nation justice be our shield and defender” if Kenyans embrace justice as our shield and defender we will shun ethnicity and live peacefully. If I am selling milk, you will buy from me, not because you come from my community, but because I have milk and you need milk...the rule of law must be upheld while integrity as entrenched in section 6 of our constitution must be implemented fully...we must name, shame, and punish leaders involved in impunity and perpetrators of injustices. We should also ensure that our prisons are transformative and rehabilitative rather than retributive centres in order to restore humanity and the hope of the country, the continuity of people’s livelihood and reintegration. The morality of this nation must be restored by exercising the rule of law in a manner that promotes humanity across the ethnopolitical divide. We need a mechanism that harmonizes the modern and indigenous structures of justice especially in terms of resource ownership and distribution.

Justice exists when people respect the human rights of others, and when there are processes in place for holding people who violate the rights of others accountable to their victims and to the wider community (Schirch, 2004: 16). While Kenyans cry for justice and the rule of law, we must ask ourselves: how can it be achieved? What does it take? Do we have structures, spaces, and forums that can nurture and embrace justice? When the hegemonic system is comprised of anti-reformists and is founded on injustice and control over all the institutions of leadership and governance, where do the reformists begin? Post-conflict reconstruction theories indicate the need to form social structures that will accommodate social justice, equity, empowerment, and accountability. This will integrate norms, standards, and principles of the international human rights system into plans, policies, and processes of leadership and governance (Hurlbert and Mulvale, 2011: 177). It will also help alleviate social disparities as Dorothy, a 34 year old leader of a local civil society organization opines:

We need to get rid of classism that has engulfed our nation. It is time that we face the forest from a closer view. When you are far, you see the thickness of the forest but as you get closer you see the individual trees and you are able to admire the uniqueness of every tree. While we address the needs of Kenyans as a nation we should also address the specific needs of individual communities in order to accommodate the diversity of our forty plus ethnic groups...the way forward is for our leaders to appreciate all tribes and divide the resources equitably. Ethnic conflicts occur due to extreme disparities in terms of the distribution of resources, infrastructure, services, and opportunities. The government should ensure food security by addressing geo-ecological challenges. This will change the mind-set of the marginalized and the concept that 'it is our time to eat' and hence positively impact on national values and trust.

Restorative justice theories suggest that doing justice constitutes restoration, rectifying wrongs, and creating right relationships based on equity and fairness; it involves advocacy for those harmed, open acknowledgement of the wrongs committed, and in addressing the special needs of the affected people (Lederach, 1995: 20). However, this requires a political will, nationalist leadership and effective governance, all of which have failed in Kenya. The cycle of historical enmity can be overcome by addressing the past history of conflict relationships, embracing shared understandings of mutual challenges, and entrenching social justice (Daly and Sarkin, 2007: 216). From a critical perspective however, are shared understandings possible in the midst of deprivations and marginalization? Catherine a 45 year old member of parliament from the Jubilee Alliance notes this as follows:

If somebody is deprived, how can you obligate such a person to build trust? If a person loses his land and you suppress his voice by blaming ethnic animosity, trust cannot be built. The MRC at the coast are saying Pwani si Kenya, that coast is not part of Kenya because they are marginalized, deprived, and the government is unwilling to listen to their grievances. To nurture cross cultural trust requires affirmative action, where positions and opportunities are accessed by those groups affected by historical injustices. People only fight when they want to scramble, there is no scramble that is civilized, but the moment everybody has a piece of the cake the reason for conflict diminishes. We must have a system that distributes resources and power among all the people equally.

Post-conflict reconstruction theorists argue that a stable political process may fail due to the unwillingness or inability of elites to cooperate with the new democratic structure and/or the

mismatch between political institutions and communal aspirations (Wolff, 2006: 173). From a critical perspective of Catherine's observation above, while affirmative action could be a form of inclusion, it compromises self-determination and encourages paternalism in which the government picks those least likely to challenge the status quo. Positions arising from competitive elections are more sustainable and democratic. In her contribution, Amelia, a 60 year old community women leader from North Eastern Province observes that justice is derived from equity, equality, inclusion, and access:

If leaders give equal chances to everybody then there should be no conflict. If we can all access basic needs such as food, employment, shelter, and land, then we can trust each other. I will not mind about your tribe as long as I can access resources for my basic livelihood. If for example the government want to employ fifty teachers from every county with a Bachelor degree, there are counties that might not have even a single person with such a qualification. Eventually such places will be left out. Embracing an inclusive system is important in nurturing the trustbuilding process.

Integrative problem solving approaches (Rothman, 1992: 60-65; Byrne and Irvin, 2000: 41-62; O'Brien 2007: 114-130; Diamond and McDonald, 1996; Galtung et al., 2002; Jeong, 2000; Hurlbert and Mulvale, 2011) and human needs approaches (MacGinty, 2008: 69-74; Burton, 1997) indicate the importance of addressing the special and expressed needs of disputants in order to nurture sustainable peacebuilding and conflict resolution. In her *Convergence Framework for Critical Peace Building*, Connie O'Brien (2007: 114-130) highlights three key considerations for effective social transformation: access to holistic human needs; inclusive, people-driven approaches, and; participatory democratization processes. Justice should be founded on the recognition of our unique norms and prejudices, an acknowledgement of our ethnocentrism, the accommodation of the voices of the marginalized and a critique of unjust social arrangements (Hurlbert and Mulvale, 2011: 30). Transformative peacemaking is based on understanding a fair, respectful, and inclusive process as a way of life and envisioning outcomes

such as a commitment to increasing justice, seeking truth, and healing relationships (Lederach, 1995: 22). The above discussion indicates that justice is deficient in the Kenyan system. There is a need to address structural violence and injustices in order to alleviate ethnic strife and build sustainable peace.

6.7 Positive Socialization and Education

Elicitive and prescriptive approaches note that education is a two edged sword; it can nurture conformity to dominant and oppressive discourses and can also nurture freedom through which those on the periphery are empowered to critically and creatively participate in the transformation of their world (Freire, 1968: 34). The culture of silence of the dispossessed is the product of economic, social, and political domination; rather than being equipped to know and respond to critical realities of their world, the dispossessed are kept in the dark through manipulative education meant to maintain the status quo (Freire, 1968: 30). Addressing stereotypes is key in resolving negative education and ethnic wars, as Miriam, a 52 year old community women leader from the Coast Province observes:

Mistrust arises from an ethnic attitude towards others. We need to change our mind-sets and address stereotypes; no one should undermine the other because of their cultural practices. People should be educated that we are all one. People should change their attitude and perception about others. The government should sponsor intercommunity social activities to alleviate ignorance and unite the people. Training of trainers can help expand inter-communal dialogue.

While the above assertion could be true, the critical challenge is to create and maintain forums and spaces that nurture intercommunal dialogue. Psycho-social approaches indicate that new relationships should appreciate a common humanity and respect for diverse identities, nurture social spaces that facilitate the expression and overcoming of grief and anger; re-establish social bonds through cross-community contacts and rehumanization (Dayton and Kriesberg, 2009: 4; Daly and Sarkin, 2007; Jeong, 2010: 214). The church, the family and opinion leaders have a key

role to play in creating cross-community dialogue spaces and forums as Ann, a 45 year old community women leader from Eastern Province explains:

The church should educate people about morality. Sharing our cultural values, fears, and desires can help address the inter-generational curse of ethnicity. Opinion leaders in every ethnic group should organize events and dialogues to enable learning and the understanding of cultural differences, needs, and values....Peace initiatives must embrace a bottom-up approach. If the groups that suffer at the grassroots come together, talk and share in an open environment, where each group feels presented, trustbuilding becomes possible. Let the people find their own solution because they know each other and their needs better...we should also strengthen the family as a core unit of socialization.

Constructionists holds that identity politics, divisive ethnic myths, symbols and stereotypes, and fears are embedded in folk culture, socialization, and institutions of divided societies (Kaufman, 2001). Restorative justice approaches indicate the need to alter the climate of fear and provide victims and perpetrators with opportunities to recognize their common humanity through trauma narratives, social engagements, and cross-community forums (Woolford, 2009: 131). In his story below Henry, a 48 year old director of a peacebuilding and rehabilitation resource centre observes that restructuring of the formal education system is essential in addressing ethnopolitical violence:

We need to have our system of education restructured such that students can school at different ethnic regions at various levels. For example, a student can have eight years primary education at the place of birth, then attend four years high school, four years bachelor, four years Masters, etc. in different regions considered to be inhabited by the enemy others. This enables demystification of myths and stereotypes. You get to witness that those perceived to be cannibals are not...We need to implement the institutional reforms and policies that cater for interethnic integration at education institutions.

Critically though, while the concept of an integrated school system has had success and contributed to gradual peacebuilding in South Africa and Northern Ireland, political willingness plays a key role (Arthur, 2009). The devolved county governance in Kenya could be an impediment to an integrated school system. Perhaps the priority should be an investment in an

uncompetitive education system, as Eva, a 52 year old governor within the ruling Jubilee Coalition suggests:

We need an educational system that is uncompetitive but result orientated; a system that is not focused on who is better than who but on how better can we can tap resources to make everyone a better person. Our education system must be inclusive of our diversity integrating the lowest and the highest in the society and nurturing philanthropy, benevolence, and social entrepreneurship. Let's not use the academic performance as the only qualification of succeeding in life. Let us ensure that those not endowed academically are accredited for their other abilities. Let us shun the system of awarding some pupils and humiliating or shaming others based on academic performances. If we give praises, let us have other categories rather than academic i.e. best in sports, most disciplined, most obedient; let us embrace co-curriculum activities as part of curriculum, if you can be a good footballer, why do you need calculus or Pythagoras theorem?

Psychosocial approaches indicates that capacity building programs such as training and education, development and transformation should be founded on long-term planning, the creation of constructive relationships between people and their environment, and developing human resources and abilities to meet special and expressed human needs (Schirch, 2004: 57).

The importance of investing in intelligence and research is highlighted by William, a 50 year old member of TJRC:

Let us understand and know how a certain community behaves, their tendencies and values. We need to train our people as intelligence and research experts in order to strengthen our early warning system. Mao, the founder of China was a militant man in fact he was the person who developed the curriculum for military science but he never used military weapons to conquer the world, he used his intelligence. We do not need to invest in the military, we need to build better schools and create civil forums to educate and address the mind-sets of our people.

Problem solving workshops indicate that training must be understood and integrated coherently into an overall peacebuilding framework, oriented towards social empowerment and change (Lederach, 1995: 119). Training, education, research, and evaluation constitute key foundations of capacity building and sustainable peace (Schirch, 2004: 26). As Peter, a 52 year old professor

at a local university observes, investment in skills training is key in empowering the peripheral populations:

We need an increase in technical and skills training colleges to help equip our industries and employment for jobless Kenyans. For example we need roads and people who know how to build roads; we do not need to import the Chinese. All this whole blue collar section where we have builders, plumbers, and electricians is the foundation of economic development. We need to invest in technicians, lab assistants, electricians, those people who make the country move. You can have all the professors and doctors but at the end of the day you need people who work, I would look at that cohort, that area. We need to talk about peace in schools, let there be a taught syllabus not necessarily for examination but general assessment including competitions and activities at grassroots. We need to budget for peace and have a ministry for peace led by experts of peace to mitigate conflict and institute early warning signs.

While skills training is key to the socioeconomic empowerment of the marginalized communities, it requires funding and a harmonized approach that will address special needs and differential development of target groups. In Kenya, this is challenging because of ethnic county governance, heightened ethno-nationalism, and corruption. From a different perspective, Teresa, a 30 year old person living with disability and a survivor of ethnic violence feels that investing in educative memorial peace projects could play a role in addressing ethnic strife:

Memorials of killings, rape, maiming, and destruction of properties that brought shame to our country and our economy to its knees constitutes great ingredients for civic education especially for the youths. It must be strategic and accompanied by individual counselling. Everyone needs to know that nobody won the ethnic war, that if such is repeated, the repercussions would be the same or even worse. The images of orphans toiling to survive, the disabled, IDPs, rape victims, inflation, and examples of how perpetrators of injustice were punished will be a warning to future generations...stories of the victims need to be documented and acknowledged so that future generations can learn from them...we need to know the kind of injustices that happened, how they happened and those involved. Some injustices cannot be corrected or reversed; if someone was maimed or killed no amount of compensation can undo that. The leaders who caused humiliation and trauma should be named, shamed and removed from public service...if you destroyed my crops, killed my animals or burned down my house apologize remorsefully, and pay back...the victims should actively participate in setting the bar for pay back.

Restorative justice theories indicate that ending protracted violence and building sustainable peace requires documentation of damage, communication, translation, and education that helps

bring about political conditions in which responsibility is acknowledged and political will generated to implement meaningful, sustainable, and restorative assurance of “never again” (Johnston and Slyomovics, 2009: 20). However, while memorial peace projects and documentation are valuable, they requires accommodative forums and spaces, all of which of course derives from political willingness. If the hegemonic political system harbours the perpetrators of injustices it would be challenging to acquire such spaces or even authority to initiate such projects.

6.8 National Ideology and Identity

The colonial occupation of Africa nurtured a diversity of new ideological orientations (Oloo, 2007: 90-91). At the forefront were socialist and capitalist systems of governance. Capitalist ideologies were especially boosted by the Airlift Africa Project in which over 800 East African Students were airlifted to join American universities between 1959 and 1963 and later came back home to influence social and political leadership (Shachtman, 2009). The fall of socialism in the 1990s gave way to capitalist greed and class politics nurturing negative ethnicity as the new ideology (Wamwere, 2008: 163). Negative ethnicity has become the ideology, a national curse at all levels of socioeconomic and political leadership (Wamwere, 2008: 39). As the fastest growing ideology in Africa, negative ethnicity urgently needs to be addressed (Wamwere, 2008: 162). As Benson a 32 year old civil rights activist observes:

We need to reconcile all the diverse ideologies and nurture our own national ideology. It requires a political space and strong informed groups, interactions, freedom of consciousness, and reconciliation of radical ideologies. Developing a national identity is a process of garnering for a neutral space that can accommodate all identities, differences, and polarizations towards harmonizing our commonality and striking a national deal. It is only after harmonizing our values, ideas, manifestos, ideals of political parties, leadership and integrity that we can address the causes of ethnopolitical conflicts.

While the reconciliation of diverse ideologies that feed ethnic nationalism is a good idea, instrumentalists indicates that the challenge lies about how to go about it (Gurr, 2004). Will ethnic protagonists agree to sacrifice their ethnic orientations and the benefits that derive from ethnic identity in order to give way for ideological harmonization? Like in the prisoners' dilemma, the success of ideological harmonization requires a carrot and stick approach based on potential benefits (Oberschall, 2007: 7; Kimenyi, 1997: 36). Perhaps ideological harmony could be nurtured by inclusion and representation rather than preferential treatment, as Elizabeth, a 37 year leader of a local NGO observes:

When you fill any government form you have to start with place of origin or tribe. The use of tribe as a form of identity brings tensions and animosity on the basis of representation. While identity in itself is very important, it should not be made a priority in nation building. Many cannot get a job irrespective of their qualification because they come from the wrong tribe. This kills the morale of Kenyans to work hard as a nation, but to work hard as a tribe, so identity should not be made too conspicuous; there should be an attempt to make sure that everybody is able to contribute to national building and diversity of our economy.

Instrumentalists argue that group identities are collectively employed for opportunistic goals thereby eliciting competition, opposition, conflicts and hence ethnic violence. The identification of the enemy others leads to stereotypes used to validate the divides of "us" versus "them" (Byrne, 2010; Mamdani, 2001). Preferential treatments constitutes a structural and cultural violence maintained and sustained by the ethnic hegemony. At the top of the pyramid, elites manufacture negative ethnicity and market the product to opinion makers and shapers at the grassroots level who then distribute it to the masses at the bottom of the pyramid (Wamwere, 2008: 166). So long as ethnic leadership and identity exist, it will be challenging to nurture inclusion and representation. A representative national leadership is key in nurturing ideological harmony. In his view, Thomas, a 45 year old opinion leader from a minority ethnic group claims

that the ethnic crisis is a creation of the West and can only be alleviated by self-leadership and governance:

We need our Kenya back, because Kenya and indeed Africa is commandeered by the west. Our continent is ruled by MNCs and superpowers. Ethnic conflict is not only a Kenyan problem, but also an African problem created by the superpowers. They rule us through their institutions such as the ICC and human rights. Africans have always had their indigenous human rights. The West cause ethnic wars, sit back and laugh at us and then pretend to save us. We need our freedom, we need our land, and we need to rule ourselves.

Elicitive approaches asserts that freedom and nurturance of conditions of existence of a human world requires disalienation, self-consciousness, and renunciation of oppressive discourses (Freire, 1968; Fanon, 1963). However, while the concept of self-rule is important in the postcolonial era, it is partially compromised by cultural, socioeconomic and political interdependence and interconnectedness created by globalization, which is both a historical process and an ideological project (Nhema and Zeleza, 2008: 10). Self-rule has been compromised by the democratization project, an American alibi meant to camouflage neo-imperialism and hence socioeconomic and political strategic interests in the world (Ibid: 12). Western governments hesitate to condemn negative ethnicity and violence because these maintain the powers of dictators who protect their economic, political, and strategic interests (Wamwere, 2008: 114). The way forward would perhaps be to tame or end the human jungle society, as Hannah, a 44 year old public service officer indicates:

The carnivorous have continued to make the life of herbivorous miserable. Remember people become carnivores not by nature but by socialization. It is possible to have a society that does not have social carnivorous but herbivorous. The human lions in our society can be domesticated or their negative behaviour disallowed in our society. We must reach a point where the society puts a stop at the production of more lions; an economic system that does not permit exploitation of one individual by the other. Our educational system should play a role in positive socialization to end the human jungle society.

Rather than be transformed into herbivorous, the carnivores would fight to maintain the status quo at all costs. Instrumentalists indicate that negative ethnicity binds its adherents with zealous loyalty to their own ethnic community rather than their country; negative ethnicity challenges multi-ethnic nationalism and replaces national patriotism with ethnic patriotism (Wamwere, 2008: 152). How then can we nurture national identity in this kind of a scenario? To end negative ethnicity in our capitalist jungle, we need a system that will end ‘cannibalism’ among humans, where the strong few exploit the weak majority (Wamwere, 2008: 260-261). We need a system that embraces wealth and power-sharing, a system that is socialist, democratic, and humanist (Ibid; Oberschall, 2007: 10; Kagwanja and Southall, 2011; Osamba 2001, 2011). In a socialist system, development is communal and therefore socialism can easily facilitate the eradication of poverty, solve the problem of classism, promote human values, and inspires harmony (Banseka, 2005: 236). To support this assertion, Banseka, in his book *“Development for Peace: In Search for Solutions to Conflicts in Sub-Saharan Africa”* gives empirical evidence that proves that Tanzania experienced greater harmony and peace at the time she practised socialism, than her neighbours, Kenya and Uganda, who adopted democratic systems. Banseka does not refer to Marxist socialism as practised in the former Soviet Union but to a communitarian ideology that accommodated the needs of everyone in the development process and that had no room for exploitation. In her contribution, Grace, a 46 year old leader of a community based organization, observes that ethnopolitical violence can be addressed by embracing diversity:

We need to be Kenyan first and ethnic second united by our national language Swahili. We must appreciate and use our diversity for the benefit of all. Nobody chooses to be born where they were born. Leaders must distribute resources equally among all ethnic groups. Students should go to different schools in the country in order to bury the stereotypes. Children should be socialized to acknowledge diversity. The ministry of justice is working on a policy of cohesion and integration to build trust among Kenyans. We need to encourage cross community interactions and embrace freedom of movement across Kenya.

The above quotation indicates that to end ethnic conflicts we must embrace multiethnic nationalism and a collective humanity derived from the belief that all ethnic groups are equal, and must share a common heritage, resources, and freedom equally and that the exploitation, oppression, and degradation of anyone anywhere is a negation of our common humanity (Wamwere, 2008: 260-261). Humanist social democracy has the potential to entrench the revival of human values of love and brotherhood, and facilitate equal and fair distribution of resources, services, and opportunities.

6.9 Findings and Conclusion

In this chapter, focus has been on respondents' perceptions about how the Kenyan ethnic challenge can be addressed. Seven key interventions have been identified. These are: socioeconomic empowerment; good leadership and governance; institutional and constitutional reforms; the facilitation of peace, security, and safety; the institution of justice, equity, equality, and fairness; positive socialization and education; and the facilitation of national ideology and identity. It is important to note that the indigenous approaches to peacebuilding and conflict resolution such as communitarianism, sharing, and reintegration were perceived by the respondents as key to transitional justice, reconciliation, and conflict transformation and are hence discussed in the next chapter. Discussed here are the above seven key interventions identified by the respondents as essential in addressing the root causes of ethnopolitical violence.

Respondents indicate the importance of socioeconomic empowerment in addressing the ethnopolitical violence in Kenya. According to the respondents, central to socioeconomic empowerment is the effective alleviation of the complex land problem in Kenya. The respondents advocate for the formulation of policies that target to address historical land injustices and that facilitate land redistribution and allocation. The implementation of the

Ndung'u report is highlighted by the respondents as key in addressing the Kenyan land issue. The resettlement of the IDPs, addressing agro-ecological disparities, and improvement of living standards for all Kenyans across the ethnopolitical divide is seen by the respondents as pivotal in facilitating peacebuilding and conflict resolution in Kenya. The respondents also point out the need to implement a bill of rights that would address equality, equity, justice for all, and humanity. Key also is the development of an economic infrastructure that targets millions of impoverished Kenyans and especially the youths. Numerous studies support the respondents' claims concerning the importance of social economic empowerment in mitigating ethnic violence.

Socioeconomic empowerment is key in the alleviation of ethnic strife (Hurlbert and Mulvale, 2011). Material based approaches indicate that violence could result from uneven development and modernization (Toft, 2003: 5). The relative deprivation approach holds that resource competition among groups emanating from economic or political conditions sparks collective action and group mobilization that leads to conflict and violence (Oberschall, 2007: 12; Collier et al, 2003). This study indicates that Kenya should address socioeconomic injustices such as land, IDPs, the agro-ecological imbalance, and inequality that have perpetuated the ethnicization of poverty and violence (Machira, 2010: 13). While the IDPs challenge is complex due to the diversity of expressed needs (Klopp, 2006), there is a need for a comprehensive approach and policy framework for IDPs because official silence amounts to an entrenchment of impunity that nurtures tensions and precipitates violence (Kenya Land Alliance, 2004: 9). There is a need to acknowledge that bad governance is the root cause of the IDPs menace and that this is the area in which a lasting solution must be found (Klopp, 2006: 74). Socioeconomic empowerment derives from good constitutionalism which nurtures a bill of rights and democratic

practices (Nasong'o and Murunga, 2007; Bekoe, 2006), the equitable distribution of resources (Rothchild, 1997; Wolff, 2006; Oberschall, 2007), and the embracement of a common humanity (Daly and Sarkin, 2007).

Good leadership and governance are hailed by the respondents as key in addressing ethnopolitical violence. Respondents advocate for integrity, transparency, accountability, and intolerance to impunity among leaders which is achievable through strict adherence to the rule of law and the constitution of Kenya. Respondents indicate that key to good governance is the nurturance of strong institutions that guarantee justice and democratic practices. Respondents also advocate for inclusive and productive devolution that ensures equality and equity. The study participants also suggest the need to embrace national political parties that nurture national leadership endeavoured to embrace ethnic diversity, geocological and geopolitical challenges. More so, study participants' advocates for leadership and governance that would distribute structures of power, resources, infrastructure, services, and opportunities equally without discrimination. A variety of literature too indicates the importance of good leadership and governance in addressing ethnopolitical violence.

Good leadership and governance alleviate impunity (Wrong, 2010), and embraces democratic practices (Roger, 2008; Machira, 2010), human rights, and the rule of law (Bekoe, 2006), which are key in addressing ethnic violence. However, good leadership and governance are founded on strong legislative and sociopolitical institutions (Nasong'o, 2007), the equitable distribution of national resources, strong national political parties, a democratic and participatory political culture (Oloo, 2007; Wanjohi, 2003), and coordination and networking between leaders at all levels (Lederach, 1997; Schirch, 2004). Kenya requires democratic governance founded on the consent of the governed, equal political participation and representation, respect for the rule

of law and decentralization and accountability of power to the citizens (Nasong'o and Murunga, 2007:5). The decentralization or pluralization of power, facilitates its shift and distribution from the centre to the grassroots, leading to equal accessibility of opportunities and services and therefore facilitating sustainable development and peacebuilding (Mazrui, 2008: 42; Hurlbert and Mulvale, 2011).

Institutional and constitutional reforms are mentioned by respondents as pivotal in the alleviation of ethno-political violence towards building sustainable peace. According to the respondents, such reforms are key in facilitating devolution of leadership and governance; regional balance, peace, and development; freedom of movement and ownership; national system of justice; a bill of rights; multi-ethnic representation; and equitable distribution of resources. According to the respondents, key to institutional and constitutional reforms is the embracement of the NCIC which endeavours to facilitate integration, peacebuilding, shared vision, and harmony in Kenya. As studies indicate, institutional guarantees and constitutional reforms constitute key ingredients in addressing ethno-political violence (Rothman, 1992; Nasong'o and Murunga, 2007). Kenya requires a peace policy based on new constitutional and institutional frameworks (Kimenyi, 1997). Such a policy would alleviate negative ethnicity and impunity (Wamwere, 2008) the ethnicization of poverty and uneven spatial and social development (Nhema and Zeleza, 2008). Social institutions should be decentralized, and be independent of political interference, and be empowered to independently address impunity and the needs of Kenyans (Kimenyi, 1997).

The respondents also highlight peace, security, and safety as important in addressing ethno-political violence. According to the respondents' peace, security, and safety can be achieved through social economic empowerment, ownership of resources and property, equal

distribution of resources, domestication and investment in the peace process and dialogue, and breaking the cycle of despondency. In addition, the respondents indicate that peace, security, and safety can also be nurtured through decentralization of development, addressing special and expressed needs of the target groups, investing in alternative lifestyles, genuine involvement and participation of all parties in the peacemaking process, strengthening of national institutions, and embracement of the Kenyan vision 2030. In terms of peace, security, and safety, studies indicate that ethnic violence threatens identity thereby provoking self-protection (Lederach, 2003: 57). The security dilemma faced by ordinary people in anarchic situations forces them to take responsibility for their own security and actively engage in violent confrontations (Oberschall, 2007: 31). What drives conflict therefore is not hatred, as primordialism's ancient hatred thesis asserts, but mistrust and fear (Posen, 1993). Safety, peace, and security require addressing collective fears, institution of justice, and the satisfaction of basic and expressed needs (Schirch, 2004: 21; Taras and Ganguly, 2006; Dayton and Kriesberg, 2009: 57; Zartman, 1989: 10). The WHEN of strategic peacebuilding is based on the fact that conflict is dynamic and changes over time (Schirch, 2004: 75-76). Strategic peacebuilding needs to occur before (early warning and response projects), during (the provision of basic needs, creating opportunities for building relationships) and after violence (disarming militias, trauma healing, infrastructural rebuilding, capacity building) (Schirch, 2004: 75-76). Restorative justice must alter the climate of fear and provide individuals with opportunities to recognize their common humanity through trauma narratives, as well as social and cross-community forums (Woolford, 2009: 131).

Justice, equity, equality, and fairness came out strongly as key ingredients in addressing ethno-political violence. They are described by the respondents as key in the alleviation of ethnic violence and hence in the facilitation of peacebuilding, conflict management, and resolution.

Respondents indicate the importance of embracing justice, upholding the rule of law, being intolerant to impunity, full implementation of the new constitution, and reintegration and humanization across the ethnopolitical divide. The respondents also indicate that the embracement of justice, equality, equity, and fairness is essential in addressing historical injustices, accommodating ethnopolitical diversities, alleviation of socioeconomic disparities, and facilitating equal distribution of resources and power. Respondents argue that the embracement of an inclusive system is important in nurturing trustbuilding and hence peacebuilding. As studies indicate, injustices, such as preferential and the discriminatory administration of opportunities, positions, and services, as well as disproportionate access to basic needs, natural and socioeconomic resources contribute significantly to ethnic consciousness and constitute precipitating factors for ethnic violence (Rothchild, 1997). The pursuit of justice in the aftermath of atrocities may strengthen the rule of law (Woolford, 2011), nurture respect for human rights (Schirch, 2004), the restoration of relationships (Lederach, 1995), and the creation of shared spaces (Daly and Sarkin, 2007). Kenya requires urgent institutional reforms and the implementation of a new constitution and a bill of rights that will address actual and/or perceived injustices.

Positive socialization and constructive education have been sighted by study respondents as important in addressing ethnopolitical violence. Such socialization and education facilitate the changing of mind-sets and misperceptions about other people and addressing stereotypes. According to the respondents, positive socialization, and constructive education can be achieved through inter-communal social activities, training of trainers, inter-group dialogues, sharing stories, and integrated school systems. These initiatives, according to respondents are key in demystifying myths and stereotypes. Respondents also indicate that key to positive socialization

and constructive education too is the investment in the intelligence and research that strengthens our early warning system, budgeting for peace, constructing peace memorial about the “never again.” The study participants also highlight the importance of punishing and reintegrating offenders into the community, documenting the wrongs and atrocities committed, and acknowledgement of the survivors and victims of atrocities. However as studies indicate, education is Janus-faced; it can either nurture peace or promote polarization (Freire, 1968). The “unconscious transgenerational transmission, externalization, and socialization of trauma” transforms future generations into new reservoirs of humiliation, hate, and prejudice (Volkan, 1998; Kaufman, 2001). Dealing with negative education and socialization requires political willingness, an integrated, and uncompetitive school system (Arthur 2009), and capacity building programs (Schirch, 2004). It also requires an analysis of symbolic and socially important places and spaces that can support relationship-building such as schools, soccer fields, cultural storytelling festivals (Senehi, 2009) and youth programs (Schirch, 2004: 78).

The embracement of a national ideology and identity was also identified as important in addressing the Kenyan ethnic challenge. While ethnic ideology, identity, and nationalism can nurture ethnic antagonism and violence, respondents also indicated that national identity and identity can facilitate peacebuilding and conflict resolution and hence alleviate ethnic violence. This as the respondents say can be achieved through harmonising diverse ideologies, accommodate diverse identities, nurturing our commonality and sharing our values. Also, respondents indicate the need of an economic system that nurtures equality and equity in order to end the “jungle society” that thrives on exploitation. Important too according to the respondents is the embracement of a national language, cross-community interactions, and the mobilization of our diversities for the common and national benefits. As studies shows, Kenya borrows from a

diversity of foreign ideologies (Oloo, 2007) entangled within ethnic nationalism hence compromising state nationalism (Wamwere, 2008). Ethnic nationalism is partially sustained by the ideological project of globalization nurtured by political and socioeconomic neo-imperialism (Nhema and Zeleza, 2008; Wamwere, 2008). This discussion of my respondents' ideas identifies humanist social democracy as an ideal form of political system that could nurture national identity and ideology (Wamwere, 2008; Banseka, 2005). A new humanism can be achieved through equitable development and distribution of wealth, and a moral reparation that embraces the oppressed (Fanon, 1963). Participants' responses in this chapter were informed by various theoretical perspectives including: instrumentalists, Social Constructionists, restorative justice, elicitive and prescriptive approaches, a human needs approach, post-conflict reconstruction, psychosocial approaches, integrative problem solving approaches, and problem solving workshops.

7.0 CHAPTER SEVEN: TRANSITIONAL JUSTICE, RECONCILIATION AND CONFLICT TRANSFORMATION (THE KENYAN FUTURE)

7.1 Introduction

This is the last of the three data presentation and analysis chapters in this study. This chapter focuses on field responses to the following questions:

6. What is your perception and/or experience about the TJRC as a form of transitional justice?
7. What is your perception and/or experience about giving testimonies, forgiveness, and amnesties within the TJRC?
8. What is your perception and/or experience about the ICC as form of transitional justice in Kenya?
9. What is your perception and/or experience about indigenous approaches to peacebuilding as forms of transitional justice in Kenya?
10. How can healing and recovery from past humiliation, trauma, and historical injustices be achieved?
11. What should be the way forward for transitional justice and sustainable peacebuilding in Kenya?
12. What are your greatest hopes and your worst fears for your future and for the future of Kenya?

The respondents in this study had different views about the approaches required to nurture a positive Kenyan future as summarized in Table 5 below.

Table 5. Respondents' Perception about the Best Way Forward for Transitional Justice, Reconciliation and Conflict Transformation in Kenya

percent Respondents	Best Way Forward for Transitional Justice, Reconciliation and Conflict Transformation
30	Non-violent Systemic Revolution and Regime Change
20	Cross-community Interactions, Dialogue, and Sharing
20	Indigenous Approaches to peacebuilding
15	Addressing expressed Hopes and Fears
10	The International Criminal Court (ICC)
5	A Truth, Justice and Reconciliation Commission of Kenya (TJRC)

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The responses to the above questions cover the themes of transitional justice, reconciliation, conflict transformation, and hence the future of Kenya. Transitional justice mechanisms addresses past harms in a bid to mitigate the relapse of violence, entrench the rule of law, and embrace a culture of human rights through legal mechanisms, commemorative projects,

truth commissions, war crimes prosecutions, reparations, and memorials (Hazan, 2010). Transitional justice programs include efforts to set up new legal and judicial systems that integrate the needs and desires of the affected people, cultures, and institutions based upon international human rights laws and standards (Schirch, 2004: 53). Guarantees of a nonrepetition require social and political will and measures that nurture the promise of the “never again,” which can be fostered through: the restructuring of security forces; the formation of an independent judiciary; the promotion of human rights and freedoms; leadership integrity; mechanisms of early warning about violence; and the reform of oppressive laws (Rose Johnston and Slyomovics, 2009:15). Similarly, table 5 above indicates the respondents’ perceptions and/or experiences about nurturing transitional justice, reconciliation and conflict transformation in Kenya. In the following section, these responses are discussed and analysed in the order in which they are presented in Table 5.

7.2 Systemic Revolution and Regime Change

Elicitive and prescriptive approaches indicates that the deprivation of humanity through colonial apparatuses of terror and hatred leads the oppressed to resign themselves to “self-absolution” (Memmi, 1967: xxvii). Colonialism denies human rights to human beings whom it has subdued by violence, and keeps them by force in a state of misery, and in a subhuman condition (Ibid, 1967: xxiv). Before embarking on a positive path, disalienation is required; it is through self-consciousness and the renunciation of oppression that humans can create the ideal conditions of existence for a human world (Fanon, 2008: 206). The only cure for the pathological condition that oppression inflicts on the colonizer and the colonized alike is liberation, freedom for the colonized, and the defeat of the colonizer (Memmi, 1967: 157). Revolution facilitates the end of exploitation, self-governance, and helps construct a new way of life; it requires breaking

down the chains of oppression because liberation does not come as a gift but is instead seized by the masses (Fanon, 1965: 2). In his contribution about revolution Benson, a 32 year old civil rights activist had the following to say:

Can a subject give a testimony against his master? Testimonies cannot be free if the oppressors are still in power. If the system is not reformed you cannot get a genuine transition; there is no guarantee for safety and security. We are changing the institutions but individuals remain the same; the forest changes but the monkeys remain the same and therefore what we have is a reincarnation of impunity. To transform Kenya, we need a systemic revolution because the same broken vehicle cannot get us to our anticipated destination. We need to either repair it or get a new vehicle. Seven key areas to systemic revolution includes: the family in which values are taught; an integrative educational system; an independent media, the rule of law; the economy; governance; and religion.

The observation above indicates the challenge of carrying out a revolution when the means of overhauling the system are in the hands of hegemonic forces. How can a revolution be nurtured when hegemonic forces control the means of production? Elicitive and prescriptive approaches asserts that as long as oppressive discourses exist the oppressed remain in the periphery (Freire, 1968: 65). Resistance and critical dialogue are the only means to emancipate the oppressed (Ibid). As William, a 50 year old member of TJRC observes:

What we need in Kenya is not transitional justice but a revolutionary justice! Nobody will give us justice; we have to fight for it. It is not the slave traders who stopped the slave trade but human rights activists. The oppressors cannot willingly support transitional justice unless forced to do so. Even the civilized nations used to be so barbaric during the Middle Ages but the age of Enlightenment transformed them into what they are today. The French leftists realized that no matter how long they agitated for their rights, it remained just but a good lullaby; revolution is the only lullaby that the tyrants understand. Injustice to the victims is justice to the oppressors...a revolution is the only means to emancipate the oppressed; it must be strategic, non-violent and steered by right leadership.

Some questions arise from the above observation: How can right leadership be nurtured in a society characterized by impunity? How is non-violence possible without the existence of sociopolitical spaces? How can transitional justice be achieved when the reform efforts that are expected to bring systemic change are instead compromised and coopted by the oppressor

(Freire, 1968: 63). The deeply ingrained impunity among our leaders can only be addressed through a renaissance. Yet, this is challenging as Violet, a 30 year old activist for the “release political prisoners” indicates:

The analogy of the lion and the antelope can be linked to the Lord’s Prayer. The lion prays: “our father who at in heaven...*give us this day our daily bread...*” The antelope prays: “our father who at in heaven...*protect us today from our enemies...*” If you were God, will you answer the lion’s or the antelope’s prayer? If you side with the lion, the antelopes mourn; if you side with the antelopes the lions starve. This is the complexity that faces the TJRC. Does the TJRC side with the oppressive hegemonic state or the justice for the masses? Being part of the hegemonic state, can the TJRC midwife transitional justice? It is difficult to change the lion into herbivore. Only a revolution can end the jungle exploitation.

The above analogy indicates the challenge of transitional justice in Kenya. The TJRC cannot fulfill its mandate as required because it is an instrument of the hegemonic state. Therefore, an effective transitional justice requires regime change, since it cannot thrive under impunity. Elicitive approaches indicates that only the oppressed can wage the struggle for a fuller humanity, because by freeing themselves they also free the oppressor (Freire, 1968: 47). Oppression maintained by violence from above can only be liquidated by violence from below (Fanon, 1965: 3). However, while 30 percent of the respondents in this study advocate for systemic revolution and regime change this does not entirely endorse the use of violence to do so. The systemic revolution proposed in this study constitutes constitutional and institutional transformations that addresses the historical and structural injustices that have maintained and sustained ethno-political violence in Kenya. This would result in the realization of justice for all Kenyans and hence sustainable peace.

7.3 Cross-community Interactions, Dialogue, and Sharing

Problem solving workshops indicates that formal dialogues help disputants to share personal experiences, perceptions, beliefs and to gain a deeper understanding of issues affecting them hence encouraging intergroup relationships in a divided society (Schirch, 2004: 50). New relationships can be forged by involving disputants in creating critical spaces for cooperation and interdependence (Daly and Sarkin, 2007: 216) such as music and storytelling festivals, cross-community businesses, workshops, seminars, and conferences. In his contribution, Henry, a 48 year old director of a peacebuilding and rehabilitation resource centre underscores the importance of participatory theatre techniques in enhancing cross-community relationships among former disputants:

Recovery and healing must target to empower the humiliated generation; the servant who marries a servant, gives birth to a servant, and dies a servant. Like Lederach's moral imagination, we engage in *participatory theatre techniques* where half of the group create a still picture of what life is like in their village now and another one of what they would like to see in a better futuristic village. We then create a transitional image from real to the ideal and spend time discussing what activities we need to do to get to our dream village...we also use drama to help in the healing and recovery process. One form of drama is *playback theatre*. IDPs took different roles and dramatized post-election violence as it happened in front of the whole group. Time after time the actors would be in tears and say *I feel like you have taken my burden away from me and I feel free*. This forum gave the victims of post-election violence a space to share their traumatic experiences.

While problem solving workshop are desirable, how can they be nurtured; how do bitter enemies sit and reason together creatively about their common challenges? As Lederach (2005: 5) asks, how do we transcend the cycles of violence that bewitch our human communities while still living in them? Problems solving workshops hold that transcending violence requires the capacity to: generate, mobilize, and build a moral imagination; imagine ourselves in complex relationships; embrace complexity; and enhance creativity and innovation (Ibid). *Moral imagination* embraces the belief in possibilities and the capacity to move beyond pessimistic

beliefs about the intractability of conflict (Lederach, 2005: 38). In peacebuilding, this is the capacity to generate constructive responses that while rooted in existing violence, transcend and break destructive cycles (Ibid, 2005: 29). A moral imagination requires the right spaces, resources, leaders, and institutions, as Claire a 55 year old prominent church leader observes in her contribution:

Healing and recovery requires genuine and trustworthy grassroots spaces that embrace morality, the fabric that holds the community together. Religious moral values can encourage people to live more peacefully and responsibly. Religious and opinion leaders command a lot of respect from their congregations and should facilitate healing and recovery through interdenominational forums....The healing process must address the victims' expressed needs. What do they need? How do they feel? What have they suffered from? Who can help them and how?

While nurturing reconciliation spaces is noble, it requires a social and political will and the capacity to embrace the diversified needs of the disputants. The use of problem solving workshops indicate that disputants need to heal and learn together how to address the harmful past and embrace a harmonious future. In his *Moving from Confrontation to Cooperation* Rothman (1992: 22-23) observes that the society must reach a point of acknowledging that "we are in this together". Appreciation of a common humanity among disputants and of the need for the genuine redress of historical injustices facilitates coexistence and the creation of a shared community through which grievances can be expressed without relapsing into cycles of violence (Daly and Sarkin, 2007: 215). While disputants are locked into vicious circles of mutual exclusiveness, reconciliation facilitates an encounter in which the harmful past is acknowledged, the present reframed, and the future envisioned (Lederach, 1997: 27). However, reconciliation requires social and human resources to reframe distorted stories, as Elijah, a 48 year old member of parliament from the ruling Jubilee Alliance observes:

We must break existing stereotypes by sharing virtues of harmonious living and inter-ethnic relationship. We need cultural tolerance in order to accommodate others. Professionals like social workers, peace students, and lawyers who believe in justice need to mobilize intercommunity dialogues. The government and NGOs should initiate cross-community economic activities to build trust. We need communal hermeneutics (auditing) of our stories in order to clear misperceptions, stereotypes and disapprove distorted stories. We need a national revision, telling and retelling of our distorted stories.

The above quotation indicates that diversity can be used positively to promote unity or negatively to stereotype others, create tensions, and conflicts. Problem solving workshops indicate that the challenge of transformation is to create spaces that encourage people to embrace a positive sense of identity in relationship to others and to develop a capacity to acknowledge and accommodate deeply felt demands in a conflict (Lederach, 2003: 55-57). The *Ancient Hatreds Thesis* holds that ethnic identity derives from a predestined sense of peoplehood (Toft, 2003; Anderson, 1991). Such identities are held to be irreconcilable and subject to temporary or fixed interests related to resources (Hussain, 2009; Ratnavale, 2009). Yet in contrast, mutual acceptance transforms relationships of hate and suspicion into relationships of trustworthiness in which the disputants accept responsibilities that nurture harmonious living (Daly and Sarkin, 2007: 217). However, social transformation requires inter-ethnic interactions and experiences as Charlotte, a 33 year old social worker in the sprawling Kibera Slums in Nairobi indicates:

If you dialogue with other ethnic groups you will realize that they are not devils but families with hopes and dreams. Cross-community tours, exchange programs, and multi-ethnic peace caravans can help us to learn and appreciate the values of others. Our people should visit places that have suffered genocide to witness the devastating effects of war. Also cross-ethnic intermarriage could ensure blood bonds and hence peace. Intermarriage is like the creeping plants, ethnicity is like the tall trees. The creeping plants though not so visible become a formidable network with time. If the creeping plants are nurtured, they will over time overwhelm the tall trees....Also sports are powerful in peacebuilding. In sports the tribe does not matter, our talents bring us together; the goal is to play as a team. It's like different ethnic groups living in a peace village where people share ideas and experiences and learn that others are humans and not animals.

Cross-community interactions cannot happen in a vacuum, they require the creation of spaces and the accommodation of ethnic diversity. However, when such spaces are compromised by the ruling hegemonic regime they nurture prescriptive outcomes that fail to address local priorities (Goodale, 2006b) therefore hindering the sustainability and ownership of such initiatives. While intermarriage could be key to the deterrence of ethnic violence, it may take generations to have its impact due to stereotypes and mistrust. Yet, as assimilationists hold, ethnicity could ultimately disappear (Gossett, 1997) as the global “melting pot” facilitates integration, a shared culture and better or improved social relations (Cornell and Hartmann, 1998). Critically though, while such integration could be seen as a blessing, it may not be desirable; it could lead to the ‘death’ of ethno-cultural identities, diversities, and values that enrich our common humanity. Northern Ireland is a great success story about the positive impact of cross-community interactions in peacebuilding and conflict resolution. Northern Ireland experienced protracted intergroup conflict that led to the “Troubles” a period that extended from the early 1960s to 1994 and characterized by extreme suffering, the death of more than 3000 people, and a civil rights movement that protested for justice and equality for all citizens (Arthur, 2000; Dixon, 2008). Studies indicate that cross-community interactions occasioned by the initiatives of the International Fund for Ireland (IFI) established in 1986, the PEACE I (1995-1998), the PEACE II (2000-2004), and PEACE III (2007-2013) greatly encouraged the fighting of stereotypes, interpersonal relationships, rehumanization, reconciliation, and peacebuilding in Northern Ireland (Byrne, 2008, 2010). This indicates the significance of cross-community initiatives in the Kenyan context.

7.4 Indigenous Approaches to Peacebuilding and Transitional Justice

While dismissing democracy as the ultimate answer for conflicts in sub-Saharan Africa, Banseka (2005: 240-249) argues that indigenous empowerment is key to sustainable conflict resolution. Similarly, using the case studies of Afghanistan, Iraq, Bosnia, Lebanon and Northern Ireland, Mac Ginty (2011) observes that hybridity and hybridization is important in understanding social, economic, and political dynamics in societies undergoing transition. Hybridity and hybridization facilitates inclusion and hence the ownership of social and political processes which nurtures security, nation-building, civil society, and facilitates economic, institutional, and constitutional reforms (Ibid). However, indigenous mechanisms are Janus-faced and also challenging to harmonize in an ethnically diversified society. For example in Kenya, each of the forty two ethnic groups has its own indigenous mechanisms of addressing violence and conflict. How then can all the diversified mechanisms be harmonized to be accommodative of all ethnic groups, the state, and the global community? Also while indigenous approaches to peacebuilding can offer sustainable solutions to ethnic challenges, they can also be abused to entrench impunity (Mac Ginty, 2011). For example, while the 11,000 Gacaca community courts in Rwanda constituted an innovative toolkit in transitional justice because they were a homegrown response to mass violence (Rose, 2010), these courts were criticized for promoting a state-sponsored grand narrative and a polarizing discourse that portrayed Tutsis as victims and Hutus as perpetrators (Hinton, 2011). The Gacaca courts transformed truth telling into a coercive tool and a source of fear and mistrust which compromised their legitimacy and promoted collective guilt (Rose, 2010). The experience of Gacaca courts indicates the importance for transitional justice mechanisms to distinguish between indigenous bottom-up approaches from imposed top-down indigenous approaches to peacebuilding (Rose, 2010). The following is a

discussion about indigenous approaches to peacebuilding as forms of transitional justice in Kenya.

7.4.1 Indigenous Communitarian System versus Modernism and Transitional Justice

As shared responsibility for conflicts becomes the basis for a shared responsibility for the resolutions. African communitarian perspectives are based on the fact that the community is the custodian of values and therefore community-based negotiations are guided by such values in re-establishing relationships (Zartman, 2000: 221). If change is grounded in communitarian values, it can nurture sustainability and ownership (Zartman, 2000: 229). As Samantha, a 28 year old single mother and a street beggar opines:

Traditionally, people used to live in a communal system where resources were shared equally. Unlike courts, indigenous approaches to peacebuilding promote a sense of unity and ownership; they are more decentralized, people-centred, timely, and focused on reconciliation. Inclusion ensures peace and harmony; a feeling that if we destroy this property we are destroying our own, that if we fuel this violence we shall be fighting our own. The main forces that fuel ethno-political violence in Kenya are land and power. Kenyan ethnic challenge can be solved if we revert to traditional socialism. Disputes over water, pastures and other resources can better be settled using traditional means and not the court. Western capitalism has killed sharing and promoted individualism dividing the society into haves and the have-nots. Exclusion has resulted in protracted ethnic conflicts.

Indigenous approaches to peacebuilding are founded on a community of relationships and values, which provided a reference for conduct in terms of fair treatment, equality, and reciprocity (Zartman, 2000: 224-226). Unlike western cultures, indigenous African cultures perceive and own conflict as a communal concern; indigenous approaches to peacebuilding are neutral, non-coercive, non-prescriptive, and conclusive (Augsburger, 1992: 8). Despite the merits attached to indigenous approaches to peacebuilding, modernity has compromised communal life as Beatrice, a 58 year old community women leader from Western Province observes:

Governance cannot exist in a vacuum it must be based on a political economy. Traditionally, we had a social-spiritual hierarchy based on age-groups that governed our indigenous system, including warriors, elders' court, and community intercessors. Indigenous political economy was destroyed by colonialists and never restored after independence. Privatization has compromised community ownership; resources remain in the hands of a few. The poor feel that if I steal electric cables I will not suffer because I have never had electricity. If electricity served the whole village everybody would protect it as a community asset. Though we desire to regress to the past, many factors pull us towards modernity: in the past there was plenty of land for everyone and elders ensured equality and justice. Today we have climate change, scarce resources and individualism.

The above quote indicates the challenge of maintaining an indigenous communitarian approach within the modern political economy which raises major critical observations: how do we revert to an indigenous system whose political economy and superstructures have been eroded? How can the communitarian system be sustained amidst scarce resources and privatization? How can the communitarian system be sustained amidst the forces of economic, political, and cultural globalization? How can the communitarian system be nurtured in the context of deep-rooted ethnic polarization? These questions can form key areas of future research about the place of indigenous approaches to peacebuilding in transitional justice. Modernization has disrupted indigenous communitarian approaches; political leaders express their solidarities through ethnic enclaves, controlling and mobilizing them as political tools for state control (Zartman, 2000: 228). Harmonizing indigenous and modern approaches could be key, as Zacharia, a 52 year old member of the Independent Electoral and Boundaries Commission observes:

Kenyans should marry exotic and indigenous approaches to peacebuilding to have sustainable solutions. We should also have policies that entrench the elders' institutions in our jurisprudence. This way justice will be localized and petty communal challenges solved at the grassroots. The elders' institution is sacred, sustainable, and owned by the community...however, if we shun modernity and cling onto traditions that would be retrogression. In the middle ages, knowledge stagnated because people resorted to unorthodox faiths and shunned scientific inquiry. The renaissance came after almost 400 years. Urbanization is a major challenge to our traditions; there is disconnect between the elders and the urbanites. Look at education; you are not trained to work only in your community but worldwide and you do not carry your elders with you.

With his recycling principle, Banseka (2005: 240-249) underscores the effect of modernization, globalization, and westernization on traditional ways and proposes the integration of the old and the new to accommodate the new culture. However, this could be challenging in a culturally diversified society. How do we harmonize a diversity of cultural values embraced by forty two different ethnic groups so as to find a common ground from which modern approaches can be embraced? What does it take to embrace a common-ground? The changing socioeconomic trends have affected indigenous methods, as James, a 63 year old community leader from Coast Province contends:

Indigenous approaches to peacebuilding cannot succeed in the modern globalized economy; formerly octogenarians ruled the world using their wisdom; today the youths rule the world using power, education and money. Then we used to have a closed society in which information was controlled by elders; now the world is a global village. Indigenous approaches to peacebuilding existed within a comprehensive program where sacrifices were made to gods and spirits. Does the modern society believe in the spirits? Are we teaching our children about spirits? Can cosmopolitanism embrace traditions? Our society is much individualistic and in transition; indigenous practices may not hold.

As indicated above, indigenous methods have been compromised by modernity. Future research may help address the future of indigenous methods as forms of transitional justice.

7.4.2 Indigenous Value and Belief Systems versus Modernism in Transitional Justice

Cultural work can be crafted to remind people of the humanity of their adversaries or the atrocities that should never happen again. Values, norms, and rituals can mediate stories as part of efforts to supplement or restore impaired relationships (Zeigler, 2003). In Sierra Leone, for example, social values such as humility, sobriety, work, and reciprocity reinforced by traditional rituals such as prayers, invocations, libations, and chewing kola nuts, fostered the reintegration of former combatants more than the process of truth telling (Rosalind, Waldorf and Hazan: 2010). Samuel, a 54 year old manual labourer living in Mathare Slums in Nairobi had the

following input about the importance of value and belief systems as ingredients of indigenous transitional justice mechanisms:

Our people appeased their gods in order to have peace among themselves. We have abandoned our traditions hence the wrath of gods and ensuing conflicts; we must repent and appease our gods in order to enjoy peace again...When people fear God, they can't perpetuate evil; the fear of the supernatural ensured peace in the past. If I offend my brother, I offend God and will be punished by God. The fear of taboos cannot be quantified but it ensured loyalty to community norms. If one saw the nakedness of an elder he would go blind. Sex is no longer divine; during violence youths rape even their grandmothers.

Rituals can be helpful tools that assist and mark the process of transformation; they can help transform an individual's identity from being a victim to a survivor of trauma (Schirch, 2004: 54). The formality of a ritual can symbolize that a peace agreement is taken seriously and that people are entering into it with honest intentions (Ibid). However, a modern commitment to the supernatural world is problematic in several ways: sacrifices to gods are no longer practiced; the indigenous justice systems have been replaced by the modern court system; an indigenous economy and superstructures are no longer available; and informal education has been replaced by formal education. For these reasons and others, a full return to indigenous practices is not feasible. Despite the above demerits, Eric, a 52 year old opinion leader from a minority ethnic group affirms the win-win approaches of the indigenous system:

This is what fuels ethnopolitical conflict. If nobody answers my cry or wipes my tears, then I am going to make you cry too so that when we all cry we can ask ourselves why are we all wailing? Then we shall together find a solution. There was no wailing in the past because resources were equally shared. Today is different; look at trust as a value, how many families trust each other? If trust as a value does not exist at the family level, do we expect it at the community level? Traditionally the family was part of the community; today, families are seen in terms of men and women. When men and women fight over rights, it affects the family, community, and the entire nation. The modern system has replaced harmony with rights.

While the re-establishment of indigenous practices is challenging due to opposing forces of modernity, the observation above indicates their success in entrenching equity and equality.

Indigenous approaches to peacebuilding offer a space to accommodate cultural stories of shame, confusion, or fear (Daly and Sarkin, 2007: 225). Rituals and art influence the understanding of the experiences of others, the embracement of a common humanity, and the transformation of the desire for revenge into a desire for affiliation (Ibid). This discussion indicates that while indigenous methods are not a panacea for transitional justice they constitute a powerful inventory that can be used to blend or complement other modern justice mechanisms as witnessed in the Canadian sentencing circles processes (Woolford, 2009: 60).

7.5 Addressing People's Expressed Hopes and fears

Psycho-social approaches indicate that the emotional and psychological effects of violent conflicts, such as fear and trauma, jeopardize future relationships due to ingrained revenge motives often justified via evocation of historical injustices (Jeong, 2010: 214). The psychology of victimhood deprives human beings of a sense of community and self-identity. It sustains a political antagonism derived from the mobilization of group symbols, as well as a conscious and unconscious fear of potential violence (Daly and Sarkin, 2007: 216). Peacebuilding requires a deep understanding of what motivates the needs, fears, wants, concerns, and hopes of the disputants by exploring their interests and therefore gaining critical insight into what is needed for the parties to reach a resolution (Furlong, 2005: 67). Trustbuilding must focus on overcoming past injustices through acknowledgement of harm, the inclusion of reparations, and apologies to the survivors of violence (Daly and Sarkin, 2007: 216). Reconciliation facilitates attitudinal changes and positive engagements (Jeong, 2010). Critically though, integrative approaches hold that such engagements may be minimalist (based on tolerance) or maximalist (based on mutual unity) depending on the levels of safety, security, trust, integrity, and the healing of relationships to which the approach aspires (Fisher, 2001, 2007; Schirch, 2004; Rothman, 1992). In his

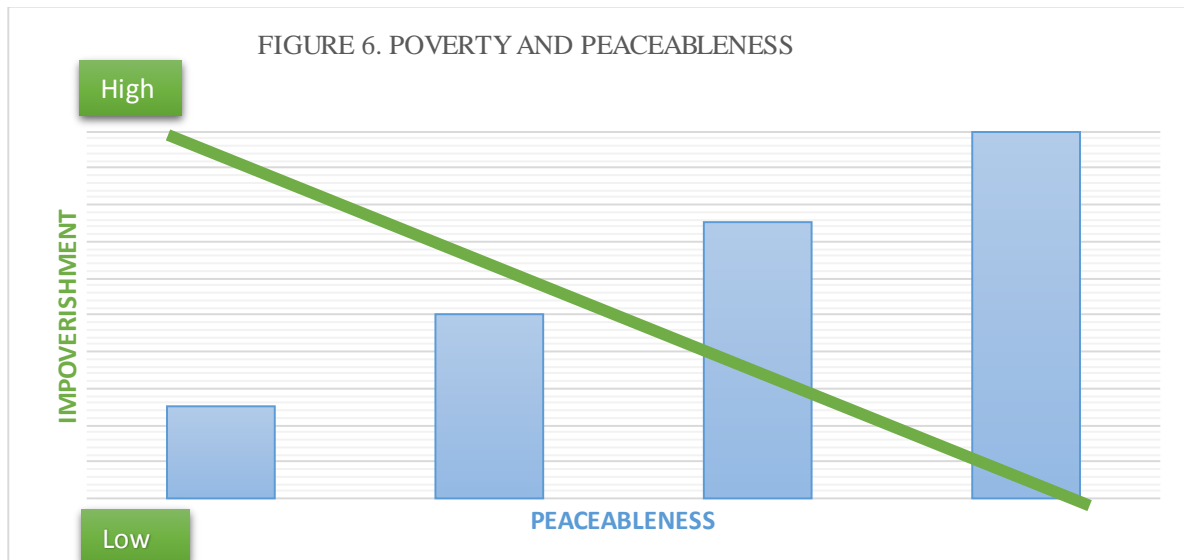
contribution Zacharia, a 52 year old member of the Independent Electoral and Boundaries Commission indicates that civic education, leadership, and economic empowerment are key to people's hope for the future:

My greatest hope is that more Kenyans are being educated and are increasingly aware about their rights; that ordinary people demand accountability from the government; that Kenyans are querying and vetting political leaders in resistance to injustices and wrong policy decisions; that Kenyans are taking time to read and comment on bills before they are passed by parliament. I hope that Kenyans shall be redeemed from material, intellectual, and moral poverty that makes them embrace impunity and rubber stamp their own oppression; that civic education will be accompanied by socioeconomic empowerment in order to inhibit corruption; that Kenyans will vote for leaders of integrity based on principles, manifestos, and ideologies and not on ethnic affiliations.

The challenge to consciousness-raising in Kenya is the strong forces seeking the preservation of the status quo. However, increased awareness could build a critical mass for positive change that impunity cannot withstand. Elicitive and prescriptive approaches indicates that the revolutionary assurance of the oppressed stems from the discovery that their lives are the same and worth as much as those of the oppressor (Fanon, 1963: 10). The conscientization principle underscores the importance of self-awareness and recognition that people are knowledgeable and capable of responding to daily realities (Banseka, 2005: 240-249). Through conscientization people become knowledgeable and capable of naming, interacting with, and responding to their own realities in transformative, constructive, and dynamic ways (Lederach, 1995: 113). Zacharia's observation above indicates that poverty can make people vulnerable to acts of political impunity. For example, even after civic education, a hungry man will bribe or accept a bribe in order to survive. Therefore, economic empowerment could alleviate poverty, reduce the vulnerability to impunity, and therefore encourage peaceableness as Figure 6 below indicates.²² Similarly, poverty could lead to vulnerability to impunity, ethnic animosity, and violence. Studies of the

²² Figure 6 below constitutes a general representation of the respondent's perception/feelings about poverty and violence vis-a-vis socioeconomic empowerment and peaceableness. See Zacharia's contribution above and the ensuing discussion.

Northern Ireland conflict underscore that there exists a clear relationship between deprivation and violence (Byrne, 2010; Byrne; 2008; Whyte, 1988; Honaker, 2005; Thomson, 1989; Glover, 1980).



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In a similar vein, Robert, a 65 year old Muslim religious leader, ties hope for the future to nationalism and institutional reforms:

I hope Kenyans will embrace an integrated society. I hope that the marginalized groups shall be given equal socioeconomic and political opportunities. I hope for the freedom of movement and settlement. I hope that national political parties shall replace ethnic parties; that the new devolved county governments addresses the interests of local people, and distributes resources and opportunities equally. I hope for peaceful, free and fair elections that will deter ethnic violence. I hope that our institutional reforms will be implemented fully to nurture peace, love, unity, and the dreams of Kenyans.

While nationalism is key for ethnic integration, it is inhibited by the strong tides of ethnic ideology. Instrumentalists argue that negative ethnicity is like leprosy and ethnic elites are its carriers; they infect the ordinary masses and once infected, the masses become carriers too (Wamwere, 2008:187). The roots of negative ethnicity can only wither and die in the bright sun of human equality and service to all (Wamwere, 2008: 269). Psycho-social approaches indicate

that hope is nurtured through supportive conditions such as open communication, mutual trust, equal opportunities, the reframing of conflict, autonomy, and power sharing (Jeong, 2010: 38); hope is built by addressing structural injustices and violence, the reconstruction of social realities, and reforms of human institutions (Ibid: 50-51). Hope is also feasible in the wake of a prospective socioeconomic development as Boniface, a 65 year old community elder from the Rift Valley Province asserts:

My hope is in Vision 2030 and the ongoing infrastructural development which is hoped to develop Kenya into a middle income economy and create resources and opportunities for all Kenyans. The LAPSSET project connects the Kenyan northern corridor with South Sudan, Ethiopia and Eritrea. We have discovered oil, coal, titanium and other minerals. My hope is in the high level of literacy that has made Kenya a world source of manpower. We have the sea port, an asset for Kenya and other landlocked countries in east and central Africa...I hope that our leaders will respect the rule of law and commit to the welfare of all Kenyans across the ethnopolitical divide; leaders who will implement our new constitution and a bill of rights therein. I hope that Kenyans learnt from past ethnic violence and that they will establish inter-community ties through education, business, and sports. I hope for a peaceful Kenya accommodative of her cultural diversity.

Boniface's hope is like that of many other Kenyans and could be transformational if realized; however, the foundation on which this hope is nurtured is shaky. Infrastructural development has not reached out to marginalized areas of the country, but is instead concentrated in politically strategic regions. It is feared that the discovery of minerals could be a curse rather than a blessing due to a politicized distribution of benefits and the negative impacts such as displacements of local communities. While the liberalization of education has produced world class graduates, they have ended up in greener pastures abroad, leaving the country unable to meet its human resource needs because of the "brain drain." Key parastatals, including the Kenya ports authority, are riddled with corruption. Human needs approaches (MacGinty, 2008; O'Brien, 2007; Burton, 1997) and post-conflict reconstruction perspectives (Wolff, 2006; Gamba, 2006; Oberschall, 2007) hold that people's hope and dreams depends on right leadership, decentralized

development, and access to equal opportunities for all. However, diminished hopes have nurtured fears among many Kenyans, as Seth, a 45 year old manager in a community investment Sacco observes:

I fear that most Kenyans are ignorant of their rights, a fact that selfish politicians continue to invest in. I fear continued ethnic stereotypes; my daughter is only six and the other day she asked me “Are we Kibaki’s people?” In school, the teacher had identified them along ethnic lines. I fear the unchanging politics of impunity; the same old monkeys have invaded our new forests, greedy leaders ensnared in massive corruption and ethnocentrism. I fear that those in power are not reformers; that the beneficiaries of atrocities are entrusted in change. I fear that our country may relapse into chaos.

Psychosocial approaches indicate that mutual accommodations and collaborations facilitate an understanding of disputants’ fears, anxiety, and security and are key to problem solving (Jeong, 2010: 12). As a process that addresses the central needs and fears of communities embedded in protracted conflicts, reconciliation could facilitate group healing and social well-being in overcoming conditions that nurture the conflict. Post-conflict reconstruction approaches indicate that reconciliation requires social and institutional changes such as security reforms, democratization, and equitable development (Daly and Sarkin, 2007: 216). However, institutional changes and reforms are compromised by lack of political will, as Jackie, a 30 year old small scale trader indicates:

My fear is the tension between the anti-reformists who are in power and who champion ethnicity and impunity and reformists who advocate for change. I fear that Kenya is a highly ethnicized and divisive society in terms of governance and resource distribution. I fear that the conviction of the ICC indictees may ignite ethnic renewed violence. I fear that the failure to address injustices and implement the new constitution or the mutilation of the constitution to maintain the status quo will lead to an armed revolution by disgruntled Kenyans and a possible relapse of violence.

Social Constructionists indicate that while ethnic groups should pursue their goals and interests through established political channels, they may resort to violence if “ethnicity is linked with acute social uncertainty, a history of conflict, and fear of the future” (Taras and Ganguly, 2006:

26). Therefore, hatred and fear must be overcome in order to create a space to address grievances and desires for revenge while at the same time strengthening and reshaping the reconstruction of destabilized social relationships. As psycho-social approaches indicate, recovery of lost honor and healing from emotional wounds depend on the changes of psycho-dynamics of power relations (Daly and Sarkin, 2007: 216). Impunity in Kenya is a national disaster that needs to be addressed urgently. As David, a 76 year old community leader from Eastern Province indicates, this requires selfless leadership, a commitment to institutional reforms and civic education focused on addressing disputants' uncertainties about the future.

I fear that our country is deeply sunk in corruption and the plunder of our national wealth by political elites; I fear the continued lack of opportunities for the marginalized communities, the continued apathy among the Kenyan youths. They graduate, they are unemployed, they lack basic needs, they are angry, they fight for their rights, they are incarcerated; is this justice? I fear that disgruntled groups such as the MRC and Mungiki will mobilize and re-ignite ethnic violence. I fear the Rwanda-like genocide beyond anything else. I fear the day I will be told they are here!

Most important in creating hope and addressing Kenyan fears is access to socioeconomic opportunities that will help Kenyans to meet their basic needs. The *greed thesis* relates the cause and maintenance of violent conflicts to economic disparities while *grievance explanations* relate the cause of such conflict to a variety of factors including identity, religion, and unmet needs; issues that may be hijacked and used by political entrepreneurs to mobilize support (MacGinty, 2008: 69-70). The human needs approach maintains that peace is founded on the fulfillment of the whole array of social, cultural, and economic needs crucial to human contentment (MacGinty, 2008: 74). Human needs theory identifies with identity politics in that the deprivation of physical needs and the denial of access are rooted in ethnopolitical discrimination. Post-conflict reconstruction involves: moving from a situation of instability and exclusion from the political process to one of stability and inclusion; addressing issues of uncertainty, mistrust

and fear; and overcoming the social and institutional legacies of the conflict (Wolff, 2006: 173). The way forward for Kenya is to create a process and a space in which people can feel safe and can be honest with themselves and with others about their fears, hopes, hurts, and responsibilities (Lederach, 2003: 57).

7.6 The International Criminal Court

The proprio-motu jurisdiction of the ICC prosecutor is guided by the principle of complementarity and is evoked as a last resort after the failure of a state's national jurisdiction to deal with an offence; that is, when a state is unwilling or unable to investigate and prosecute (Wise, 2000; Article, 15). The mandate of the ICC is limited to "grave breaches" (Article 8 /2a) and "serious violations" (Article 8/2b) in which independent investigations are opened, indicting and possibly prosecuting those who bear the greatest responsibilities for mass atrocities. Respondents had mixed reactions about the ICC as a form of transitional justice in Kenya. These reactions were centred on the perception of the ICC as a neo-colonial and neo-imperial project, its responsibility to protect and suitability as an alternative form of justice, and its jurisdiction, deterrence, selective justice, and success (or lack thereof) in civic education. The following is a discussion of these perceptions.

7.6.1 Neo-imperialism and neo-colonialism

Due to its exclusive focus on Africa, the ICC is critiqued as an instrument of neo-colonialism and neo-imperialism (Arieff et. al., 2010). The ICC is embedded in the western ideal of the rule of law (Minow, 1998: 40). This has led to disapproval of the ICC in Africa, as Jane, a 33 year old community nurse observes:

Am opposed to the hijack of the ICC by the West. He who pays the piper calls the tune; those who finance ICC influence its delivery of justice to fit their interest instead of the victims' interests. Our problem is not limited to 2008 ethnic war, it extends to pre-independence time, why the interest now? ICC is about global power struggles between the West and the East. Kenya's relationship with China and the East has compromised the West's socioeconomic, political, and strategic interests in Kenya being a stable democracy and an ally of the West in the fight against terrorism. The West wishes to nurture pro-West leadership and to push pro-East leadership to oblivion. Leaders indicted by ICC are Pro-East. In Kenya 1,500 people died and the West intervened immediately while 500,000 and 1 million people died in Darfur and Rwanda respectively as the West watched. Why the interest in Kenya?!

The above observation raises various important issues. Most of the countries in which the ICC is involved in are those that align with the West's strategic and political interests. For example, while Kenya is a strategic frontier for the West's war against terror in the Horn of Africa, the current leadership has turned east to find new socioeconomic and political allies. The aggrieved West is determined to covertly use the ICC as an instrument to nurture a pro-West leadership and oust a pro-East leadership. As such, Abigail a 53 year old community women leader from Central Province dismisses the ICC as a western democratization project:

The ICC is not an International Criminal Court but an international colonial court, an international imperial court; it is not even international per se because some countries have not subscribed to it. A lot of suspicion surrounds how the ICC was constituted, who constituted it, and who funds it. The ICC is overstepping its mandate by practising selective justice; harassing Africa and sparing the West. The ICC needs to dissociate itself with the West's strategic and political interests, and resist being used by the strong against the weak....If only four Kenyans are being indicted what about the hundreds of militias who killed, maimed, and raped? Whose interest is the ICC serving? The ICC is an American tool used to covertly entrench western democratization in developing world. If we assume that the ICC do not embrace non-member countries, why does the USA use it? The ICC lacks credibility; that is why the AU has decided to protect indicted Africa leaders.

Tribunals often have limited success due to their disconnection from local realities and lack of capacity for social repair (Roger, 2005). Moreover, American funding and the use of the ICC as a tool for democratization conflicts its non-member status to the Rome Statute (Van der Vyver, 2000). The ICC should be neutral, independent, and committed to sustainable reconciliation and

peacebuilding in countries emerging from protracted violence, but it is not clear that this is the case for the ICC in Kenya.

7.6.2 Alternative Justice and the Responsibility to Protect

The Westphalian doctrine of sovereignty is often evoked to challenge the indictment of African leaders by the ICC (ICTJ, 2010). However, proponents of the ICC argue that it is mostly African states and in some few cases the UNSC that invite the ICC to investigate issues (Gosnell, 2008). It is also argued that despite gross breaches of humanitarian law, Africa has a weak legal system which compromises the ICC complementarity principle (Ibid). In her contribution, Naomi, a 54 year old community women leader from Nyanza Province supports the ICC as an alternative form of justice in Kenya:

I support the ICC because our justice has been failed and because we are signatory to the Rome Statute. The perpetrators should be tried and either proved guilty or not guilty. The ICC has confirmed that there is a case to answer; if guilty let them pay for their impunity. Kenyans should know that it is not an ethnic group or a political party that is being taken to the Hague; it is the perpetrators of injustices. The ICC is complementing our failed institutions. The ICC is a complementary court of justice which is expected to bring justice to the affected people. While African states may be targeted, the violation of human rights has been highest in Africa; the ICC is a learning experience, a deterrence, and a warning that the world is watching and perpetrators will have to carry their own cross. The ICC plays a better role than the TJRC because there is an expectation that justice will be done.

A trial in the aftermath of mass atrocity marks an effort between “vengeance and forgiveness” by transferring the individual’s desire for revenge to state bodies (Minow, 1998: 26). Trials facilitate accountability for harms committed and the reconstruction of impaired relationships. However, groups from which the indictees come from perceive the ICC as an affront to their own people or their political parties, and therefore tend to blame the enemy others for their predicament. In her contribution, Claire a 55 year old prominent church leader observed the following concerning the institutionalization of the responsibility to protect:

Our current law recognizes the Rome statute, and given the lack of confidence in our own system it is the best alternative for justice. The ICC is a reminder that if the national judicial system does not guarantee justice, the world has a responsibility to protect...Human rights are universal, so no one should commit crimes and then take advantage of a weak national system to escape the punishment. The ICC may affect our sovereignty but considering that human rights are universal then their violation should be interpreted universally. If the ICC abscond its duty other perpetrators may assume that they can as well commit crimes and get off the hook.

The principle of sovereignty as entrenched in Article 2.7 of the UN Charter holds that States have the primary responsibility for their citizens, yet in circumstances where states commit crimes against humanity and war crimes against their own citizens, the international community has an obligation and a duty to those citizens (ICISS, 2001; Chataway, 2007; Evans and Sahnoun, 2002). However, sovereignty has been used to mask gross violation of human rights, security and economic well-being of populations around the world (Crocker et al. 2007: 656) and in response principles of human rights and human security are promoted as foundations for the protection of vulnerable populations (Marten, 2005: 37). However, the right to intervene is inadequate in several ways: it focuses more on the rights of intervening states than the humanitarian needs of target beneficiaries; it ignores the more important preventive dimension and the post-conflict responsibility to build; and it is a tool for political and strategic interests rather than a tool for universal human rights and morality (ICISS 2001: 16). This challenges the rationality of the ICC as a form of transitional justice in Kenya.

7.6.3 Jurisdiction, Deterrence, Selective Justice and Civic Education

The respondents had different perceptions about ICC jurisdiction, selective justice, deterrence, and civic education and its impact on transitional justice. In terms of civic education, Ibrahim, a 60 year old community leader from Nairobi Province, decried the failure of the ICC to popularize its meaning, mandate, and process among the masses:

How many Kenyans understand the ICC and its mandate? The ICC will create divisions due to the divided nature of our politics. The ICC lack grassroots support because it is not understood; it should accommodate and involve Kenyans in order to nurture ownership. Kenyans believe that the ICC is a tool of the West; a colonial remedy to a local problem. We need to know how the ICC collects its evidences and why Kenyans are excluded from the process. How credible is the evidence collected? Why is the process selective? Why is the ICC more in Africa than elsewhere? Why do we have the West influencing its decisions?

The above observation shows that Kenyans have many unanswered questions about the ICC which indicates a gap in its suitability as a transitional justice mechanism. The ICC has been politicized thereby compromising the information and its ownership by the masses. Kenyans need to be educated about the ICC process, mandate, meaning, and impact to facilitate making informed decisions relating to the Rome Statute. Elicitive approaches indicates that conscientisation creates an encounter of people with themselves and with the realities they experience therefore nurturing the capacity to name, interact, and respond to their own realities in dynamic ways (Lederach (1995: 113). While the ICC has failed to sensitize Kenyans about its process, studies indicate that indigenous empowerment facilitates the mobilization of local potentials that are key to sustainable change (Ibid: 111). However, in spite of its failure in the conscientisation of the locals, the ICC has been instrumental in the deterrence of crimes against humanity as Damaris, a 52 year old professor at a local university observes:

While we say that the ICC is targeting African countries, we can all appreciate its deterrence role. People should not use their positions to perpetuate impunity and human rights atrocities and then get away with it. The ICC deterrence has reduced agitation for violence after political elites realized that the world is watching...the ICC has helped people to rethink about the way they do politics and this has helped to shape politics in Kenya. The ICC is sending a message that we are not living in an island that Kenyans are part of an international community and should not be harmed as the world watches.

In contrast to the above positive observation, the ICC is criticized by others for delaying justice and the enormous cost involved (Arieff et al., 2010), which raises questions about its capacity to

facilitate deterrence, sustainable reconciliation, and peacebuilding (Gosnell, 2008). However, the proponents of trials accredit the long-term benefits of trials as forms of transitional justice. Trials can facilitate the collection of evidence, hence accomplishing “incredible events by credible evidence.” Moreover, by holding accountable the offenders of mass atrocity through justice and law, trials help others to learn from the past and to warn those in the future (Minow, 1998: 48-49).

The ICC is also criticized for its retrospective application of norms, political manipulations, and selective justice (Freeman and Gibran, 2004). In Kenya for example, the West has used the ICC platform to discredit the Kenyan government as well as the political elites who are anti-West and/or pro-East. The indictment of four people said to bear the greatest responsibility for crimes against humanity while leaving out thousands of militias who committed human rights atrocities compromises sustainable reconciliation. This is because the wounds, traumas, grievances, and revenge motives of neighbours who fought each other remain unaddressed at the grassroots level. While trials can nurture justice at home as in the case of Yugoslavia’s Milosevic and Chile’s Pinochet (Arsanjani, 1999), the ICC level is a hindrance to sustainable reconciliation and peacebuilding (Lamont, 2001). Rather than embracing reconciliation and reintegration, the ICC’s confrontational approach nurtures possibilities of revenge and a relapse into violence (Popoviski, 2000). As Minow (1998:40) asks of such trials: “Can selection be judged as a matter of fairness rather than arbitrariness? Do power and personality rule?” In his contribution, Vincent, a 45 year old leader of a local community vigilante group critiques the retrospective applications of norms, political influence, and the selective prosecution of trials:

There is no fairness in the ICC selection process because no proper investigation has been done. How did the ICC come up with Hague Four (Uhuru Kenyatta, William Ruto, Joshua Sang, and Francis Muthaura) from among thousands of perpetrators of human rights atrocities? If the ICC incarcerates the financiers of crimes and leaves behind the perpetrators how are we going to realize justice? None of the Hague Four actually killed, we are told they financed or planned the violence, so the killers are out there. The ICC process will ignite ethnic animosity and compromise reconciliation; the Hague Four will get jailed, persevere and come out as heroes. History will hold that it is because of that community that our son was incarcerated and the generational curse of violence will ensue. How is indicting four persons going to reconcile a rapist on the loose and a rape victim? While the ICC can only prosecute crimes committed after July 1, 2002, how will historical injustices that runs beyond its mandate be addressed?

The above observation raises many important concerns. It is not clear how objective, transparent or effective the ICC process will be in reconciling Kenyans. Retributive justice tends to institutionalize the perpetrators therefore exposing them to greater violence, which is counterproductive to transformative restorative community integration (Woolford, 2009: 135). Trials should embrace fairness, a commitment to the national interest, and mobilize resources and capacities to ensure that justice is done (Minow, 1998: 50). Historical injustices in Kenya go back to colonial times—therefore, more than 100 years of injustice are not covered by the mandate of the Rome statute which began in 2002. How then will the injustices committed before 2002 be addressed? Was the start date of the ICC mandate in 2002 a covert commission to camouflage colonial injustices and therefore prevent trials of colonial perpetrators? The post-election violence was a war between communities in favour of the incumbent President alleged to have lost the 2008 elections and those in favour of the prime minister alleged to have won the elections. Why are the two principals and the electoral commission not in the Hague? The absence of trials of superiors who gave orders, inducements, and threats, as well as the selectivity, arbitrariness and creation of martyrs out of a few, discredits the court and threatens any sense of fairness or rationality (Minow, 1998: 40-45). How did the original list of those most responsible for crimes against humanity come to be reduced from twenty people, to six and then

four? These concerns raise questions about the suitability of the ICC as a form of transitional justice. The ICC is also challenged about its jurisdiction, as William, a 50 year old member of the TJRC argues:

The ICC is not an independent court; it doesn't have its own police. The perpetrators are surrounded by people they trust, they command big followings, and can influence politics even from jail. It takes too long for justice in the ICC to be realized...the court embraces criminal justice but we need social justice that nurtures reconciliation. We need a system that addresses historical injustices. The justice we need is not just prosecution by the ICC but how that impacts on our future. How will the prosecution of the Hague Four impact on the IDPs, rape victims, the disabled, orphans, and the widows? Can we reconcile criminal and social justice? Effective transitional justice requires people who understand our history; it must be people-led, and must revolve around socioeconomic welfare.

The above argument indicates that the ICC does not augur well with transitional justice in Kenya. The political elites indicted can use their resources to frustrate the Hague process in and outside the court. Also, the court invests in criminal justice rather than the desired social justice. As well, it aligns with the strategic and political interests of its authors, namely the global North. Critiques of retributive justice asserts that the deterrent retributive mode of justice mostly does not help the reformation and transformation of criminals and that offenders should instead be provided with meaningful opportunities to reform themselves (Woolford, 2009: 11). Rather than using retributive measures, justice can be promoted through democratic, reconciliative, and restorative practices in which structural injustices and violence are addressed. This study indicates that despite its deterrence, ICC disapproval is high and hence unsuitable as a form of transitional justice in Kenya.

7.7 Truth Justice and Reconciliation Commission of Kenya (TJRC)

A civic culture of tolerance and respect for minorities, vulnerable, and marginalised groups is not conceivable without truth and justice in human affairs. Justice for victims of ethnic atrocities restores the rule of law and therefore potentially reduces the likelihood of cycles of revenge and retribution. Justice uncovers truth, removes offenders from public office, holds individuals rather than groups responsible for crimes against humanity, and gives offenders an opportunity to reintegrate into society after serving their sentences (Oberschall, 2007: 188). While genuine relationships between offenders and victims cannot be restored by retribution or replaced by rehabilitation, restorative justice facilitates a conciliatory process in which offenders take responsibility for their acts which empowers victims and renews relationships (Daly and Sarkin, 2007: 219). Whereas in many cases conflict resolution has been characterised by a win-lose situation, studies indicate that TRCs facilitate a win-win situation in which the perpetrators of injustices are actively involved in finding lasting solutions (Hayner, 1999; David, 1994). We need to challenge the dominant punitive discourses of justice that are deeply ingrained in our culture and instead strive for win-win approaches (Woolford, 2009: 11).

However the process of truth telling and reconciliation as exhibited by comparative cases around the world is not always smooth. The case of Argentina illustrates how truth narratives are constructed and undergo change in transitional justice initiatives, how the voices of the affected people are differently promoted and/or silenced, and how truth and justice are bound by political goals, situational conditions, and issues of legitimacy (Hinton, 2011: 15). Likewise, the case of post-genocide Burundi illustrate that effective transitional justice requires collaborative partnerships and conditions for justice that include coexistence, civil life, and the establishment of networks of relationships (Theidon, 2007b, 2010). Narrating and remembering must be

understood in the context of ongoing social relationships and spaces. In East Timor and Indonesia, for example, giving testimonies and witnessing were compromised by suspicion, betrayal, and fear of reprisals by the hegemonic state (Hinton, 2011). Finally, the SATRC nation building project tended to ignore the structural problems created by apartheid and the expressed needs of victimized communities (Woolford, 2009: 79; Wilson, 2001). Likewise, the Kenyan TJRC has been compromised by hegemonic forces and failed to address transitional justice, as the following responses from the study participants indicate.

7.7.1 Leadership Structure, Mandate, and the Final Report of the TJRC

Transitional justice processes should avoid perpetuating established forms of structural and cultural violence or the social asymmetries of power in which processes of social reconstruction are compromised by protective silences. There is a need to create secure and safe spaces that encourage people to speak (Allen, 2006). Concerning the leadership structure of the Truth, Justice, and Reconciliation Commission, Caroline a 42 year old member of parliament from the Coalition for Reforms and Democracy had the following to say:

The TJRC structure does not have the ownership of the Kenyan masses. The chair is said have some skeletons from the past; he was appointed to protect some big fish from prosecution. The commissioners should be people of unquestionable integrity. The TJRC should be inclusive, participatory and focused on reconciliation. The message should be as good as the messenger. You cannot have a midwife whom you do not trust to deliver your child. The TJRC was not formed to nurture justice but to camouflage injustices and covertly deny justice without seeming to do so; it has opened wounds and left them unattended. The chair should be foreigner to avoid conflict of interests.

Caroline's concerns are weighty and legitimate. Truth telling cannot be free if the TJRC's legitimacy is questioned. Who really constitutes the TJRC? For whom does the TJRC exist? Is the TJRC independent? Can the TJRC reconcile Kenyans? Why were Kenyans not involved in the formation of the TJRC? The composition of truth commissions is pivotal in the performance and legitimacy of the final findings. In other words, the appointment of respectable figures

considered to be above reproach, as in the Salvadoran case, adds credit to the truth commissions (Hayner, 2001). But are foreign commissioners always non-partisan? While arbitrations of the World Council of Churches in Brazil, the UN in El Salvador and Guatemala, and the ANC in South Africa bridged the gap after governments failed to assume responsibility, the dependency on such support may be counterproductive due to a lack of local knowledge and the imposition of prescriptive templates which compromise the ownership and sustainability of the process (Hayner, 2001). The transitional justice discourse is characterised by power imbalances between citizens as victims and repressive state agents as perpetrators. These power imbalances suppress alternative histories, create resentful silences, and nurture a system of absolute victimhood that compromises national reconciliation and social justice (Lame, 2005). As witnessed in East Timor and Indonesia, transitional institutions enforce particular narratives to yield certain social and political consequences while other narratives such as military violence are excluded from social visibility to hide the evidence of past atrocities (Woolford, 2011: 252). The zeal to establish truth is often compromised by political influences in terms of who is heard, the kind of information considered, and how such information is presented in the final report (Hinton, 2011: 14). Critical too is the unrealistic mandate of the TJRC, as Alice, a 38 year old civil society activist laments:

The mandate of the TJRC goes back to independence in 1963 and can't be accomplished within a time frame of two years...the TJRC is a political tool. Ask yourself: who formed the TJRC? The government! Who was to be investigated? The government! The TJRC should have been constituted through a referendum; it is not representative of all ethnic groups. We have not seen real victims and perpetrators coming forward and remorsefully testifying or asking for forgiveness. While forgiveness embraces truth and justice; the TJRC has opened wounds and left them for the flies. The TJRC is confined in the urban, where people talk in English and use electronics inaccessible to rural folks; we need to reach out to all Kenyans using their language and local resources. The final report should also be printed in ethnic languages to accommodate all groups.

The mandate of truth commissions typically involve: a focus on the past; an investigation into a pattern of abuse over a period of time; a specific operation period normally six months to two

years; and an official authorization by the state (Hayner, 2001). The Kenyan TJRC is characterised by power struggles and has wasted most of its two year mandate which is meant to cover five decades of injustices. Its commissioners were appointed unilaterally by the incumbent regime, which raises questions about its legitimacy. While restorative justice forums like truth commissions strengthen relationships and frameworks for understanding past injustices, it can also be abused by manipulative discourses and powers (Braithwaite, 2003; Woolford, 2009: 77). Restorative justice should be transformative, participatory, and inclusive while engaging the public in social change and opportunities for raising critical consciousness through collective decision making (Woolford, 2009: 152). While the TJRC should have focused on relational healing (Woolford, 2009: 14), it has instead compromised the truth-telling that is vital for breaking the cycle of violence (Hutchison and Wray, 2003). Kenyans are worried about the final report, as Amelia, a 60 year old community women leader from North Eastern Province observes:

I hope that the final report addresses historical injustices but the TJRC can only recommend actions and cannot prosecute. If the government is the perpetrator, who will implement the final report and ensure that justice is done? The Kenyan process has been manipulated; before the truth is incubated, even before it's in the embryonic stage, it is killed or defaced. Therefore baby justice shall never be born because the custodian of the incubator is the perpetrator who want to maintain the status quo.

Truth commissions typically lack the authority to punish the perpetrators or to implement the institutional reforms stipulated in their final reports (Hayner, 2001). Even when a TRC refers a case to courts, there is no guarantee of justice in the contexts that feature weak legal systems, political unwillingness, and/or limited resources (Ibid). Indeed, how can truth commissions be independent of manipulation from incumbent regimes? Official endorsement of a truth commission is important because it represents an acknowledgment of historical injustices and a commitment to facilitate sustainable reconciliation (Hayner, 2001: 14). Restorative justice should

strive to interrogate questions such as: who has been hurt? What are their needs? Who should meet those needs? Who are the actors and how can they be involved in finding a solution? (Schirch, 2004: 52). These are key issues that the Kenyan TJRC has failed to address.

7.7.2 Testimonies, forgiveness, and amnesties

All actors in the TJRC process should acknowledge that there were past injustices. They should also embrace apologies, forgiveness, and the desire to move forward. However, when people deny that injustices happened, then there is no need for reconciliation because there is nobody with whom to reconcile. In such instances, amnesty for the accused perpetrators is experienced as an injustice by extension. Reconciliation requires that the truth about gross violations of human rights be established through official investigation using fair procedures, fully and unreservedly acknowledged by the perpetrators, victims and bystanders (Minow, 1998: 55). Victims' testimonies may facilitate empowerment and humanization while offenders' acknowledgment of the harms, apologies, and reparations could facilitate forgiveness and renewed social relationships (Brody, 2001; Marshal and Gurr, 2003). Psycho-social approaches indicate that formal acknowledgement of past atrocities have a cathartic effect: a sense of recognition combined with a restoration of dignity (Minow, 1998: 62-68), which arguably occurred in the case of El Salvador (Naomi and Roht-Ariaza, 2010). However, the process can also be a source of dissatisfaction and anger and a catalyst for post traumatic disorders as was the case in South Africa (Hayner 2001; Tepperman, 2002). Criticism of the *cathartic thesis* argues that it is absurd to think that wounds of trauma can ever heal (Hayner, 2002). Healing is an obscene notion for those who have died; perhaps endurance rather than healing is what survivors at best can seek (Minow, 1998).

Amnesties for perpetrators, as a key approach in truth commissions, have also been overly criticized. In South Africa, for example, the victims who resisted amnesty were ignored while the victims' refusal to forgive was met with ridicule, shaming, and intimidation (Brudholm, 2008: 30-31). Studies indicate that the granting of amnesty trades justice for truth (Minow, 1998). Respondents in this study had various observations relating to testimonies, forgiveness and amnesties. As Luke, a 40 year old political analyst and human rights activist observes:

The affected persons needs a chance to account about what happened, their feelings, and their fears. People who faced injustices should have a credible audience to listen to them. But if perpetrators are not willing to confess, then who is to be forgiven or given amnesty? Giving testimonies is okay if justice is done; but if testimony is given so that amnesty can be prescribed why I should waste my time? Victims want to see offender(s) confess, get punished according to the Law and/or pay compensation for the loss. Perpetrators should not direct their testimonies or apologies to an institution but to victims of injustices. If as a country we acknowledge our wrongs and the complexity of our history and help to retell our story we can heal. Stories may open old wounds but it may be necessary that closed wounds are reopened if they are not healing well so that they can be re-banded. How the stories are told and handled shall impact our healing.

As indicated above, giving testimonies requires a credible audience, acknowledgement of wrongs, and an assurance of justice. Psycho-social approaches indicate that reconciliation promotes an encounter between the painful past and an interdependent future; it embraces truth and mercy, letting go of the past and the embracement of new relationships; and it facilitates justice and peace through which wrongs are addressed and a common future envisioned (Lederach, 1997: 3). Reconciliation addresses expressed needs and fears of communities embedded in protracted conflicts; it facilitates group healing and social well-being in overcoming conditions that nurture conflict (Daly and Sarkin, 2007: 216; Galtung et al. 2002). Forgiveness is central in giving testimonies, as Penelope, a 32 year old victim and survivor of violent atrocities observes:

Forgiveness or non-forgiveness is a personal choice and should not be abused; it must be genuine to enable sustainable reconciliation. Forgiveness must have limits in order to give justice a chance; offenders should face justice to deter future atrocities. Forgiveness requires psychological preparation of the victims to accept what happened. Let the offender provide my upkeep, that way I will to look back and say fine, let us move forward. It is not just about giving testimonies and receiving amnesty. How can the government forgive you on my behalf yet you messed up my life. But also, if perpetrators are punished, the grudge will stay. To reconcile, we need a formula to blend forgiveness, amnesties, and punishment.

Penelope's assertion raises some critical observations: to what limit should we forgive in order to give justice a chance? How do we harmonize diverse individual approaches to forgiveness in order to accommodate amnesty? While retribution may nurture future grudges, how do we reconcile forgiveness and punishment? These questions are not addressed in this study and may require future research. While the idea of forgiveness can be offensive after genocidal atrocities, it is not "an arbitrary, free act of pardon"; it involves the restoration of relationships, the release of guilt, pain and suffering, the removal of fear and suspicion, and the reintegration of the perpetrator into the moral community (Daly and Sarkin, 2007: 218). Blanket forgiveness is criticized and non-forgiveness justified as permissible and admirable on the basis that there is a moral significance in the expression of anger in the face of evil which does not necessarily reflect a thirst for revenge or personal deficiency (Brudholm, 2008). Giving amnesties like forgiveness is also highly sensitive, as Victoria, a 42 year old director of a local counselling and rehabilitation centre observes:

Giving amnesty does not augur well with real forgiveness. Let the victims give a final verdict; it is more therapeutic. If victims want legal justice while the TJRC insists on amnesty how do we reconcile the two? We must strike a middle line between offense and revenge; solve the complexity of a perpetrator who was a victim and the victim who was a perpetrator. Then amnesty may be necessary. We have a strong culture of impunity, so amnesty is another form of impunity. Offenders should face the law to act as a deterrent against heinous crimes, we must set the right precedent. Amnesty should be limited to petty offenders and derive from genuine public confessions. Giving blanket amnesties is like opening the prison doors and releasing all the jail birds irrespective of their crimes. Forgiveness and amnesty means that we cannot address every detail; past injustices are so huge, we need a fresh start. However, amnesties must be accompanied by restitution.

While amnesty is a good carrot for perpetrators, it is contentious as indicated above: Who should give amnesty? What is the middle-line between amnesty and retribution? Should amnesty be entertained in a state of impunity? What are petty offences and who defines them as such? What amount of restitution guarantees amnesty and who should determine such a sum? The victim should actively participate in deciding amnesty. Giving amnesty on behalf of victims disempowers them and constitutes an affront to their dignity. Restorative justice theories indicate that SATRC's amnesty to perpetrators of mass atrocities was a violation of victims' right to seek judicial redress for the murder of their loved ones (Minow 1998: 56; Woolford 2009: 68). Studies indicate that while amnesty has been abused to give immunity to dictators as in El Salvador (Hayner, 2001) and salvage nation building as in South Africa (Wilson, 2001), no one has the right to prevail on others to forgive (Brudholm, 2008).

7.7.3 TJRC Restructuring, Civic Education, Witness Protection and Support

A section of the respondents indicate that the best way forward for transitional justice in Kenya is to restructure the TJRC into an institution that will nurture reconciliation, educate and involve Kenyans in its structural formulation, and embrace witness support and their protection. Psycho-social approaches indicate that the TJRC should embrace the four pillars of reconciliation namely: Truth, which includes confession, transparency, revelation, and clarity;

Justice, which embraces equality, amending wrongs, restoring relationships and restitution; Mercy, which embraces acceptance, forgiveness, support, compassion, and healing; and Peace, which embraces harmony, unity, well-being, security, and respect (Lederach, 1997: 30). In her contribution, Alice, a 38 year old civil society activist had the following observations about the TJRC:

We need a genuine TJRC in which truth and justice are embraced, wrongs are acknowledged, and victims' special needs are addressed. A genuine TJRC will nurture truth; truth will lead to justice; justice will nurture forgiveness; and forgiveness will elicit mercy and peace. You cannot reconcile in a state of untruthfulness, unforgiveness and impunity. We need a TJRC that is all inclusive, transformative, restorative, and capable of addressing trauma...a perpetrator rapes your daughter in your presence, both of you are traumatized by this heinous tragedy; in the absence of justice it is difficult to heal or recover. Healing requires someone to recognize my afflictions. When you find yourself with one arm and you see the person who amputated you walking free, hurting persists.

While Alice's observation is credible, the four pillars of reconciliation cannot be implemented in a vacuum; they require a space, involvement, and ownership of the process by all actors. The TJRC should create an authoritative record of what happened, provide a forum for the victims to tell their stories and acquire some form of redress, recommend reforms that will address impunity, facilitate compensation and restitution, and facilitate the accountability and reintegration of the perpetrators (Roht-Ariaza, Naomi, and Mariecurrena. 2006; Hayner, 2001). Restorative justice indicates that reconciliation requires the arbitration of truth, the consolidation of justice, the exorcism of bitterness and fear, through confession, forgiveness, and restitution (Wamwere, 2008: 87); it engages disputants as humans-in-relation (Lederach, 1997: 26). In her contribution, Lilian, a 66 year old opinion leader from the minority ethnic groups indicates that Kenyans needs to be educated about the TJRC process:

Kenyans are ignorant about the TJRC; its success requires educating people using all forums such as churches, schools, media, and sports about its importance. All Kenyans must actively be involved in the whole process of testimonies, forgiveness and amnesties. Transparency should be key during confessions and all the testimonies made public to enable feedback. The TJRC process must be authored by all actors, not a few political moles.

Prescriptive approaches indicate that prescriptive education compromises freedom as an indispensable condition for human completion, it afflicts the oppressed and transforms their consciousness to conform to the oppressors' consciousness (Freire, 1968: 47). We need to inquire: what kind of civic education is out there? Who has authored it? For whom has it been authored? For what reason has it been authored? What is its outcome and impact? When the oppressed have adapted to the structures of domination they become unable to wage the freedom struggle (Ibid). Elicitive approaches advocate for elicitive education which is inclusive and participatory and aims at discovery, creation, and nurturance of contextual models and resources that addresses conflict appropriately (Lederach, 1995: 55). All actors in Kenyan transitional justice must invest in elicitive education to ensure the success of the TJRC process. In another perspective, Andrew, a 75 year old elder from Western Province emphasizes the importance of witness protection in truth telling:

There is no political will to guarantee protection for those giving testimonies. Evidences that are given are incomplete, incompetent or lacking substance due to fear of revenge and/or lack of justice. All the eye witnesses of political assassinations have gone missing or died in mysterious circumstances. In giving testimonies, witness protection must be prioritized. If we do not testify for fear of victimization there would be no forum for confessions or forgiveness; testimonies are key to reconciliations.

Credible confessions and testimonies require assurance of safety for both victims and perpetrators. Kenya should have a witness protection act due to sensitive confessions and testimonies implicating senior political elites some of whom are still in power. Truth commissions must acknowledge the risks and benefits of both silences, testimonies, and

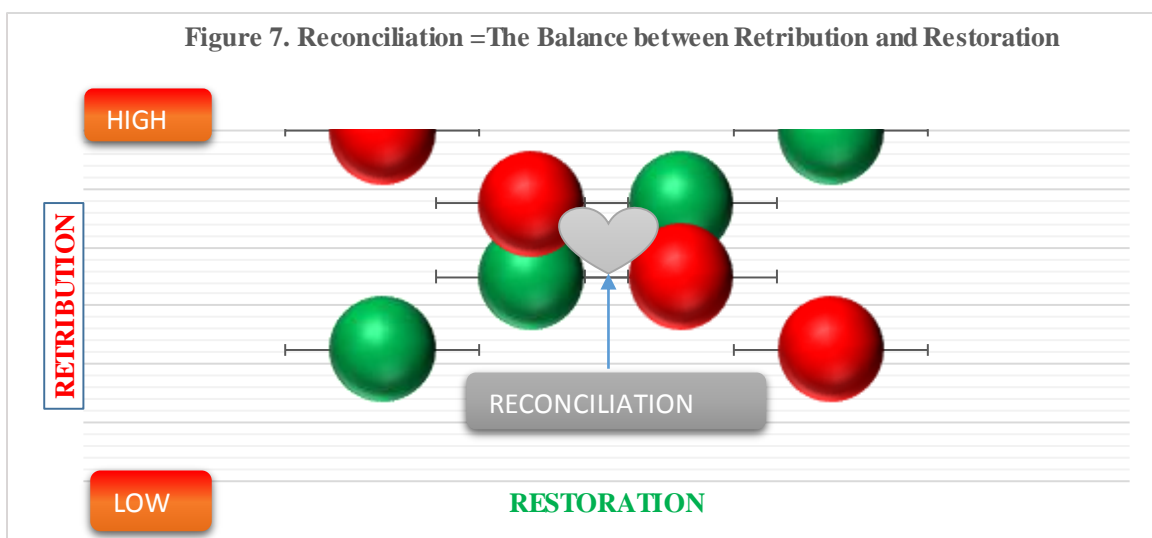
confessions where no internal or external protection is expected (Cobban, 2007). Lack of guarantee for witness protection endangers the prospects for transitional justice.

7.7.4 Retributive and Restorative Justices

Retributive justice as a retroactive approach advocates for punishment to those who violate human rights law and commit crimes against humanity (Maiese, 2003). Trials in the aftermath of mass atrocity mark an effort between vengeance and forgiveness; it transfers an individual's desire for revenge to state bodies and facilitates accountability and acknowledgement of harms, therefore facilitating the reconstruction of impaired relationships, providing constructive lessons from the past, and future envisioning (Minow, 1998: 26). Restorative justice processes on the other hand facilitates the mutual healing of victims and perpetrators of mass atrocities, access to special needs, the restoration of social relationships, and the reintegration of both the victims and offenders into the moral community (Hayner, 2001). Restorative justice strives to cultivate resonance within diversity, sociopolitical transformation, and a sense of human relationality that means "we all have an interest in repairing rifts and healing harms, since any scar left unattended will affect the humanity of each and every one of us" (Woolford, 2009: 68). Yet, how do we reconcile retribution and restoration? At what point should the victims let go? Studies indicate that victims' needs may often be irreconcilable with national or political goals (Wilson, 2001: 34). For example, SATRC's redemptive model is criticized for having delegitimized retribution and legitimized the ANC's nation building project which compromised a culture of human rights. As Wilson (2001: 153) asks "Reconciliation for whom?" Likewise, Michael, a 43 year old victim and survivor of ethnic violence observes:

Allow the affected groups to share their feelings, it is not just a matter of being resettled; victims must regain their lost life...reparations must be case sensitive to address the diversity of violations. Someone testifies to have killed my entire family, raped and infected me with HIV and now seeks forgiveness. How do you forgive or even heal from such kind of humiliation? Forgiveness alone may not heal my wounds, offenders need to actively restore my life; if you burnt my house, build me another one. If you cannot build me a house, what else can you do? You must take responsibility for my upkeep. Then I will feel yes, I need to let go, since you have paid dearly for your atrocities. When the TJRC decides to give amnesty on my behalf that is a big joke. Jailing an offender is not a solution either, let him be part of my life, reconstruct my life, it is not punishment but a pay back.

Healing and recovery is challenging if the wounds are deep and the environment is a constant reminder of injustices. Successful post-conflict reconstruction often requires gradual, individualized, and focused intervention and affirmation of the ‘never again’ and that justice would be done (Wolff, 2006: 180). Reparation as a component of post-conflict reconstruction constitutes a variety of redress measures including restitution, compensation, rehabilitation, satisfaction, and guarantees of a nonrepetition of human rights abuses (Johnston and Slyomovics, 2009: 7-13). Figure 7 below suggests that reconciliation is nurtured via a middle-ground between retribution and restoration. This is the point where the trend lines meet; it constitutes the point of satisfaction and the start of healing and recovery.



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Therefore, central to reparations is satisfaction: Yet, are reparations always satisfying to the victims? Who defines and decides satisfaction? How can satisfaction be measured? How can individualized satisfaction be achieved amidst diversified needs and scarce resources? Satisfaction as a form of reparation constitutes: the restoration of dignity and legal rights of the victims; the full public disclosure of truth; public apologies; sanctions against the perpetrators; and recovery and forensic analysis of remains, as well as reburial in culturally appropriate ways (de Greiff, 2006). However, there are multiple obstacles to reparations: attitudinal barriers and reluctance by offenders to make reparations; lack of political will; in the case of victims disappearance or death; instances where a human rights violation was not considered a legal wrong at the time of commission; and fear of reinforcing differences among disputants (Balfour, 2003: 43; Torpey, 2006: 166; Muller, 2006). For example, while the 2008 apology to First Nations by Stephen Harper for the forced assimilation, incarceration, and abusive treatment of children in the Indian residential schools was meant to generate satisfaction, it was also construed as an effort to evade responsibility because it lacked a meaningful approach to reparation (Annet, 2008).

As studies indicate, the Canadian TRC and compensation policy was state-centred and therefore compromised the self determination of the First Nations (Corntassel and Holder, 2008). For instance, despite the establishment of the Aboriginal Health Foundation, the government failed to acknowledge the history of colonialism in Canada (Henderson and Wakeham, 2009), the systemic destructions of residential schools, or call for a public inquiry (Nagy and Kaur Sehdev, 2008). The political transition in post conflict spaces do not often reflect the transition of the settler society. As studies show, reconciliation as *cure* rather than a *healing* “functions as a means to foreclose on the colonial past without investing in structural and epistemological

transition to a decolonized relationship between Indigenous people and non-Indigenous people” (Green, 2012: 130). To nurture legitimacy and ownership, truth commissions should be transformative, participatory, representative, and inclusive. Lack of remorse, apology and acknowledgement are also noted in the Kenyan restorative process, as Isaac, a 40 year old lawyer and human rights activist observes:

We have not had remorsefulness from the perpetrators; we have not heard perpetrators saying, the devil visited me, I burned women and children, and I am sorry. When perpetrators do not believe they committed a crime, when the society does not agree that we had a historical epoch of injustices that need to be addressed, testimonies serve no purpose. Kenyans believe in punitive justice, you commit a crime you get punished according to the law. We should name, shame and incarcerate the perpetrators; by tolerating impunity Kenyans are doing an injustice to themselves. What precedent are we setting by forgiving a person who killed and there is evidence that he killed. Why should we have forgiveness or amnesty? We should let the law take its course.

While retribution is not desirable, how do we deal with arrogant and non-remorseful offenders? Should the rule of law be compromised for the sake of restoration? While wounds may not be reversed through reparations in the aftermath of mass atrocities, justice may be achieved by the punishment of offenders (Daly and Sarkin, 2007: 217). However, opponents of retribution argue that punishment does not help reform or transform criminals and that offenders requires meaningful opportunities to reform themselves (Woolford, 2009: 11). However, key to transitional justice is the embracement of the wishes of victims of atrocities.

7.8 Findings and Conclusion

The focus of this chapter is about the way forward for transitional justice in Kenya. Systemic revolution and regime change; cross-community interactions, dialogue, and sharing; indigenous approaches to peacebuilding; addressing people’s future hopes and fears; the ICC and TJRC were identified as key for Kenya’s future. In the following section, the above mentioned areas are briefly be reviewed.

Respondents decry the protraction and reincarnation of impunity emanating from political unwillingness to embrace positive change. They therefore disapprove the status quo indicating that systemic revolution and regime change is best for Kenya's future. Yet, as studies indicate, such a renaissance is difficult to achieve so long as the oppressive discourses shape and control power and resources (Freire, 1968). On a more optimistic note however, some observations indicate that all human beings, no matter how submerged they are in the culture of silence, are capable of a new self-awareness, sense of dignity, and hope if given access to a positive-sum dialogical encounter founded on critical perceptions of reality (Freire, 1968: 33). According to the respondents in this study, this requires the right leadership, a positive change of attitude, institutional reforms, and the embracement of people's humanity.

Cross-community relationships were also identified by study respondents as key for a peaceful Kenya's future. Cross-community interactions, dialogue, and sharing was hailed by respondents as an important ingredient for a peaceful Kenyan future. To achieve this, respondents propose the use of participatory theatre techniques by survivors, victims, and perpetrators of violent atrocities. Respondents also advocated for the creation of spaces that embrace inter-communal interactions where the expressed needs of the affected groups can be shared and acknowledged. According to study participants, trustbuilding can be nurtured through cultural tolerance, intercommunal dialogues, and communal hermeneutics all of which are important in demystifying misperceptions, stereotypes, and distorted stories. Other key interventions for a peaceful Kenyan future according to the respondents include cross-community tours, exchange programs, multi-ethnic peace caravans, intermarriage, and peace villages. In support of respondents assertions, studies indicate that cross-community relationships can be nurtured through: sharing and dialogues (Schirch, 2004); the involvement,

participation, and interdependence of disputants (Daly and Sarkin, 2007); and moral envisioning of the future (Lederach, 2005). Yet, cross-community interactions must be founded on a sociopolitical willingness, an integrative and shared community (Rothman, 1992), and the reframing of irreconcilable identities (Hussain, 2009; Ratnavale, 2009). While nurturing common spaces, identities, and humanity among disputants is challenging (Lederach, 2003), cross-community programs can address stereotypes, enhance trustbuilding, and provide integration (Goodale, 2006b). From a critical perspective however, it could be argued that integration is not necessarily a prerequisite for peace and harmony; a condition of peaceableness can also be nurtured amidst an ethno-cultural diversity of identities. Therefore while integration is desirable, it is not necessarily essential for peaceful coexistence.

Respondents also indicated that indigenous approaches to peacebuilding could be an integral part of Kenya's future. The respondents highlighted indigenous approaches to peacebuilding and conflict resolution as pivotal in facilitating transitional justice and hence a harmonious and a peaceful Kenyan future. According to study participants, indigenous approaches to peacebuilding and conflict resolution embrace communitarianism, sharing and a sense of ownership; they are more decentralized, people-centred, timely, and focused on reconciliation. However, some respondents decry the irrelevance of indigenous approaches to peacebuilding in our modern globalized world sighting the erosion of the traditional economy, value and belief system. In support of respondents observations, studies indicate that indigenous approaches to peacebuilding embrace a communitarian system and shared responsibilities (Zartman, 2000), view conflict as a communal responsibility (Augsburger, 1992), and are non-coercive, non-prescriptive, and conclusive (Augsburger, 1992). However, this study indicates that these approaches, at least in their traditional forms, are difficult to sustain in the modern

political economy due to the erosion of indigenous political economy and infrastructure (Zartman, 2000). While recycling indigenous alongside modern approaches has been suggested (Banseka, 2005), it is challenging amidst ethno-political diversities. In this context, the embracement of on-the ground realities (Hinton, 2011; Merry, 2006; Shaw, 2007) and the grounding of foreign templates in local contexts (Rosalind, Waldorf, and Hazan, 2010) is key to conflict resolution (Zartman, 2000).

Addressing the people's expressed hopes and fears is also mentioned by study respondents as important in facilitating transitional justice, reconciliation, and conflict transformation. Respondents in this study hope for increased awareness about their rights, emancipation from poverty and hopelessness, a bill of rights, and an end to ethnic politics. Respondents also hope for an integrated society, access to equal opportunities, freedom of movement and settlement, national political parties, devolved governance, institutional reforms, and peaceful, free, and fair elections. Other respondents hope for the realization of vision 2030, leaders of integrity, respect for the rule of law, and embracement of cultural diversity. However, respondents also exhibit fears concerning political unwillingness to positive change, massive corruption and ethnocentrism, a relapse into chaos, the outcome of ICC interventions in Kenya, and failure to implement the new constitution. Other respondents exhibit the fears about continued impoverishment and disgruntlement among the majority Kenyans, and a likelihood of a Rwanda-like genocide in Kenya. Supporting studies indicate that the psychology of victimhood diminishes hope, nurtures fear, and is a recipe for violence (Daly and Sarkin, 2007). When traumatic mental representations and feelings of humiliation cannot be resolved they are transferred transgenerationally and become "part of the group identity, an ethnic marker on the canvas of the ethnic tent" (Volkan, 1998: 45). Sustainable conflict resolution requires the

deconstruction of such identities (Furlong, 2005). Restitution (Daly and Sarkin, 2007), attitudinal change (Jeong, 2010), economic empowerment (Byrne, 2010, 2009); human equality (Wamwere, 2008); and conscientization (Fanon, 1963) facilitates transformative response to daily realities (Lederach, 1995). Hope is nurtured by addressing disputants' feelings of fears (Jeong, 2010); institutional reforms (Daly and Sarkin, 2007); and socioeconomic opportunities (Roger, 2008).

The ICC entry into Kenya followed the 2007-2008 post-election violence after the national jurisdiction failed to prosecute the perpetrators of human atrocities. However, this study indicates that the ICC is largely detested and only 10 percent of the respondents embrace it as a form of transitional justice. The respondents refer to the ICC as Janu-faced; it has its advantages and disadvantages in as far as transitional justice in Kenya is concerned. The opponents of the ICC dismiss it as an instruments of neo-imperialism and neo-colonialism; it is seen as a tool of global power struggles, a facilitator of the new world order, and democratization process. The respondents dismiss the ICC as an international colonial court, an international imperial court founded on selective justice in a bid to nurture the West's strategic and political interests. Respondents critique the ICC for being detached from grassroots reconciliation and expressed needs. The opinion polls conducted by Ipsos Synovate opinion survey firm indicates that only 35 percent of the Kenyans support the ICC process (The Star, 2013). However, the proponents of ICC welcomes the court as a conduit for alternative justice and the responsibility to protect. These respondents see the ICC as a complementary court of justice endeavoured to bridge the gap left by weak justice systems and therefore deterring future atrocities. Nevertheless, in a country ingrained in high propaganda and ethnicization of politics, it is important to remember that respondents' views may be influenced and/or represent contextual and political discourses. My field data indicates that those respondents opposed to the ICC process come from the strong

holds of the PNU government which supposedly won the 2007 general elections and the Jubilee government declared as the winner of the 2013 general elections by the high court and whose top leaders are battling the Hague indictment. I also noted that those supporting the Rome Statute are the people from the strong holds of ODM and CORD movements which lost in the 2007 and 2013 general elections respectively.

Existing literature affirms the claims of the respondents about the ICC. Due to its exclusive focus on Africa (Arieff et. al., 2010), the ICC has been dismissed both as a neo-imperial and neo-colonial project and a western tool for the mobilization of political, socioeconomic and strategic interests (Roger, 2009; Randall 1998). The ICCs confrontational approach and disconnection from local realities (Van der Vyver, 2000) is largely seen as a hindrance to sustainable reconciliation and peacebuilding (Lamont, 2001; Popoviski, 2000). While Kenya has evoked the Westphalian doctrine of sovereignty to challenge the ICC, sovereignty masks the violation of human rights (Crocker et al. 2007; Marten, 2005). Therefore the ICC constitutes an alternative justice based on the principle of the responsibility to protect (ICISS, 2001). Although the court is credited for long-term benefits (Minow, 1998), it is criticized for selective justice (Freeman and Gibran, 2004), limited jurisdiction, and delayed justice which compromise deterrence (Arieff et al., 2010), and reconciliation (Gosnell, 2008).

The respondents indicate that a well-structured and people-based TJRC could greatly contribute to transitional justice, reconciliation, and conflict transformation in Kenya. For example, some respondents advocate for leaders of high integrity and a TJRC that is inclusive, top-down, representative, transformative, restorative, participatory, and focused on reconciliation. However, respondents dismissed the Kenyan TJRC as a political meant to protect and maintain the status quo. Respondents advocate for TJRC that is gives a space for real

perpetrators and victims to confess and give testimonies respectively. Respondents also advocated for the harmonisation of amnesty and forgiveness to ensure reintegration of offenders and deterrence of the strong culture of impunity. As studies indicate, Truth and justice after ethnic violence nurture a civic culture of tolerance, rule of law, and respect for victims of atrocities (Oberschall, 2007: 188). However, only 5 percent of the respondents embrace the TJRC as a worthwhile form of transitional justice in Kenya, which indicates the disapproval of this mechanism. The politicization of the TJRC has compromised its competence, performance, legitimacy, and ownership by the masses. While truth commissions should be transformative, participatory, representative, and inclusive (Woolford, 2009), the TJRC's power struggles, lack of resources, and non-realistic mandate that covers five decades has compromised civic spaces, forums, and opportunities that nurture reconciliation (Hutchison and Wray, 2003).

This discussion indicates that testimonies, forgiveness, and amnesties can in some instances facilitate humanization, recognition, and the restoration of dignity (Brody, 2001; Marshal, 2003) and hence have a cathartic effect (Minow, 1998). Yet, the TRC process is also dismissed as a source of dissatisfaction and a catalyst for post traumatic disorders (Tepperman, 2002; Hayner 2002; Minow, 1998). Giving amnesty to the perpetrator on behalf of the victim disempowers the latter which constitutes an affront to their dignity (Woolford, 2009) hence trading justice for truth (Minow, 1998). Forgiveness too, while it comes with an acknowledgment of guilt and the correction of past harms by the perpetrators, should be left to the discretion of the victim rather than formally or informally prescribed (Daly and Sarkin, 2007). This study indicates the importance of restructuring the TJRC, educating the masses about its mandate, and involving all actors in its process. The study also indicates the importance of reconciling restorative and retributive approaches of justice but this requires civic and political

will (Wilson, 2001). Key to reconciliation is successful post-conflict reconstruction (Wolff, 2006) which should embrace reparation and guarantees of non-repetition (Johnston and Slyomovics, 2009). However, central to reparations is satisfaction as defined by the affected people (Johnston, 2005; Sanford, 2003; de Greiff, 2006). Effective restorative justice should overcome attitudinal, judicial, socioeconomic and political barriers (Balfour, 2003; Muller, 2006; Torpey, 2006), alter the climate of fear, nurture common humanity, accommodates diversity, and critically questions the taken for granted realities (Woolford, 2009; Hurlbert and Greenberg, 2011). Victims of atrocities should actively be involved in deciding their preferred form of justice.

In this chapter, various theories have been used to inform and interpret the responses of the study participants. Theories of ethnic conflict including instrumentalist and social constructionist has helped us understand some of the central causes of ethnopolitical conflicts. This is key in informing policies that would help address and mitigate the relapse of such conflicts in the future. Transitional justice theories including retributive and restorative justice are key in informing policies of justice relating to victims and perpetrators of injustices and structural violence. While retributive justice focuses on punishing the perpetrators of injustices, restorative justice embraces reconciliation, restoration, and reintegration. These theories indicate that justice requires the satisfaction of the affected people. Theories of conflict management and resolution including indigenous approaches to peacebuilding, elicitive and prescriptive approaches, a human needs approach, and post-conflict reconstruction inform this study by offering different means of manage and resolve of conflicts. These theories emphasize the importance of ensuring that interventionism is context based, owned up by the target people, and satisfies the expressed and special needs of the target people. Theories of peacebuilding and

conflict transformation including psycho-social approaches, integrative problem solving, and problem solving workshops indicates that sustainable change should be a holistic, collaborative, and integrated process that addresses the social and psychological needs of the affected people. For example, psychosocial approaches help us to understand how victims of traumatic experiences can be supported and informs policies that entrench the satisfaction of their special needs. The ARIA framework, social cubism, the convergence framework for critical peacebuilding, multi-track diplomacy, and positive peace and negative peace remind us that ethnic violence is complex and that interventionism requires multiple dimensions. Policy formulations from these theoretical frameworks would thus help to inform and address protracted ethnopolitical violence in Kenya and hopefully help in nurturing sustainable peace. The next chapter offers some conclusions and recommendations based on the data analyzed in the last three chapters. It presents a grounded approach, which if implemented could facilitate transitional justice, peacebuilding, and conflict resolution in Kenya.

8.0 CHAPTER EIGHT: CONCLUSION AND RECOMMENDATIONS

Introduction

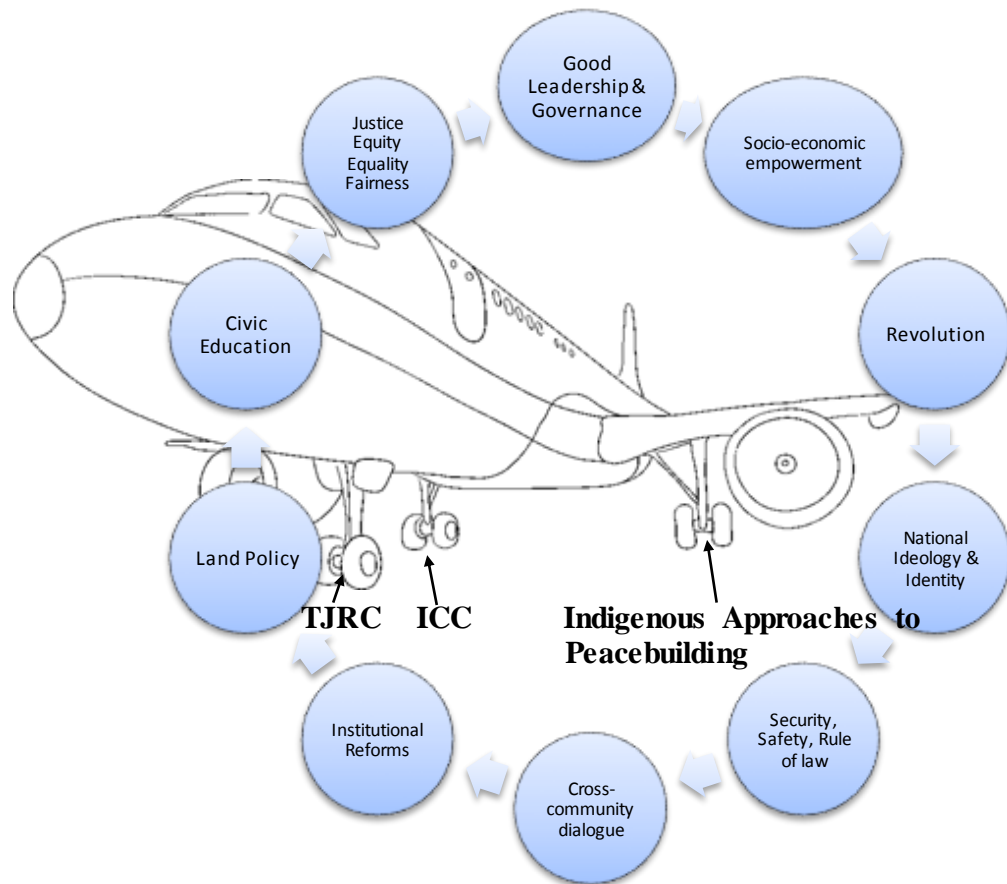
Guarantees of non-repetition must entrench measures that ensure “never again” including: effective control over the military force; establishment of an independent judiciary characterised by due process, fairness, and impartiality; establishment of a political climate that protects human rights activists; establishment of mechanisms that ensure integrity in public servants; mechanisms for preventing and monitoring social conflicts and their resolutions; and the review and reform of laws that contributed to the gross violation of international human rights laws all of which requires broad societal support, political will, and substantive transformation of power (Johnston and Slyomovics, 2009: 15)

The above quotation identifies key measures that form the basis for transitional justice, peacebuilding, and conflict resolution in countries emerging from protracted violence. From the data presented and analysed in this study, some of the key issues that need to be addressed in order to resolve the Kenyan ethnic challenge include: justice, equity, equality, and fairness; socioeconomic empowerment; the TJRC; land policy; indigenous approaches to peacebuilding and conflict resolution; national ideology and identity; formal, informal and civic education; revolution/renaissance; security, safety and the rule of law; institutional and constitutional reforms; the ICC; good leadership and governance; and cross-community interactions, dialogue, and sharing. From these priority issues identified by the respondents of this study, a Kenyan template for transitional justice, peacebuilding and conflict resolution emerges: *The JET LINERS-RIGS Grounded Approach for Peacebuilding and Conflict Resolution* (hereafter referred to as *the new Kenyan model* or *the jetliner model*). The new Kenyan model is founded on the fact that the tripartite hybridity of TJRC, ICC, and indigenous approaches to peacebuilding cannot nurture sustainable transitional justice in Kenya due to social, political, and structural gaps as indicated in this study. While the TJRC, ICC, and indigenous approaches to peacebuilding constitute the main pillars of transitional justice in Kenya, they require social, political, and institutional support and streamlining in order to nurture sustainable transitional

justice, peacebuilding and conflict resolution in Kenya. The structure of the new Kenyan model is presented in Figure 8 below.

Figure 8. The JET LINERS-RIGS Grounded Approach for Peacebuilding and Conflict Resolution

Justice, Equity, Equality, and Fairness	J
Socioeconomic Empowerment	E
TJRC	T
Land Policy	L
Indigenous approaches to Peacebuilding	I
National Ideology and Identity	N
Formal, Informal and Civic Education	E
Revolution/renaissance	R
Security, Safety and the Rule of Law,	S
Institutional and Constitutional Reforms	R
ICC	I
Good Leadership and Governance	G
Cross-community Interactions, Dialogue, and Sharing	S



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8.1 The JET LINERS-RIGS Grounded Approach for Peacebuilding and Conflict Resolution

According to the Merriam-Webster dictionary a Jetliner is “a large Jet Airplane used for carrying passengers.”²³ In this chapter the Jetliner represents Kenya, a multi-ethnic country that is emerging from protracted ethnopolitical violence. This Jet does not only require the three wheels (the tripartite hybridity of the TJRC, ICC, and Indigenous Approaches to Peacebuilding and Conflict Resolution) in order to fly. It also needs other inputs such as the pilot (good leadership and governance); the engine (socioeconomic empowerment); mechanical and electrical servicing (institutional reforms); flight attendants (cross-community interactions); safety preparation and equipment (Security, safety, rule of law and civic education) among other things. One meaning of the word ‘Rig’ according to the Merriam-Webster dictionary is “to put in condition or position for use” (Ibid). All the above outlined Functional-Jet requirements constitute socio-institutional ingredients that are key in getting Kenya back to a position for use—a condition of peaceableness.

The success of the new Kenyan model requires interaction, networking, collaboration, and interdependence between various components of the model. This reminds us of MTD discussed earlier in this study and which emphasizes the importance of intrasystemic relationships in determining pathways of communication, the sharing of resources, and opportunities for mutual enrichment (Diamond and McDonald, 1996: 156). Collaborative action will ensure that the Jetliner delivers the occupants safely and securely to their destinations.

²³ <http://www.merriam-webster.com/dictionary/rig>; <http://www.merriam-webster.com/dictionary/jetliner>: Accessed April 5, 2014.

Integrative approaches indicate that a comprehensive framework for peacebuilding requires the coordination and connection of various peacebuilding initiatives in order to facilitate peaceful relations (Lederach, 1997). These includes: the development of a peace inventory to track the activities of all stakeholders; the empowerment of each other while avoiding the duplication of efforts; the creation of clearer channels between various levels of leadership; the facilitation of peace conferences to provide an opportunity for new information and learning; the creation of strategic resource groups with various expertise in conflict and peacebuilding; and the linkage of internal and external peacemakers, their capacities, efforts, and resources (Ibid: 99-102). Such a comprehensive framework is key for the success of the new Kenyan model in which various components need coordination in order to function optimally. Problem solving workshops indicates that coordination in peacebuilding requires ongoing conversations about guiding values and analytical frameworks for understanding conflict and violence (Schirch, 2004). It also requires investment in relational skills and forums that nurture collaborative and shared innovations (Ibid: 83). The new Kenyan model should thus embrace coordination as a central component in the implementation of a comprehensive peacebuilding strategy and in building an infrastructure for peace. However, effective coordination requires social and political spaces and forums in which all stakeholders freely share their success stories and challenges (Schirch, 2004: 11). Ethnopolitical coordination and networking is thus key in building the capacity for rigging—putting the country back into a position for use in which historical injustices shall be addressed and social justice entrenched across the Kenyan ethnopolitical divide. The implementation of various components of the jetliners-rigs model is key for the realization of social justice in Kenya. Social justice entails that all Kenyans enjoy socioeconomic, cultural, and political security, participate in democratic decision-making processes, exercise mutual respect

for one another and protect and sustain the natural environment for future generations (Hurlbert and Mulvale, 2011: 19). Yet, why does Kenya need a grounded peacebuilding model?

A grounded peacebuilding model interrogates two questions: how do we address conflict in ways that reduce violence and increase justice in human relationships; and how do we develop a capacity for constructive interaction while addressing systemic and structural changes (Lederach, 2003: 2)? While ethnic conflict is complex, forecasting its future trends is challenging. A grounded initiative therefore helps to focus on local dynamics and in guiding informed interventionism (Wolff, 2006: 188). Our communities are central to the solution of their conflicts. Healing requires bringing the affected groups back into the picture, involving them and using their value systems to inform the solution, as well as looking at their problems as opportunities (Hurlbert and Greenberg, 2011: 281). It is therefore essential to place special emphasis on survivor's priorities for post-violence reconstruction by adopting the realities on the ground and accommodating the expressed needs of the beneficiaries of justice (Weinstein et al, 2010). As Constructionists argue, people act on the basis of the meaning they attach to things; meaning is created through shared and accumulated knowledge as a basis upon which people interpret and understand conflict. Therefore, understanding conflict and developing appropriate models of handling it must respect and draw from the cultural knowledge of a people (Lederach, 1995: 10). In respect to the respondents' voices that represent the Kenyan ethnopolitical divide, it is assumed that the implementation of the new Kenyan model will meet the expressed needs of Kenyans and facilitate sustainable transitional justice, peacebuilding, and conflict resolution. In the following discussion each of the components of the new Kenyan model are discussed.

8.1.1 Justice, Equity, Equality, and Fairness (J)

This study indicates that justice in Kenya is skewed; it is for the highest bidder and is influenced by power and influence. Justice in Kenya has marginalized those at the periphery of society and favoured those at the centre. Justice should embrace fairness and equality in terms of the distribution of goods, rewards, and services (Hurlbert, 2011; Zehr, 2004). The reinstatement of justice in Kenya requires: good leadership and governance; equality, equity, and fairness; embracement of the rule of law; and the full implementation of institutional and constitutional reforms. The aforementioned concurs with what Dorothy, a 34 year old leader of a local civil society organization observes:

We need to get rid of classism that has engulfed our nation...address the specific needs of individual communities in order to accommodate the diversity of our forty plus ethnic groups...the way forward is for our leaders to appreciate all tribes and divide the resources equitably. Ethnic conflicts occur due to extreme disparities in terms of the distribution of resources, infrastructure, services, and opportunities. This will change the mind-set of the marginalized and...positively impact on national values and trust.

While Kenyans have suffered colonial and post-colonial injustices, justice is essential for healing and overcoming circumstances responsible for mutual victimization, social exclusion, past grievances, and historical traumas (Daly and Sarkin, 2007). In her contribution, Amelia, a 60 year old community women leader from North Eastern Province observes that justice is derived from equity, equality, inclusion, and access:

If leaders give equal chances to everybody then there should be no conflict. If we can all access basic needs such as food, employment, shelter, and land, then we can trust each other. I will not mind about your tribe as long as I can access resources for my basic livelihood.

Therefore, a new Kenyan justice should: be participatory, and inclusive; recognize the expressed needs of the affected people across the Kenyan ethnopolitical divide; embrace ethics of doing no harm; honour a bill of rights; and create strong relationships across communities (Hurlbert and Mulvale, 2011). The jetliner model does not conceive of Kenyans as “passive passengers” but

“active passengers” able to demand their rights, better services, and involve the cabin crew (leadership) in productive engagements that will ensure comfort and satisfaction in the course of the flight (transitional justice process). Justice should be defined from the basis of its beneficiaries; it should embrace affirmative action and endeavour to constant updating in order to accommodate the dynamic and subjective process of assessing fairness and equality for Kenyans across the ethnopolitical divide.

8.1.2 Socioeconomic Empowerment (E)

Sustainable human development encompasses empowerment, cooperation, equity, sustainability and security dedicated to the expansion of the choices for all people in society, putting the vulnerable and marginalized groups at the centre of development process and protecting the life opportunities of future generations and the natural systems on which all life depends (Hurlbert and Mulvale, 2011: 177-178). Poverty, the inequitable distribution of resources, perceived historical injustices, and exclusion, constitute the key root causes of ethnopolitical tensions and violence in Kenya (Ahere, 2012; Mkangi and Githaiga, 2012). As evidenced in his contribution, Wycliffe, a 51 year old member of the National Cohesion and Integration Commission holds that access and equity are key to peacebuilding:

Access and equity to resources such as education, land, food, and job opportunities for all is key in addressing ethnic conflicts....Equity, equality and fairness should be national inclusive but community specific in order to address the diversity of socioeconomic needs across Kenyan ethnopolitical divide. We need a policy that gives a fair chance to all ethnic groups to access public opportunities. We need to embrace affirmative action, merit and quotas to favour ethnic groups that were not privileged by colonial and post-colonial regimes. We need to have some jobs that do not require academic certification to cater for ethnic groups not privileged to have good education.

Studies indicate that in countries infested with negative ethnicity, dictators intentionally create poverty as a means of political control (Wamwere, 2008: 213). To facilitate ethnopolitical stability and the continued distribution of ethnic favours, ethnic leaders become suppliers of

legislation and brokers of wealth transfer by creating inefficient systems of property rights through price and interest controls, regulation of foreign exchange markets, illegal imports licensing, and selective subsidization and taxation of industry and agriculture, all of which nurtures corruption and preferential ethnic benefits (Kimenyi, 1997: 51-52). The making of the Mungiki in Kenya was precipitated by the politicization of poverty in which the unemployed, vulnerable, and marginalized youths were mobilized into violence by selfish political elites (Gecaca, 2007:68). Kenyan youth have remained at the periphery of the society having been excluded from active participation in the planning, design, and implementation of policies and programmes that effect their lives; their productivity has been untapped and their hopes, wishes, and expressed needs have been ignored (Mshai, 2007: 130). Employment, access to basic services, infrastructural development, corruption, and the accumulation of wealth and power are ethnically and politically motivated, leading to the vulnerability and marginalization of large sections of Kenyan masses resulting in ethno-political violence. This is witnessed by John, a 34 year old youth leader and political activist who maintains that addressing youths' vulnerability and marginalization is key to solving ethno-political violence in Kenya:

We must address the unemployment of youths...they live below the poverty line; they are dehumanized and cannot meet their basic needs. Poverty and unemployment has caused the rise of militias in every community, young people who can only secure their livelihood through hooliganism and the gang mentality....We must invest in social and economic infrastructure to ensure that millions of disfranchised youths participate and are involved in the development of our country because they are most vulnerable to political manipulations that cause conflict.

Studies shows that violence occurs when people deny or frustrate the human needs of others; violence is a way to do justice or undo injustice and therefore peacebuilding requires identifying the perceptions of unmet needs in order to find alternative, nonviolent ways to satisfy the needs of all parties (Schirch, 2004: 22). Instances of violence can drastically be reduced by improving

the economic conditions of affected communities, expanding basic services and opportunities, and liberalizing access to political power (Dayton and Kriesberg, 2009). Dayton and Kriesberg in their book *“Conflict Transformation and Peacebuilding: Moving from Violence to sustainable Peace”* gives various empirical evidence to support this. In a chapter entitled *“Revolution deferred: from armed struggle to liberal democracy: The Africa National Congress in South Africa”* they indicate that the organized violent opposition that lasted for more than three decades between 1961 and 1994 ended after the grievances and expressed needs of the supporters of Africa National Congress (ANC) were addressed by the ruling Apartheid government and the willingness of the ANC to suspend its armed struggle, tolerance and commitment to non-violence (Dayton and Kriesberg, 2009:166). The needs addressed by the apartheid government included open electoral competitions, legalization of all prohibited organizations, indemnities for returning exiles, and negotiated political settlements (Ibid). De-escalation of violence and sustenance of transformation was nurtured by the 1994 negotiated constitutional settlement, ending of political strife, power-sharing, amnesties, a truth commission, employment and pension guarantees for civil servants, electoral reforms, proportional representation among other factors (Ibid:168). Therefore, to avoid relapse, post-conflict reconstruction should embrace social integration, economic development, committed leadership, social security, and psychosocial transformations.

As other studies indicate, de-escalation of violence and eventual peacebuilding can be nurtured by a liberal market that protects property rights, encourages investment, and fair competition, in addition to sound economic policies that accommodate ethnic diversity and differential development (MacGinty, 2008). Liberalism is about liberty and equality and therefore part of the Social Human Democracy proposed in this study. For example, affirmative

action should be embraced to address and recognize the special socioeconomic needs of people of different ages, gender, and ethnicities in order to involve and include them in national policy frameworks (Mshai, 2007). African economists and political leaders should formulate their own economic order and market policies that meet the needs, capacities, and abilities of their populations (Banseka, 2005). If well implemented socioeconomic empowerment will be key to the success of the new Kenyan model.

8.1.3 TJRC (T)

The observation of respondents in this study indicates that the Kenyan TJRC has social, political, and structural problems that have led to its disapproval from the majority of Kenyans. Its mandate, leadership, structure, and process have been politicized and there is not much hope in its final report or in the expected restoration of victims of human rights atrocities and historical injustices. As studies indicate the zeal to establish truth is often compromised by political influences in terms of the kind of information considered and how such information is presented in the final report (Hinton, 2011). Lack of involvement and participation of the affected people in the TJRC process has compromised its local ownership and reconciliation. Studies show that this top-down facilitation of this form of restorative justice may jeopardize the informal roots and local legitimacy of the process, which can only be gained by satisfying and empowering the target beneficiaries (Woolford, 2009). Respondents in this study indicate that the Kenyan process of giving testimonies, forgiveness, and amnesties has been compromised by a lack of political will that jeopardize trustbuilding across the ethnopolitical divide. These assertions are confirmed by Caroline, a 42 year old member of parliament from the Coalition for Reforms and Democracy who had the following to say:

The TJRC structure does not have the ownership of the Kenyan masses. The chair...was appointed to protect some big fish from prosecution. The commissioners should be people of unquestionable integrity. The TJRC should be inclusive, participatory and focused on reconciliation. The message should be as good as the messenger. You cannot have a midwife whom you do not trust to deliver your child. The TJRC was not formed to nurture justice but to camouflage injustices and covertly deny justice without seeming to do so; it has opened wounds and left them unattended.

Studies indicate that while public remembering and truth-telling constitute critical human rights tools to protect against repressive hegemonies, they have been compromised by political subordination and harmful defensive and protective strategies such as secrecy, fear, and silence (Lame, 2005; Shaw, 2007). Civic education about the meaning, process, and impact of the TJRC is important in ensuring its ownership. The restructuring of the TJRC requires the active involvement and representation of Kenyans across the ethnopolitical divide in order to nurture its sustainability and the expected impact. A restorative justice process should engage people in joint processes of identifying the obligations and responsibilities that result from injustice or violence so that needs can be met and healing promoted. This process requires focus on the special needs of victims as well as the establishment of a forum in which the affected people can tell their stories of victimization and obtain justice (Schirch, 2004). Local engagement of transitional justice mechanisms nurtures policies and practices that command local ownership and respect (Wilson, 2001). As Luke, a 40 year old political analyst and human rights activist observes:

The affected persons needs a chance to account about what happened, their feelings, and their fears. People who faced injustices should have a credible audience to listen to them. But if perpetrators are not willing to confess, then who is to be forgiven or given amnesty? Giving testimonies is okay if justice is done; but if testimony is given so that amnesty can be prescribed why I should waste my time? Victims want to see offender(s) confess, get punished according to the Law and/or pay compensation for the loss...If as a country we acknowledge our wrongs and the complexity of our history and help to retell our story we can heal.

To ensure sustainability, transitional justice should accommodate local experiences, priorities, and practices as evidenced by the problem solving workshops in Israeli-Palestinian, Guatemalan, and Burmese cases in which the affected groups actively participated in informing the implementation process of transitional justice (Rosalind, Waldorf and Hazan, 2010). Place-based approaches informed by victims and survivors of atrocities are more accommodative and effective in addressing the heterogeneity, priorities, and diversity of target groups and hence nurture more sustainable decisions and policy frameworks (Rosalind, Waldorf and Hazan, 2010).

This study indicates that restorative initiatives such as confession, acknowledgement, forgiveness, amnesty, and reparations should cultivate ownership by the affected people and avoid co-optation by facilitating agencies. While restorative processes should identify the harms, needs, and responsibilities of actors in a conflict and create solutions that meet those needs, offenders are often held accountable to the state instead of their victims therefore leaving the victims out of the process of justice (Schirch, 2004). A restorative justice process should address social disorganization, socioeconomic marginalization, and structural inequalities and violence by facilitating: the recognition of those who suffered historical injustices and structural violence; the redistribution of resources, services, and opportunities; and the equal representation of affected groups in the decision making processes (Woolford, 2009). At the same time, victims and survivors of injustices require education about their reparation rights to facilitate their meaningful participation and representation in terms of publicity and negotiation (Johnston and Slyomovics, 2009: 21). They also need to develop partnerships with advocates for legal, technical, and funding aid in order to build the capacity to sustain the struggle despite power imbalances (Ibid). This study indicates that the effectiveness of reparations is determined by the positive transformation or satisfaction of the victims of atrocities (Johnston 2005; Sanford 2003;

de Greiff 2006). This is confirmed by Alice, a 38 year old civil society activist in the following observations:

We need a genuine TJRC in which truth and justice are embraced, wrongs are acknowledged, and victims' special needs are addressed. A genuine TJRC will nurture truth; truth will lead to justice; justice will nurture forgiveness; and forgiveness will elicit mercy and peace. You cannot reconcile in a state of untruthfulness, unforgiveness and impunity. We need a TJRC that is all inclusive, transformative, restorative, and capable of addressing trauma.

As a transformative process, the TJRC should therefore endeavour to: explore the precipitating factors of ethno-political violence; embrace recognition, fairness, equality, respect, and diversity; empower the beneficiaries to identify social connections to their grievances; and facilitate interventions that will facilitate healing and recovery (Hurlbert and Greenberg, 2011). While genuine relationships between offenders and victims cannot be restored by retribution or replaced by rehabilitation, restorative justice facilitates a conciliatory process in which offenders take responsibility for their acts and justice empowers victims and renews relationships (Daly and Sarkin, 2007). Transitional justice mechanisms may never bring closure for the affected families, end impunity, or institute a radical transformation of the society and therefore an integrated holistic and local approach key in effecting social change (de Greiff, 2008). This study indicates that foreign templates such as SATRC may not be replicated elsewhere without systemic modification because they were informed by different contexts. Therefore, the TJRC should be designed to deal with the Kenyan ethno-political challenges by prioritizing the expressed needs of victims of injustices and dealing fairly with the perpetrators in accordance with the rule of law (Olsen, Payne and Reiter (2010). The TJRC should facilitate the setting up of new legal and judicial systems that integrate the needs and desires of the diversified ethnic groups, cultures, and institutions informed by international human rights laws and standards

(Schirch, 2004: 53). All the measures discussed above are essential in the formation of a new TJRC that will be a key part of the new Kenyan model.

8.1.4 Land Policy (L)

While land ownership in Kenya constitutes a prominent source of identity and attachment, the colonial displacement and post-colonial disproportionate land allocation and distribution dispossessed some ethnic groups of their land thereby nurturing resentment, hatred, and violence (Ahere, 2012: 27-40). The context chapter of this study echoes presents the complex land issue in Kenya. The 2006 Ndung'u report identified gross political impunity and patronage related to land grabbing and land allocation and recommended: the formation of a Lands Titles Tribunal to facilitate revocation, rectification and validation of such titles; the establishment of a Land Division of the High Court; the formation of an independent National Land Commission; the upgrading of informal settlements; an update on the implementation process of the Ndung'u report by all actors; the computerization of all land records; collaboration in addressing regional land issues; the harmonization of laws and policy on land tenure, ownership and use of public land; the recovery of wealth gained from illegal land allocation and the prosecution of the offenders; and the facilitation of the disclosure of information on land (Ndung'u, 2006). However, the above outlined measures have hardly been implemented because of the sensitivity of the report and the implication of former and current regimes and political elites in land appropriation. Full implementation of the Ndung'u report and the eventual resolution of the land problem is key to the success of the new Kenyan model proposed in this study. This is confirmed by Robert, a 65 year old Muslim religious leader who shares the following:

The Ndung'u report on land injustices in the country was never implemented or made public. The government must embrace dialogue with affected groups such as the Mungiki and MRC and critically identify the root causes of conflicts...Why are the MRC at the coast saying, "The Coast is not Kenya?" The indigenous population at the coast are squatters in a land where their forefathers were born, lived and buried. The Coast people want to secede from the rest of Kenya because their resources have been taken away from them. So unless we deal with land issues effectively, conflicts will persist. We must address the complex issue of land by adopting land policies that alleviate past injustices and accommodate unique land traditions of our communities, such as communal land ownership. The Ndung'u report should be disseminated and implemented.

Studies indicate that the attachment to a specific territory such as ancestral or group homeland is a source of ethnic identity and elicits feelings of common solidarity among group members (Smith, 1993: 65). Conflicts relating to territorial homelands are potentially explosive because they are non-negotiable; they create zero-sum encounters in which political entrepreneurs manipulate on behalf of their political constituencies (McGarry and O'Leary, 1993: 16). Restitution should not create a new wave of dispossession, rewarding some while depriving others; it must be balanced and committed to bringing satisfaction to both victims and perpetrators of land appropriation. The Ndung'u Land report should be amended to embrace a land compensation policy for those displaced or dispossessed of their land; the reintegration and peaceful coexistence of current and former land owners should be a priority. Restitution should avoid politicization to evade rekindling ethnic resentments. The Ndung'u report should integrate an economic component to land allocation; while vast public land have been idle in the past, such land should have a utilization plan in the future. The land report should also recommend a land policy to address the colonial land agreements that gave land rights to white settlers and rendered millions of native Kenyans squatters in their own country. The solution of the land problem is an important component of the new Kenyan model and if implemented will nurture reconciliation and peace among Kenyans.

8.1.5 Indigenous approaches to Peacebuilding and Conflict Resolution (I)

Indigenous approaches to peacebuilding as forms of transitional justice have their own merits and demerits. Indigenous mechanisms were identified by the study participants as community based, ritualistic, value-based, sustainable, and able to promote local ownership. This is evidenced by Samantha, a 28 year old single mother and a street beggar who observes the following:

Traditionally, people lived in a communal system where resources were shared equally. Unlike courts, indigenous approaches to peacebuilding promote a sense of unity and ownership; they are more decentralized, people-centred, timely, and focused on reconciliation. Inclusion ensures peace and harmony; a feeling that if we destroy this property we are destroying our own, that if we fuel this violence we shall be fighting our own....Western capitalism has killed sharing and promoted individualism dividing the society into haves and the have-nots. Exclusion has resulted in protracted ethnic conflicts.

As studies indicate, a people's accumulated and implicit knowledge is an extraordinary resource for developing appropriate conflict strategies within their setting thereby encouraging creativity and empowerment (Lederach, 1995: 120). Peacebuilding requires an understanding of the local context to facilitate knowing what the conflict is all about, what needs to stop, what divides and connects people, and what fosters vulnerability to conflict (Schirch, 2004: 21). However, while embracement of the local is key in peacebuilding, indigenous approaches to peacebuilding have been dismissed as outdated, patriarchal and as having been overtaken by contemporary events; they are said to have been compromised by politicization and the strong waves of modernization and globalization (Mac Ginty, 2008; Merry, 2006). The erosion of indigenous approaches to peacebuilding is fast-tracked by the demise of a traditional economy and infrastructures that maintained and sustained their relevance leading to ethnic violence as Eric, an opinion leader from a minority ethnic group observes:

This is what fuels ethno-political conflict. If nobody answers my cry or wipes my tears, then I am going to make you cry too so that when we all cry we can ask ourselves why are we all wailing? Then we shall together find a solution. There was no wailing in the past because resources were equally shared. Today is different; look at trust as a value, how many families trust each other? If trust as a value does not exist at the family level, do we expect it at the community level? Traditionally the family was part of the community; today, families are seen in terms of men and women. When men and women fight over rights, it affects the family, community, and the entire nation and hence violence.

However, the respondents indicate that indigenous approaches to peacebuilding could still form a credible component of the tripartite hybridity and also the new Kenyan model proposed in this study. Alternative dispute resolution movements entrenched in track two (unofficial diplomacy) of the MTD system has gained importance in peacebuilding due to the complexity and intractability of intra-state conflicts (Diamond and McDonald, 1996: 3-4). This calls for the need to empower the community and invest in local innovation, creativity, and imagination in addressing protracted conflicts. This is in respect to the fact that culture is rooted in social knowledge and represents a vast resource, producing a multitude of conflict resolution approaches (Lederach, 1995: 120). Despite the proposal to form national and subsidiary indigenous peacebuilding forums in Kenya by the chief justice, key things need to be put in place: the de-politicization and independence of the institution of the elders; the harmonization of diversified ethnic approaches into a national template; the representation of Kenyan ethnic diversity; the harmonization of the national and subsidiary indigenous courts with the formal justice mechanism; the integration of indigenous methods of peacebuilding into the Kenyan education curriculum; and the formulation of a policy that will guide indigenous approaches to peacebuilding and conflict resolution. The re-birth, embracement, and preservation of indigenous methods of peacebuilding and conflict resolution will be key to the sustenance of the new Kenyan model.

8.1.6 National Ideology and Identity (N)

Ethno-nationalism has been identified by respondents in this study as having compromised state-nationalism and identity. Ethno-nationalism is sustained by the benefits derived from being a member of a group. Studies indicate that ethnic identities, solidarities, and boundaries are maintained by the steady supply of benefits to group members, who through interactions develop a sense of belonging and psychological distinctiveness for the in-groups and out-groups (Oberschall, 2007:4). Therefore, the elimination of ethno-nationalism and embracement of a national identity requires that the steady supply of benefits are maintained and sustained. As Kimenyi (1997:41) opines, “any idea that one can make a diversity of people into a nation by suppressing their identities and affiliations to which they attach the highest political significance is simply a nonstarter.” National loyalty cannot instantaneously supplant ethnic loyalty; it has to be built on top of ethnic loyalty by creating a system in which all the ethnic groups feel that there is room for self-expression (Ibid). This is better explained Hannah, a 44 year old public service officer who contributes the following:

The carnivorous have continued to make the life of herbivorous miserable. Remember people become carnivores not by nature but by socialization. It is possible to have a society that does not have social carnivorous but herbivorous. The human lions in our society can be domesticated or their negative behaviour disallowed in our society. We must reach a point where the society puts a stop at the production of more lions; an economic system that does not permit exploitation of one individual by the other. Our educational system should play a role in positive socialization to end the human jungle society.

From the foregoing, the Kenyan system should endeavour to nurture national loyalty as an integral part of ethnic loyalty. Nurturing national loyalty does not entail abandoning ethnic loyalty; it means engaging and endearing ethnic groups to national values and ideals while remaining attached to their ethnic foundations. Ethnic groups will embrace each other's wants, preferences and share collective goods if they have similar tastes and preferences for such

collective goods. The dangled carrot for national ideology and identity should therefore embrace harmonization of diversified ethnic tastes and preferences in terms of collective symbols of shared values and group dignity as expressed in the celebration of holidays, the naming of streets and public monuments, representation, inclusion, and active participation in national agenda and decision making processes (Oberschall, 2007:6). This is attested by Benson a 32 year old civil rights activist who observes:

We need to reconcile all the diverse ideologies and nurture our own national ideology. It requires a political space and strong informed groups, interactions, freedom of consciousness, and reconciliation of radical ideologies. Developing a national identity is a process of garnering for a neutral space that can accommodate all identities, differences, and polarizations towards harmonizing our commonality and striking a national deal. It is only after harmonizing our values, ideas, manifestos, ideals of political parties, leadership and integrity that we can address the causes of ethno-political conflicts.

The above assertion indicates that the possibility of national ideology and identity is based on the fact that identity is not static; it is dynamic and under constant definition and redefinition. Therefore, transition into state-nationalism from ethno-nationalism requires the capacity to understand and respect the role of identity framing as a means of protecting a sense of peoplehood and deeply felt demands across the ethno-cultural and political divide (Lederach, 2003: 55). This understanding enables us to be attentive to people's perceptions of how identity is linked to historical injustices, power systems, and structures which organize and govern their relationships (Lederach, 2003: 60). Therefore, nurturing nationalism as a key component of the new Kenyan model requires addressing the ways in which structural relationships symbolize and represent ethnic perceptions. Understanding and addressing the roots of such perceptions is key to endearing ethnic groups to national ideals.

As this study indicates, nationalism could be nurtured by a new form of governance or political system — the Humanist Social Democracy in which human values of love and

brotherhood, equality and fair distribution of resources, services, and opportunities are fostered. The “humanist” components of the newly proposed political system in this study identifies with the Maslow’s Hierarchy of Human Needs which includes: biological and physiological needs i.e. basic life needs such as food, air, drink, shelter, sleep, sex, warmth etc.; safety needs i.e. order, rule of law, protection, security, stability, etc.; Belongingness and love needs i.e. family, affection, relationship, workgroup, etc.; self-esteem needs i.e. achievement, status, responsibility, reputation etc.; and self-actualization needs i.e. personal growth and fulfilment.²⁴ The “social democracy” components of the proposed political system or political ideology embraces the values and ideals of a democratic welfare state, democratic socialism, or an in-between of capitalist and socialist political systems of governance. While capitalism facilitates consumer choice, efficient economy (production of goods on demand to cut costs and avoid wastage), and economic growth which impacts on GNP and living standards, it is critiqued for embracing monopoly of power in supplies and purchases, inequality in wealth distribution, and recession and joblessness occasioned by fluctuation in economic growth (Heilbroner, 2008).

On the other hand while socialism has greater economic efficiency (means of production controlled by central authority rather than by market forces), greater welfare and hence less inequality, absence of monopoly and hence less exploitation, absence of business fluctuations, and economic growth emanating from proper centralized planning, it is dismissed for lack of political and economic freedom in enterprise and occupation, lack of competition among producers and consumers and hence production of poor quality goods, lack of consumer sovereignty in the choice of goods and services, and hence a compromise of democracy (O’Hara, 2003). Therefore, democratic socialism would thus invest on the merits of capitalism and

²⁴ Source: Maslow, A.H. (1943). A theory of human motivation. *Psychological Review*, 50 (4), 370–96. Retrieved on July 30, 2014 from <http://psychclassics.yorku.ca/Maslow/motivation.htm>

socialism political systems while at the same time addressing their demerits in order to nurture a more citizen-friendly political system. Social Democracy embraces: a collective bargaining and a universal social welfare system within a capitalist economy; the rule of law; universal social and human rights; access to public and social services such as education, healthcare, work benefits, and childcare; and freedom of trade unions and labour movements (Meyer and Hinchman, 2007; Donald, 2000). From the aforesaid therefore Humanist Social Democracy, which combines “humanism” and “social democracy” could be an ideal form of a political system endeavoured to meet the expressed needs of all Kenyans, promote national identity, freedom, solidarity, and justice, and facilitate sustainable peacebuilding, conflict resolution and transformation. With the current clamour for devolution of governance and the embracement of county governments in the new Kenyan constitution, the proposed Humanist Social Democracy would most probably be founded on a federation government.

8.1.7 Formal, informal and Civic Education (E)

Respondents in this study indicates that colonial and post-colonial preferential formal education policies created differential socioeconomic development across the ethnopolitical divide, giving some ethnic groups a head start while leaving others poor and marginalized. This nurtured a feeling of discrimination among the affected ethnic groups and hence violence. Post-colonial education policies have mostly benefited the rich and the well-connected and left out a whole section of minority and marginalized groups. Formal education has also concentrated on cognitive skills and left out psycho-motor and affective skills. This has marginalized a whole group of children who are less endowed in cognitive abilities but gifted in psycho-motor and affective abilities. An education policy that embraces cognitive, psycho-motor and affective skills is required to facilitate inclusion and nurturance of special abilities. Affirmative action

should be embraced in education policies to ensure that poor and minority groups are given opportunities to participate in education. Track five (Research, training and education), which is a component of multi-track diplomacy, facilitates generation and transfer of information about peacebuilding and conflict resolution, which is key in policy formulation and action plans; the more people learn, the more they are capable of collectively addressing their challenges (Diamond and McDonald, 1996:70). Integration of peace and conflict studies in the Kenyan education curriculum could nurture peaceableness. As Wamwere (2008:109) notes, “If only a small fraction of resources used on relief for victims of ethnic wars is directed toward education about negative ethnicity, millions of people would be saved from the cycle of death, civil war and genocide”

Informal or indigenous education has been affected by modernization and globalization. This has led to the erosion of traditional political economy and infrastructures. The embracement and preservation of indigenous education is key in nurturing indigenous values and norms that hold the communities together. The principle of indigenous empowerment indicates that people from a particular setting are a key resource in their education and hence there is a need to maximize the potential resource that they represent (Lederach, 1995: 111). Training must be understood and integrated coherently into an overall peacebuilding framework oriented towards social empowerment and change (Lederach, 1995: 119). Fundamental mechanisms by which conflict is constructed and handled and on which training is based are rooted in schemes of action and interpretation emerging from accumulated social and cultural knowledge (Ibid: 46). Therefore, training for conflict transformation and mediation must envision cultural knowledge as a key resource in both the creation and development of models appropriate to a given context (Lederach, 1995: 10). While indigenous education may have suffered erosion, the principle of

recycling could be used to bridge the gap created by cultural change and transition. While acculturation has affected indigenous social resources for handling conflict, and while the new situation does not adequately address indigenous needs, recycling embraces the old and the new to nurture an in between product (Lederach, 1995: 114).

Civic education has been a prescriptive tool of the hegemonic states in which the content is manipulated to fit strategic political goals. Prescriptive models are designed and controlled by the 'expert' (Lederach, 1995: 50). This leads to continued ignorance among the masses about important decisions and policies that affects their lives. Negative socialization has led to ethnic stereotypes, dehumanization, and ethnic violence. This is affirmed by Naomi, a 54 year old community women leader from Nyanza Province in Kenya:

We grew knowing other tribes as animals and our children must be socialized to treat others as humans, we are the only people who can teach our children that other tribes are not animals, they are people like us, they are human. We should let our children interact, visit each other, play together, and let our schools embrace our national language, values and symbols...so long as we treat each other fairly; trustbuilding will slowly trickle in. We need to sit together, have everyone participate and be involved.

Studies indicate that elicitive education in which the masses are actively involved is key in creating awareness, sensitization, and socialization about transitional justice, peacebuilding, and conflict resolution. Elicitive education facilitates discovery, creation, and use of models derived from indigenous contexts and that respond to the needs in these contexts (Lederach, 1995: 55). The Elicitive model fosters participatory design and places emphasis on participants designing, discovering together, and naming the conflict resolution models that emerge (Lederach, 1995: 68). The success of elicitive models in Kenya requires the empowerment and freedom of the civil society as a forum in the development of strategies for democratic and social change without political intimidation or manipulation. A policy for the freedom of the civil society needs to be enacted and implemented. Civil societies, including churches, trade unions, and media, may

create democratic forums (Oloo, 2007: 94) in which the rights of the minorities and the vulnerable groups are safeguarded while the hegemonic government's abuse of power is resisted (MacGinty, 2008: 52). Kenya requires a policy on capacity building as a key component of post-conflict reconstruction for the minorities and vulnerable groups. Capacity building nurtures the intrinsic value of people's abilities and knowledge and the recognition that increased insight, learning, and growth is necessary and possible (Lederach, 1997: 108). Training as a form of capacity building raises awareness about conflict patterns, dynamics, and handling and imparting skills such as communication, negotiation, and mediation for dealing with conflict (Lederach, 1997: 47-48). Capacity building programs such as training and education, development, transformation, and investment in human security, research and evaluation enables creation of constructive relationship patterns between people and their environment, sustainable human resources, and abilities to meet human needs (Schirch, 2004: 57). In sum, all the actors in peacebuilding and conflict resolution must invest in policies that nurture purposive, participatory, inclusive, and integrative education and alleviate divisive, preferential, discriminative, and alienative education.

8.1.8 Non-Violent Systemic Revolution/Renaissance (R)

The majority of the respondents in this study indicate that a non-violent systemic revolution could be the answer for transitional justice, peacebuilding, and conflict resolution in Kenya. However, respondents also indicate the challenge faced in carrying out a successful non-violent systemic revolution while the oppressive regime remains in power and in control of key resources.

This study indicates that an effective non-violent systemic revolution in Kenya should be preceded by institutional reforms in order to guarantee safety and security for civil activists. This

study also indicates that justice for the Kenyan masses may hardly come through peaceful means or persuasion but through persistence and coercion. This is attested by Benson, a 32 year old civil rights activist who had the following to say:

If the system is not reformed you cannot get a genuine transition; there is no guarantee for safety and security. We are changing the institutions but individuals remain the same; the forest changes but the monkeys remain the same and therefore what we have is a reincarnation of impunity. To transform Kenya, we need a systemic revolution because the same broken vehicle cannot get us to our anticipated destination. We need to either repair it or get a new vehicle.

In a similar perspective, William, a 50 year old member of TJRC observes the following:

What we need in Kenya is not transitional justice but a revolutionary justice! Nobody will give us justice; we have to fight for it. It is not the slave traders who stopped the slave trade but human rights activists. The oppressors cannot willingly support transitional justice unless forced to do so....The French leftists realized that no matter how long they agitated for their rights, it remained just but a good lullaby; revolution is the only lullaby that the tyrants understand. Injustice to the victims is justice to the oppressors...a revolution is the only means to emancipate the oppressed; it must be strategic, non-violent and steered by right leadership.

Quoting Martin Luther King Jr., Schirch (2004: 67) observes that “Freedom is never voluntarily given by the oppressor, it must be demanded by the oppressed.” Coercive peacebuilding strategies create forums for mobilization of shame, sanctions or boycotts (Ibid). In a critical observation however, the success of such mobilizations requires political and social spaces. Such spaces may be difficult to establish under oppressive regimes that use military and police apparatuses to silence any slight opposition. Systemic revolution in Kenya could therefore be enabled by allowing freedom and spaces for social and political activism. Activism, which constitutes track six of the multitrack diplomacy is key in changing institutions, attitudes, and policies through political action. Activism is based on the assumption that peace is not possible without social, political, environmental and economic justice and integrity — grassroots action and leadership are critical in opposing actions and policies that are immoral, oppressive, or

detrimental to peace and justice (Diamond and McDonald, 1996:87). The struggle for humanization, emancipation and affirmation of men and women is possible only when dehumanization is not exalted but condemned as an unjust order that engenders violence in the oppressor therefore dehumanizing the oppressed (Freire, 1968: 44). In sum, systemic revolution is not ripe for Kenya at this moment. Spaces and forums for its success need to be nurtured. These include: institutional and constitutional reforms that will safeguard a bill of rights and guarantee safety and security; freedom of human rights activism; and decentralized civic education. Other forums key for revolution include international interventionism, diaspora support, and funding. All these combined could nurture effective systemic revolution.

8.1.9 Security, Safety and the Rule of Law (S)

The security dilemma approach holds that ethnic violence could derive from the fear arising from the failure of state security (Toft, 2003:8). Ethnic violence arises when ethnic groups feel that their identity and non-negotiable needs that are linked to cultural, religious, ethnic, and national self-determination and security are threatened by other groups (Rothman, 1992: 38). The responses in this study indicates that guarantees of security, safety, and the rule of law are key in nurturing peacebuilding, reconciliation, and conflict resolution. Study participants also maintains that security and safety can be nurtured through: socioeconomic empowerment; investment in innovative lifestyles that addresses agro-ecological and socioeconomic disparities; decentralization of development; equality; and inclusion. This study indicates that safety and security cannot thrive under deprivation; they are nurtured by breaking the chain of despondency and providing the vulnerable and marginalized populations access to resources and power. This is confirmed by Naomi, a 54 year old community women leader from Nyanza Province who observes that:

We must domesticate the process of peacebuilding and break the chain of despondency. If your grandfather was a slave, most probably your father is a slave due to two factors, a slave can only marry a slave and give birth to a slave and the lineage of slavery continues. Therefore, if I am a slave I do not have dignity because dignity is a product of peace....Peace is impossible in a state of deprivation. Peace is sustained by structures that nurtures equality in access to resources and power. No justice, no peace; peace is a product of access to what you need to survive and live comfortably with.

Studies shows that safety and security are derived from the restoration of law and order and an effective judicial system, setting up of a system for accountable government bound by the rule of law, and consolidation of an inclusive and democratic political process (Wolff, 2006: 166). Safety and security are derived from the rule of law and are directly proportionate to peace. Peace means different things to different people: to some, it means inclusion, safety, security, dignity, and hope. Peace also means the presence of justice, the absence of fear, access to basic needs, freedom of movement, absence of war, life without anxiety, and good health. All these conditions for peace are key to conflict transformation and resolution. As Abigail a 53 year old community women leader from Central Province observes:

Peace is not the absence of war but the presence of justice. Peace can be nurtured through the socioeconomic empowerment of all people....If you are the only one who enjoys peace then others will make your world unpeaceful...if we all own glass houses we will be careful not to throw stones. The sense of ownership is a big factor in nurturing peace; ownership of resources nurtures the ownership of peace process.

According to studies, others factors that nurture a sense of security and safety include self-governance, demographic dominance, demographic stability, and pre-democratic cooperation and accommodation (McGarry and O'Leary, 1993: 16). Safety, security, and the rule of law are key components of post-conflict reconstruction, and therefore important ingredients of transitional justice. Feelings of safety and security can also be nurtured through the embracement of a culture of human rights realized through legal mechanisms, commemorative projects, truth commissions, war crimes prosecutions, reparations, and memorials (Hazan, 2010).

From the foregoing therefore Kenya should mobilize essential resources for sustainable investment in the rule of law in order to nurture safety and security. This requires national assessments of expressed safety and security needs across the ethnopolitical divide (Merry, 2006; UN, 2004a:1). There is also a need to enact a safety and security policy that address special needs of different ethnic groups. Some of the issues that could be addressed by such a safety and security policy include: access to basic services and opportunities; ethnic identity, beliefs, and values; affirmative action; political representation; land; and access to basic needs, among others.

8.1.10 Institutional and Constitutional Reforms (R)

The post-independence regimes facilitated integration of ethnic groups through coercion and hence the African nation state neither embraced institutional arrangements that define the relationship between ethnic groups nor developed a social contract that advances liberty and freedom, which in part explains protracted ethnopolitical violence (Kimenyi, 1997: 45). The Kenyan post-colonial state was founded on a colonial legacy characterised by the breakdown of constitutional checks and balances and sustained by the institutions of the police, the judiciary and the prison, all of which collaborated to silence the opposition and protect the hegemonic state therefore perpetuating a miscarriage of justice (Gimode, 2007:227). One of the lessons emerging from this study is that institutional guarantees are instrumental in transitional justice, peacebuilding, and conflict resolution in Kenya. This is affirmed by Agnes a 47 year old community women leader from the Rift Valley Province who highlights the positive role of the constitutional and institutional reforms and implementation in addressing ethnopolitical violence:

The full implementation of the constitution and institutional reforms is the greatest thing for every Kenyan because it touches on every bill of right including integrity, justice, economic welfare, and general development. If you import a train let's say from Japan you must first make a railway line on which it will run. Similarly, our constitution must be fully implemented for change to happen in Kenya.

Studies indicate that the choice of appropriate democratic institutions—forms of devolution or autonomy, electoral system design, legislative bodies, judicial structures, designed and developed through fair and honest negotiation process are vital ingredients in building an enduring and peaceful settlement to even the most intractable conflicts (Harris and Reilly, 1998). Institutional guarantees require full implementation of the constitution and institutional reforms in which a bill of rights is entrenched as stipulated in Chapter four (articles 26-57) of the constitution of Kenya (The Constitution of Kenya, 2010). To facilitate effective socioeconomic and political development, African countries must prioritize and embrace good constitutionalism in order to ensure equity and equality in the dispensation of services and the entrenchment of a bill of rights (Nasong'o, 2007: 52-53).

This study indicates that a bill of rights guarantees a diversity of social, economic, and cultural policies and is key to the future of a democratic Kenya. The realisation of dignity, social justice, potentiality, and humanity of all ethnic groups in Kenya depends on recognising and protecting their human rights and fundamental freedoms. Some key concerns about the Kenyan bill of rights emerging from this study relate to: right to life; equality and freedom from discrimination; freedom and security of the person; freedom of expression; freedom of media; right of access to information; freedom of association; right of assembly, demonstration, picketing and petition; political rights; freedom of movement and residence; protection of right to property; labour rights; right to clean and healthy environment; economic and social rights; right to language and culture; access to justice; rights of children; rights of persons with disabilities; rights of the youth; and rights of minorities and marginalized groups. The full implementation of all the above rights is key to the success of the new Kenyan model proposed

in this study. As Christopher, a 72 year old community leader from Nyanza Province observes, institutional guarantees are key in addressing the Kenyan ethnic challenge:

If we put value on national institutions and appreciate regional diversities and peculiarities, pull each region to meet its minimum then we can build and sustain peace. The new constitution and especially devolution will decentralize governance and development such that people will exercise their potentials from any part of the country thus enabling regional balance and peace. Freedom of movement and ownership is a very strong part of our constitution...Every county system has a role in creating justice for a particular region which will impact positively on the national system of justice. We now need grassroots initiatives to cater for multi-ethnic representation. The county governments will enable equitable distribution of resources to ensure that everyone has access to basic needs and hence peace; people fight due to physical, material, ideological, and moral scarcities.

However, the success of the aforementioned depends on the political will to draft, publish, and assent to these key bills. The Commission for the Implementation of the Constitution (CIC), responsible for advocating and tracking the process of constitutional legislation in Parliament, indicates that since January 2011 out of 25 bills that requires legislation, eleven of them are still going through internal review and stakeholders consultations; nine are pending publication by the attorney general; and five have been published and are awaiting parliamentary debate.²⁵ The CIC indicates that while the timeline for the enactment of these bills required completion by August 31, 2011, this goal was not met. Justice delayed is justice denied; the civil society in Kenya, in conjunction with the CIC, as well as the media, should educate, sensitize, and create awareness among Kenyans about the lack of commitment from the government to implement the institutional and constitutional reforms and assent to a bill of rights therein. The citizens should unite to recall legislators who are not committed to the welfare of the masses and replace them with leaders of integrity.

²⁵<http://cickenya.org/>

8.1.11 ICC (I)

Effective and legitimate transitional justice should ensure that the dominant discourse of the international system of criminal justice does not compromise the needs and desires of the victims of abuse (Lame, 2005). This study indicates that the ICC is Janus-faced; while it is applauded for its complementarity and deterrence role, it is also dismissed for its confrontational stance. The ICC is seen as an instrument of neo-colonialism and neo-imperialism and as embedded in the western ideal of the rule of law (Arieff et. al., 2010; Minow, 1998:40). It is seen as a colonial or imperial court and a tool of western democratization meant to nurture economic, political and strategic interests of the west (Randall 1998). The ICC is also dismissed for violating the Westphalian doctrine of sovereignty often evoked to challenge the indictment of African leaders (ICTJ, 2010). However, the proponents of the court evoke the principle of the responsibility to protect (Chataway, 2007) to defend its interventionism. The court's complementarity principle supplements weak national judicial systems and thereby nurtures the principles of human rights and human security (Marten, 2005: 37). However, as this study indicates, the right to intervene should embrace: local humanitarian needs rather than the needs of the interveners; early warning signs, preventive mechanisms, and the post conflict responsibility to rebuild; and human rights rather than political and strategic interests (ICISS 2001: 16). Further critiques of the Rome Statute relates to its jurisdiction, deterrence, selective justice and civic education. The court has failed to educate the consumers of justice about its meaning, mandate, and process therefore compromising its local ownership. This is affirmed by Ibrahim, a 60 year old community leader from Nairobi Province, who decries the lack of support and owner of the ICC at the grassroots:

How many Kenyans understand the ICC and its mandate? The ICC lack grassroots support because it is not understood; it should accommodate and involve Kenyans in order to nurture ownership. Kenyans believe that the ICC is a tool of the West; a colonial remedy to a local problem. We need to know how the ICC collects its evidences and why Kenyans are excluded from the process. How credible is the evidence collected? Why is the process selective? Why is the ICC more in Africa than elsewhere? Why do we have the West influencing its decisions?

The above assertion shows that courts would work best when there is a commitment to the rule of law, good evidence gathering practices, respect for court decisions, and active involvement of all stakeholders. While its deterrence role is appreciated, the ICC is discredited for delayed justice (Arieff et al., 2010) and its inability to facilitate sustainable reconciliation and peacebuilding (Gosnell, 2008). The ICC is also criticized for its retroactive application of norms, political manipulations, and selective justice (Freeman and Gibran, 2004). The ICC should be neutral, independent, and committed to sustainable reconciliation and peacebuilding. The key task of the ICC in Kenya should have been to embrace the needs of the affected populations. Therefore the end product of the ICC should address the question: Have the needs of the Kenyans been satisfied? Have the problems that led to post-election violence been addressed? Yet, it is challenging for the ICC to address the Kenyan historical injustices comprehensively because: (1) the mandate of the Rome Statute began in 1982 while the Kenyan historical injustices date back to colonial 'invasion' in 1900s; (2) the majority of Kenyans do not embrace the ICC process; (3) the ICC package does not embrace two very important components of transitional justice—reconciliation and restoration; (4) the court is interpreted by Kenyans as an instrument of western capitalism, democratization and imperialism; and (5) there exists a lack of state cooperation to handover the ICC indictees. The above five issues if addressed appropriately could facilitate the embracement of the ICC process in Kenya and nurture the realization of the

new Kenyan model. William, a 50 year old member of the TJRC sites some of the ICC's challenges:

The ICC is not an independent court....It takes too long for justice in the ICC to be realized...the court embraces criminal justice but we need social justice that nurtures reconciliation. We need a system that addresses historical injustices. The justice we need is not just prosecution by the ICC but how that impacts on our future. How will the prosecution of the Hague Four impact on the IDPs, rape victims, the disabled, orphans, and the widows? Can we reconcile criminal and social justice? Effective transitional justice requires people who understand our history; it must be people-led, and must revolve around our socioeconomic welfare.

The ICC also has other challenges outside Kenya, including: lack of ratification of the Rome Statute by three permanent members of UNSC, namely the USA, Russia, and China, who can use their veto powers against ICC indictments, and lack of support of by the African Union. Despite of all these challenges, the ICC interventionism, responsibility to protect, and complementarity plays an important role in facilitating transitional justice not only in Kenya but also in other countries emerging from violent conflicts.

The success of the ICC in Kenya depends on how the court establishes a positive relationship with Kenyans. This requires extensive civic education about its meaning, mandate, process, selection criteria, and jurisdiction. The court also needs to embrace the expressed needs of the affected people and especially their hopes and fears. Key to the structure of the ICC should be a component that nurtures reconciliation and restoration of the people at the grassroots rather than concentrating on those most responsible for crimes against humanity. The ICC processes should actively embrace the participation of opinion leaders representing all ethnic groups across the ethnopolitical divide. This will create understanding, ownership and sustainability of the ICC process in Kenya. There should also be efforts to empower and streamline local tribunals to take care of human rights atrocities at grassroots levels. This will begin to alleviate concerns about neo-imperial and neo-colonial interventionism. Important too would be the establishment of the

African Criminal Court of Justice (ACCJ) to take care of human rights atrocities that happen in Africa. This would nurture local solutions for local problems and end the hard stance of African leaders toward the ICC which is perceived as a colonial and imperial court. Africa should also have an African security council composed of African military and civilian leaders and a Pan African Emergency Force dedicated towards building a Pax Africana (Mazrui, 2008: 48). However, the fear is that ACCJ could be a smokescreen to hide impunity, pardon dictators, and perpetuate human rights atrocities. All in all, while ICC is not a panacea for transitional justice, it plays an important role in transitional justice mechanisms. While other options may be sought, ICC should be strengthened by addressing the grievances of member countries concerning its mandate and jurisdiction and embracing the expressed needs of victims of injustices. All the UNSC members should join the membership of the Rome statute in order to empower its functions. Effective resolution of the above mentioned concerns and the implementation of the recommendations is key in the nurturance of the new Kenyan model.

8.1.12 Good Leadership and Governance (G)

The colonial regime used indirect rule rather than direct or participatory rule therefore encouraging ethno-social identities and compartmentalization in order to mobilize, control, and rule local populations (Rothchild, 1997:7). Democracy in Kenya is achievable through restructuring the institutions of governance and decentralization of power (Nasong'o and Murunga, 2007:1). However, political elites have sacrificed liberal democracy on the altar by failing to be accountable to the governed and by preventing people's ownership and participation in the governance process (Ibid:5). This study indicates that colonial practices of divide and rule nurtured a preferential system that confined opposing ethnic groups to the periphery while embracing the loyalists at the centre. This resulted in differential development, socioeconomic

imbalances, ethnic antagonism, and protracted violence in the pursuit of justice (Rothchild, 1997:6). The post-colonial regimes saw the emergence of an African bourgeoisie who used the colonial ethnic card to claim the national resources and benefit themselves and their own, while marginalizing the ethnic others (Rothchild, 1997:9). Like in the prisoners' dilemma, the Kenyan political elites have invested in a system of costs and benefits which is used to induce ethnic groups to conformity or non-conformity to ethnic manipulations (Kimenyi, 1997: 36). Kenyan leadership and governance should commit to address historical injustices and embrace social interaction, identification, and satisfaction of collective needs (Danziger, 2005:113). It is also important to ensure equity and equality in access to basic needs, services, and opportunities across the ethnopolitical divide. Central to equity and equality is power-sharing. However, consociational democracy has often failed in Kenya due to incumbent regimes' unwillingness to cooperate, compromise where necessary, and accommodate the key interests of opponents (Wolff, 2006: 152; Kagwanja and Southall, 2011; Osamba, 2011). Consociational democracy is key in securing rights, freedoms, and opportunities for all ethnic communities and in creation of political and institutional spaces for the enjoyment of such benefits (McGarry and O'Leary, 1993: 36; Kagwanja and Southall, 2011; Osamba 2001, 2011). In Kenya, effective consociational democracy depends on the implementation of the new constitution, institutional reforms, and the separation of powers between the executive, judiciary, and legislature. Consociational democracy is based on the idea that ethnic identities will persist in a multi-ethnic democracy and continue to be the basis for governance and politics (Lijphart, 1990; Ibid). This requires good leadership and governance. As Zacharia, a 52 year old member of the Independent Electoral and Boundaries Commission asserts, intolerance to impunity and the embracement of the rule of law are key to good leadership and governance:

Every vessel that floats on water relies on its pilot. We need to get good leadership to sail the Kenyan vessel to the Promised Land. It should start with cleaning our political house; corrupt leaders must either reform or be removed from the office. Our leaders must demonstrate a high level of responsibility, truth, objectivity, integrity, and uphold the rule of law. We need leaders who is intolerant to impunity. People want justice now and not tomorrow. If justice fails, then it leads to jungle law which translates into survival for the fittest. Therefore, the priority should be a total respect of the rule of law, because it is from the rule of law that we manage our institutions.

From the aforementioned therefore and as studies indicate, ethnic relations should embrace: cooperation and accommodation; decentralization of governance; ethnic representation; democratic participation in decision making processes; and distributive justice (Oberschall, 2007:198-199; Kagwanja and Southall, 2011; Osamba 2001, 2011). Effective decentralization entails that local governments be units of collective choice and action, autonomous in the exercise of their responsibilities, included in and protected by the constitution, and responsible to the subjects. Local governments should also guarantee constitutional protection of private property rights and embrace geoethnicity or territorial identity (Kimenyi, 1997: 72). However this requires good leadership and governance.

Kenya requires strong leaders able to set accommodative goals across the ethno-political divide, develop, and maintain consensus among all stakeholders; it involves persuasion in the process of setting the agenda, building networks, and accomplishing goals (Dayton and Kriesberg, 2009: 30). A 'winner takes all' system nurtures ethnic competition and hence zero-sum conflict (McGarry and O'Leary, 1993: 25). As Simon, a 56 year old member of parliament from the ruling Jubilee Alliance asserts, the Kenyan future needs to have an inclusive, people-based and national leadership:

Martin Luther King Jr. walked so that we can run. But how many Kenyans are ready to carry the cross and visions of our liberation heroes? The greatness of a nation can only be realized when a leader becomes a servant. The leaders should embrace the worm's eye view and not the bird's eye view; their shoulders should bear the burden of the Kenyan ethnic diversity. We need new ideologies customized to the diversity of our nation. Our leaders must be men and women of integrity willing to enforce the rule of law and implement our constitution...we need national leaders who embrace inclusive ethnic development. We need leadership that will create jobs, foster unity, and nurture nationalism.

Studies indicate that effective governance derives from the nurturance of middle range leadership which is best placed to reconcile the top-level and the grassroots leaderships (Lederach, 1997: 43). Middle range approaches facilitate integration by: developing the capacity to design sustainable social change; understanding crisis issues as connected to systemic roots; recognition of the integrative potential of middle-range leadership and their ability to cultivate relationships (Lederach, 1997: 81). Middle range approaches in Kenya would target religious leaders, opinion leaders, NGO and civil society leaders, women leaders, and youth leaders. This discussion shows that internal political dynamics such as power sharing, political parties, leadership and governance play a significant role in determining strategic choices for adversarial contestations that lead to continuation or renunciation of conflicts (Dayton and Kriesberg, 2009: 4). To end negative ethnicity in our capitalist jungle, we need a system that will end cannibalism among the humans — the concept of a strong few exploiting the weak majority (Wamwere, 2008:260-261). Such a system is founded on sharing power and wealth, equal distribution of resources, unity and harmony. As part of the new Kenyan model, this study is therefore proposing a new Kenyan system of governance entrenched on the values of socialism, democracy, and humanism namely Humanist Social Democracy. This new system of governance will revive human values of peace, love, and harmony and avoid class conflicts through equitable distribution of resources, services, and opportunities across the ethnopolitical divide. To end ethnic conflicts we must embrace

multi-ethnic nationalism, our collective humanity, founded on the belief that all ethnic communities are equal, and that all citizens must share a common home, resources, and freedom equally and that exploitation, oppression, and degradation of anyone anywhere is a negation of our common humanity (Wamwere, 2008:260-261).

8.1.13 Cross-community Interactions, Dialogue, and Sharing (S)

While violent conflict arise from social-psychological processes relating to stereotyping, dehumanization, and inflammatory references to historical injustices, the pursuance of cross-community contacts and rehumanization of the ‘enemy others’ transforms the cognitive and emotional dynamics that sustain intergroup violence (Dayton and Kriesberg, 2009: 4). When people voluntarily choose to change their mind-sets and behaviours as a result of learning through negotiation or dialogue, they are more likely to embrace change and the end product of such change is more sustainable and long-lasting (Schirch, 2004: 67). Cross-community relationships facilitate the discovery of commonalities, humanization (Dayton and Kriesberg, 2009) and the reduction of intergroup bias (Fisher, 2001, 2005, 2007). This study indicates that community interactions have been hindered by: precolonial and post-colonial preferential administration; ethnic polarization, stereotypes, and prejudice; politicization of ethnicity; historical grievances and injustices; ethno-nationalism; exclusion and marginalization of some groups from socioeconomic and political welfare; inaccessibility to basic needs, services, and opportunities; threat to ethnic identity and nationalism among other factors. The creation of the insiders and outsiders has nurtured what has been referred to as the most dangerous four-letter word in the English language— THEM, one that has caused indefinable suffering and death of millions of people globally.²⁶ THEMification has compromised unity, harmony, and peaceful coexistence; it has nurtured finger pointing among disputants. However, THEMification can be

²⁶ <http://knowthem.org/> Retrieved April 25, 2014

alleviated by applying the principle of the 4Cs (Ibid): we need to be **Conscious** about ethnic prejudice, labels, and stereotypes; we need to be **Curious** about the stories of other people; we need to be **Compassionate** about breaking the cycle of the otherness; and we need to **Challenge** the foundations of THEMification. When one steps into the shoes of the disputants, stories are retold, and this creates a new understanding of the grounded realities, demystification of myths and stereotypes, and positive change that leads to de-THEMification. Formal dialogues enable disputants to share personal experiences, perceptions, and beliefs, which facilitates deeper understanding of issues and hence cross-cutting relationships in a divided society (Schirch, 2004: 50). This is best described by Charlotte, a 33 year old social worker in the sprawling Kibera Slums in Nairobi who emphasizes that social transformation requires inter-ethnic interactions and experiences:

If you dialogue with other ethnic groups you will realize that they are not devils but families with hopes and dreams. Cross-community tours, exchange programs, and multi-ethnic peace caravans can help us to learn and appreciate the values of others. Our people should visit places that have suffered genocide to witness the devastating effects of war. Also, cross-ethnic intermarriage could ensure blood bonds and hence peace. Intermarriage is like the creeping plants, ethnicity is like the tall trees. The creeping plants though not so visible become a formidable network with time. If the creeping plants are nurtured, they will over time overwhelm the tall trees....Also sports are powerful in peacebuilding. In sports the tribe does not matter, our talents bring us together; the goal is to play as a team. It's like different ethnic groups living in a peace village where people share ideas and experiences and learn that others are humans and not animals.

The use of the 4Cs during cross-community interactions, dialogue, and sharing is key in nurturing de-THEMification. Peacebuilding requires an ethic of interdependence and partnership; it is strategic when resources, actors, and approaches are coordinated to accomplish multiple goals and address multiple issues for the long-term (Schirch, 2004: 9-15). The embedding of the 4Cs in cross-community tours, exchange programs, cross-community businesses, participatory theatre techniques, peace villages, multi-ethnic peace caravans, folklore

projects, cross-community children games, cross-community youth sports, and intermarriages are all important in nurturing de-THEMification and hence trustbuilding and sustainable reconciliation. Civil societies provide a space for actors to interact, safeguard the rights of the minorities or vulnerable groups, and resist government's abuse of power (Mac Ginty, 2008: 52). Civic integration can be facilitated through integrative schools, national language, integrative housing policies, ethnic inclusive work place, and outlawing discrimination (McGarry and O'Leary, 1993: 17). The absence of cross community contacts concretizes negative stereotyping and dehumanization that nurtures violence (Dayton and Kriesberg, 2009: 4) while public spaces enables creative communication of private experience and shared humanity (Daly and Sarkin, 2007: 226). The process of de-THEMification creates spaces for recovery, healing, and empowerment of the humiliated others which nurtures responsibility and accountability in community relationships. De-THEMification nurtures cultural tolerance and hence facilitates breaking down of stereotypes and misperceptions.

Protracted conflicts are zero-sum or winner-loser approaches; they constitute a real threat to the existence of the loser and therefore conflict transformation should seek to end the vicious cycle of mutual rejection (Rothman, 1992: xii). Moving from confrontation to cooperation enables interdependence and constructive dialogue between disputants in deep conflict by exploring ways of working together towards fulfilling each other's expressed needs (Ibid: xiii). The new Kenyan model should embrace multi-track diplomacy which nurtures intra-systemic relationships, communication, sharing of resources, and opportunities for collaborative action and mutual enrichment (Diamond and McDonald, 1996:156). Key in multi-track diplomacy is track two, which involves informal and unofficial contacts and activities between citizen diplomats or non-state actors (Diamond and McDonald, 1996:1-2). For example, cross-

community business as a component of multi-track diplomacy facilitates building relationships and creating pathways for communication and joint action; it enhances economic empowerment, interdependence, and mutual trust (Diamond and McDonald, 1996:52).

Important to the new Kenyan model is the embracement of Problem Solving Workshops (Burton, 1969) also called Interactive Problem Solving (Kelman, 1982), or Third Party Consultations (Fisher, 1997, 2001) which provides a space for unofficial (third party) representation of disputants, interaction, and collaborative analysis of mutual grievances (Lederach, 1997: 46). Middle-range leadership (opinion leaders) are especially key in problem solving workshops due to their knowledge of the conflict, proximity to key decision makers, and ability to influence decision (Lederach, 1997: 47). However, the engagement of deep issues is challenging and does not end with a ceasefire; dialogue is permanent and requires platforms that make such engagements at multiple levels of the affected society sustainable (Lederach, 2005: 49). Sustainable engagements requires coordination of work, sharing of success stories and challenges, and working together to bridge existing gaps (Schirch, 2004: 11); it requires breaking the cycle of transgenerational transmission of trauma (Volkan, 1998: 43), and moral imagination—that capacity to: envision and nurture interdependent relationships; avoid narrow dualisms; address complex relationships and realities; and seek constructive engagements (Lederach, 2005).

While the new Kenyan model could provide a solution to the Kenyan challenge, how will it be afforded, sustained, and maintained? This can be achieved through five main pillars namely: formulation of key policy frameworks; cultivation of political will; coordination and networking; funding; and civic education. To start with, the new Kenyan model requires a comprehensive policy framework to guide its institutionalization, implementation, and sustenance. The policy

framework for the new Kenyan model should be entrenched in the Kenyan law in order to make it legal and protect it from political manipulation and abuse. The policy framework should spell out how various components of the new Kenyan model should interact and coordinate. The framework should formulate means of conducting critical peace assessment that contribute to informed transitional justice, socioeconomic development, post-conflict reconstruction, and sustainable peacebuilding. This would be essential for maintaining and sustaining critical linkages between peace, conflict, and reconstruction (MacGinty, 2008: 92). Second, the effectiveness of the new Kenyan model requires the ruling elites to embrace the process. Studies indicate that post-conflict reconstruction may fail to achieve an inclusive and a stable political process due to the unwillingness or inability of the elites to cooperate with the new democratic structure and/or the mismatch between political institutions and communal aspirations (Wolff, 2006: 173). Therefore, the sustainability of the new Kenyan model requires the willingness and the ability of political leaders to work in good faith towards its implementation (Wolff, 2006: 175). Political will can be nurtured through: investment in civic education at all levels; voting for leaders of integrity; embracement of the rule of law; addressing impunity and corruption; and ensuring that leaders take responsibility for their political decisions. Third, peacebuilding actors across the Kenyan ethnopolitical divide need to work together in order to create coordination networks that model, practice, and hold each other accountable to jointly define peacebuilding values, relational skills, analytical skills, analytical tools, and processes (Schirch, 2004:83). Fourth, funding as a key pillar in the sustenance of the new Kenyan model should be supported by all parties including philanthropists, government, donor community, and the public. Track eight of the multi-track diplomacy indicates that we all have a responsibility and opportunity to make a positive contribution by sponsoring worthwhile projects (Diamond and McDonald,

1996:108). Such funding will contribute to the exploration of critical areas of knowledge and action which impacts on the growth and evolution of humanity towards a more peaceful world (Ibid). Fifth, civic education should be embraced among all stakeholders across the ethnopolitical divide involved in the implementation of the new Kenyan model in order to ensure its ownership and sustainability. All the actors should be educated about the structure and components of the new model; their responsibilities in its implementation and development of mutual coordination, partnerships, relationships, and networks.

8.1.14 Conclusion

In conclusion therefore, the new Kenyan model if implemented and sustained can nurture transitional justice, peacebuilding, and conflict resolution in Kenya. This study indicates that creating stability in Kenya entails the cultivation and tolerance to that very elusive trait—the ability to accept diversity (Mazrui, 2008: 41). We must deviate from Afro-pessimism and Afro-phobia and simplistic stereotypes concerning the tractability of African conflicts by embracing the fact that such conflicts have complex histories; they exhibit multiple and multi-dimensional causes, courses, and consequences (Nhema and Zeleza, 2008: 2). The new Kenyan model proposed in this study can inform the government policy frame works, the civil society, citizen diplomats and other local initiatives towards transitional justice, peacebuilding, and conflict resolution. It constitutes a framework that offers proposals for solutions to multiple and complex needs that must be met for transitional justice to occur in Kenya.

Lastly, it is important to outline issues or questions arising from this study that would form the basis for future research. From the first data chapter, the following questions arise: Why have some countries been able to overcome ethnic challenge while others have not despite having similar historical backgrounds? Why has consociational democracy failed in many

countries emerging from protracted ethnic and intrastate violence? To what extent does Truth and Reconciliation Commissions represent or misrepresent justice? While Kenyan ethnic violence is partially blamed on the inherited British constitution why don't we have intrastate violence in Great Britain or some of other former British colonies that inherited similar colonial constitutions? From the second data chapter the following questions emerge: How can institutional and constitutional reforms succeed in a hegemonic system founded on impunity? How can trustbuilding be nurtured amidst continued and persistent deprivations? How can national identity and ideology be nurtured in the context of ethno-political nationalism? From the third data chapter the following questions emerge: Victims of atrocities lose their loved ones, their body parts, and their body functions; how can that be costed during compensations and reparations? And can restitution ever be possible in such cases? When nonviolence is impossible, some ethnic groups result to violence which in many cases is repressed by the hegemonic state; how can armed revolutions to overthrow dictators be successful when the hegemonic state controls all the resources and power? This study indicates that protracted ethno-political violence emanates from lack of political will to yield to popular demands for change; how can political will be nurtured amidst ingrained ethno-nationalism, dictatorship, and impunity? While this study has nurtured a new Kenyan model for peacebuilding and conflict resolution, how can the new model be maintained, sustained, and effectively be implemented? The answers to these questions could further inform the Kenyan solution to the ethnic challenge and facilitate sustainable peacebuilding, transitional justice, and conflict resolution. While peace is elusive, it is attainable; with optimism, determination, resilience, and passion we shall make it! I end this task with the following quote:

“The charm of fishing is that it is the pursuit of what is elusive but attainable, a perpetual series of occasions for hope.” John Buchan

Peter Karari, 2014

9.0 CHAPTER NINE: REFERENCES AND APPENDICES

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9.3 Appendices

9.3.1 Ethics Certificate from the University of Manitoba

 UNIVERSITY OF MANITOBA	Office of the Vice-President (Research and International) Research Ethics and Compliance	Human Ethics 208 - 194 Dafoe Road Winnipeg, MB Canada R3T 2N2 Fax 204-269-7173
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APPROVAL CERTIFICATE

February 2, 2012

TO:

FROM:

**Re: Protocol #J2012:009
"Ethnopolitical Violence, Transitional Justice and Peacebuilding in Kenya:
Nurturing a Tripartite Hybridity"**

Please be advised that your above-referenced protocol has received human ethics approval by the **Joint-Faculty Research Ethics Board**, which is organized and operates according to the Tri-Council Policy Statement (2). This approval is valid for one year only.

Any significant changes of the protocol and/or informed consent form should be reported to the Human Ethics Secretariat in advance of implementation of such changes.

Please note:

- If you have funds pending human ethics approval, the auditor requires that you submit a copy of this Approval Certificate to the Office of Research Services, fax 261-0325 - please include the name of the funding agency and your UM Project number. This must be faxed before your account can be accessed.
- if you have received multi-year funding for this research, responsibility lies with you to apply for and obtain Renewal Approval at the expiry of the initial one-year approval; otherwise the account will be locked.

The Research Quality Management Office may request to review research documentation from this project to demonstrate compliance with this approved protocol and the University of Manitoba Ethics of Research Involving Humans.

The Research Ethics Board requests a final report for your study (available at: http://umanitoba.ca/research/orec/ethics/human_ethics_REB_forms_guidelines.html) **in order to be in compliance with Tri-Council Guidelines.**

umanitoba.ca/research/orec

9.3.2 Research Authorization from the Government of Kenya

REPUBLIC OF KENYA



NATIONAL COUNCIL FOR SCIENCE AND TECHNOLOGY

Telephone: 254-020-2213471, 2241349
254-020-310571, 2213123, 2219420
Fax: 254-020-318245, 318249
When replying please quote
secretary@ncst.go.ke

P.O. Box 30623-00100
NAIROBI-KENYA
Website: www.ncst.go.ke

Our Ref: **NCST/RCD/14/012/285**

28th March 2012
Date:

Peter Mwaura Karari
University of Manitoba
Canada.

RE: RESEARCH AUTHORIZATION

Following your application for authority to carry out research on "*Ethno-political violence, transitional justice and peace building in Kenya: Nurturing a tripartite hybridity,*" I am pleased to inform you that you have been authorized to undertake research in **all provinces** for a period ending **30th May, 2012.**

You are advised to report to **The Provincial Commissioners and the Provincial Directors of Education, all provinces in Kenya** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.



DEPUTY COUNCIL SECRETARY

Copy to:

The Provincial Commissioners
The Provincial Directors of Education
All Provinces.

9.3.3 Research Clearance Permit from the Government of Kenya

CONDITIONS

1. You must report to the District Commissioner and the District Education Officer of the area before embarking on your research. Failure to do that may lead to the cancellation of your permit
2. Government Officers will not be interviewed without prior appointment.
3. No questionnaire will be used unless it has been approved.
4. Excavation, filming and collection of biological specimens are subject to further permission from the relevant Government Ministries.
5. You are required to submit at least two(2)/four(4) bound copies of your final report for Kenyans and non-Kenyans respectively.
6. The Government of Kenya reserves the right to modify the conditions of this permit including its cancellation without notice

REPUBLIC OF KENYA

RESEARCH CLEARANCE PERMIT

GPK60553mtl0/2011 (CONDITIONS—see back page)

PAGE 2 **PAGE 3**

Research Permit No. NCST/RCD/14/012/2

THIS IS TO CERTIFY THAT: **Date of issue 28th March 2012**

Prof./Dr./Mr./Mrs./Miss/Institution **Fee received KSH.2,000**

Peter Mwaura Karari

of (Address) University of Manitoba

Canada

has been permitted to conduct research in

Location

District

Provinces


all

on the topic: Ethno-political violence

transitional justice and peace building in

Kenya: Nurturing a tripartite hybridity.

for a period ending: 30th May, 2012.



9.3.4 Affiliation Confirmation Letter from Catholic University of E.A.



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA A.M.E.C.E.A

Department of Research

P. O. Box 62157
00200, NAIROBI

Kenya

Telephone: 8891601-6/8890023/4

Fax: 254-20-8891261/8891084

Email: research@cuea.edu

Ref: CUEA/R/A/16-08

October 29th 2011

Ms. Ibi Brown
Exchange Program Coordinator,
The Centre for International Governance Innovation
Email Address: aiexchange@cigionline.org

Ref: Africa Initiative Graduate Research Grant-Host/Affiliate Organization's Letter of Support For Peter Karari

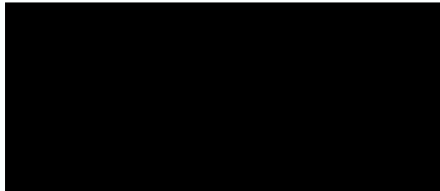
This is to confirm that Peter Karari, an applicant of Africa Initiative Graduate Research Grant will be hosted/ affiliated with Catholic University of East Africa (CUEA) and attached to our research department at the main campus in Nairobi. Our primary interaction with Peter will involve introducing him to our research department and helping him as much as possible to acclimatize and to have a conducive environment to conduct his doctoral research. His research topic namely: *"Ethnopolitical Violence, transitional Justice, and Peacebuilding in Kenya: Nurturing a Tripartite Hybridity"* is of great importance to our country given the history of protracted ethnopolitical violence in Kenya and the dire need for sustainable conflict transformation and peacebuilding. His research is significant in informing our country's policy and institutional frameworks.

At CUEA we believe that creation and dissemination of information is a vital function of a university and can only be done through research. Supporting Peter in his doctoral research constitutes a core value of CUEA meant to encourage a strong culture of research into its academic community. We believe that the knowledge gained through affiliation with international students contributes to our academic development in this globalized, highly dynamic, and interactive world. Peter's doctoral research will add to our rich sanctuary of internal, regional and international research projects. In the course of his research we will provide Peter with all the research information, guidance, and support that he may require. Peter will also be invited to share his doctoral research proposal and findings with our students and university community through facilitation of workshops, seminars, and conferences. We also anticipate publishing Peter's research findings in CUEA Research Report Series, Monographs or Occasional papers and the Eastern Africa Journal of Humanities and Sciences. The schedule/action plan of Peter's doctoral research is as follows:

March 5-April 4, 2012	Data Collection in Rift valley, Nyanza & Western Provinces (60 Participants)
April 5- May 4, 2012	Data collection in Central, Eastern, and Nairobi Provinces (60 Participants)
May 5- June 4, 2012	Data collection in Northeastern and Coast Provinces (40 Participants)

Given his academic achievement, experience, and passion for his country, it is our hope that you will consider awarding Peter the Africa Initiative Graduate Research Grant so s to enable him carry out this very important research.

Yours faithfully,



Associate Professor and Deputy Director, Research
The Catholic University of Eastern Africa

9.3.5 Semi- Structured Interview Guiding Questions

Ethnopolitical Violence, Transitional Justice, and Peacebuilding in Kenya: Nurturing a Tripartite Hybridity

Interviewing Questions:

1. What is your perception and/or experience about the root causes of ethnopolitical conflicts in Kenya?
2. How can the root causes of ethnopolitical conflicts in Kenya be addressed?
3. How can trustbuilding be nurtured across the ethnopolitical divide in Kenya?
4. What is your perception and/or experience about peace and sustainable peacebuilding in Kenya?
5. What is your perception and/or experience about Justice in the Kenyan context?
6. What is your perception and/or experience about Truth, Justice and Reconciliation Commission of Kenya as a form of transitional justice?
7. What is your perception and/or experience about the International Criminal Court as form of transitional justice in Kenya?
8. What is your perception and/or experience about Indigenous approaches to peacebuilding as forms of Transitional Justice in Kenya?
9. What is your perception and/or experience about giving testimonies, forgiveness, and amnesties?
10. How can healing and recovery from past humiliation, trauma, and historical injustices be achieved?
11. What should be the way forward for transitional justice and sustainable peacebuilding in Kenya?
12. What are your greatest hopes and your worst fears?

9.3.6 Human Subject Research Ethics Protocol Submissions (Ft. Garry Campus): Informed Consent

Research Project Title: Ethnopolitical Violence, Transitional Justice and Peacebuilding in Kenya: Nurturing a Tripartite Hybridity.

Principal Investigator and contact information:

Peter Karari

PHD Candidate in Peace and Conflict Studies
Faculty of Graduate Studies, University of Manitoba
C/o Arthur V. Mauro Centre for Peace and Justice
252-70 Dysart Road Winnipeg Manitoba Canada R3T 2M6

Home address: 12-1139 Grant Avenue WINNIPEG, MB Canada R3M1Y8
Telephone: Home +1 204 452 5645 Cell +1 204 390 0765
Email: karari_mp@yahoo.com

Research Supervisor contact information:

Dr. Andrew Woolford, Department of Sociology
Email: woolford@cc.umanitoba.ca
Phone: 204 474 6058

Sponsor (if applicable): Not Applicable. This study is solely funded by the researcher.

This consent form, a copy of which will be left with you for your records and reference, is only part of the process of informed consent. It should give you the basic idea of what the research is about and what your participation will involve. If you would like more detail about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.

1. A brief description of the purpose of the research.

The purpose of this research is to explore the experiences and perceptions of participants about ethnopolitical violence, transitional justice and peacebuilding in Kenya. This research is expected to uncover the root causes of ethnopolitical violence in order to facilitate informed and sustainable conflict transformation, reconciliation and peacebuilding in Kenya.

2. A description of the procedures involving the participant, including their nature, frequency, duration, and the total time involved.

The involvement of participants in this research will be based on free and informed consent. According to Tri-Council Policy Statement (TCPS), “free and informed consent refers to the dialogue, information sharing and general process through which prospective subjects choose to participate in research involving themselves...”(Article 2.1). The key informants will be recruited through emails, telephone calls, letters, visitation and referrals. Subsequent participants will be recruited through snow-balling.

The data collection procedure will involve making appointments with the target respondents, explaining their roles and the content of the interview. This procedure will greatly help in preparing the field time schedule. Before the beginning of each interview, self-introductions and engagements in brief informal chatting will be done to facilitate making rapport with the participants. Making rapport will facilitate relaxation and warming up before setting the ball rolling. Each interview will take approximately one hour. All the participants in this study are mature adults able to make informed decisions and willingly participate in this study.

Access will be enabled through an introduction letter from the University of Manitoba, an introduction letter from the Ministry of Education in Kenya, and informal introductions through community gatekeepers. Participants will be met via scheduled appointments at agreed venues and time. Appropriate venues will be chosen and agreed upon by both participants and the researcher to facilitate a productive interviewing process. Each day a minimum of three and a maximum of five participants will be interviewed. This study is expected to take 3 months starting from March 5, 2012 and ending on June 5, 2012.

3. A description of any recording devices to be used.

In this study, audio recording will be used using an audio recorder. However, this will only be done after informed consent is sought and granted by individual participants. The participants will be made aware about the use of the audio recording device and informed about how it works. After the data is transcribed, participants will be asked to re-confirm that the content reflects what they shared during the initial interviews.

4. A description of the benefits, if any, directly to the participant.

This study will be beneficial to the participants and to the entire Kenyan population because it will facilitate uncovering of the root causes of ethno-political violence and offer recommendations for sustainable conflict transformation, reconciliation and peacebuilding. To be specific the following are the expected benefits of this study.

- i. This is the first research of its kind in Kenya that reaches out and accommodates all the voices in a bid to address the root causes of ethno-political violence and facilitate transitional justice in Kenya.
- ii. Practice wise, the product of this research will be a guideline that will inform the civil servants, NGOs, human rights organizations, Civil Societies, and other actors in the Kenyan transitional justice process. This research will also inform the Kenyan policy framework and guide policy evaluations, formulations and institutional reforms.
- iii. This research advances the knowledge in peace and conflict studies' field. The tripartite hybridity of TRC, ICC, and Indigenous approaches to peacebuilding, forms a new avenue that can be replicated elsewhere in societies emerging from protracted conflicts around the world.
- iv. This study will also contribute to the development of theoretical knowledge and especially grounded theory through the data collected from a multi-ethnic context comprising of 42 tribes with diversified values, norms and traditions. Contemporary theories will be tested against the field data, re-evaluated and new critiques generated.
- v. The implementation of the results of this research will facilitate mending the impaired social fabric and the restoration of relationships between the 42 ethnic groups in Kenya.
- vi. Globally, ethno-political and intrastate violence has become a world affair. Therefore, apart from benefiting Kenya, this research will be a blessing to other countries emerging from violent conflicts and struggling with transition justice

vii. In sum, this research is timely and long overdue because it seeks to investigate the root causes of ethno-political violence in a bid to find a lasting solution towards sustainable conflict transformation, reconciliation, and peacebuilding in Kenya.

5. A description of the potential risk, if any, to the participant. If the risk of harm is more than minimal, (i.e., harm greater than that which one might experience in the normal conduct of one's everyday life), an explanation of how participants who actually experience harm will be helped. If appropriate, a list of helping resources should be provided.

TCPS ethical guidelines maintain that any research should balance harms and benefits. That is to say that the benefits must outweigh the harms. In minimizing harms, "Research subjects must not be subjected to unnecessary risks of harm, and their participation in research must be essential to achieving scientifically and societally important aims that cannot be realized without the participation of human subjects."²⁷ There are no potential risks or harm expected in this research. However, to a very minimal or negligible instance, (equal or less to what one might experience in the normal conduct of everyday life) there might be one or a couple of participants who may get emotional when talking about their experiences about past ethno-political violence in Kenya (although it is not expected). The benefits of this study namely long-term and sustainable conflict transformation, reconciliation, and peacebuilding, outweighs any minimal emotional expression, if any, which might be expressed in the course of the interviewing process. This study will be committed to the advancement of human condition and expressed interests through collaboration and active involvement of research subjects.

However, no chances are taken in this study. In the event that any of the participants in my study becomes emotional during the interviewing process, there will be two means of interventions: (1) As a trained and experienced counsellor, I will facilitate counselling and guidance (I did guidance and counselling as a course through my Bachelors in Social Work at the University of Nairobi-Please see the scanned certificate. I was also employed as a counsellor and social worker with compassion international for 7 years). (2) If the case requires referral, I will facilitate that by linking the participant to professional counselling agencies around Kenya. Some of the counselling agencies that I would consider for linkage and referral and some of which have

²⁷ <http://www.pre.ethics.gc.ca/eng/policy-politique/tcps-eptc/context-contexte/> Accessed 12-2009

satellite centres and branches around the country include the following:

List of Targeted Counselling Agencies in Kenya

- i. Kenya Association of Professional Counsellors
P.O. Box 55472 -00200 Nairobi
Tel: 254(20)- 3741051, 3741056, 3741123.
Mobile 0721296912, 0733761242
Web: www.kapc.or.ke
Email: nairobi@kapc.or.ke
- ii. Amani Counselling Centre and Training Institute
Mbagathi Way
P.O. Box 41738 - 00100, Nairobi, Kenya.
Tel: 6002672 / 3
Fax: 6002674
Cell Phone : 0722 626 590; 0733 263 870
E - Mail : info@amanicentre.org
- iii. Family Life Counselling Association Of Kenya
POB 18077, Muchumbi Road South B
Nairobi, Kenya
Tel: 558926/555977
Fax: 544640
- iv. Coalition on Violence Against Women (COVAW)
Ngong Road, near Adams Arcade
P O Box 7631
Nairobi, Kenya
Tel: 254-2-574357/8
Fax: 254-2-574253
Email: covaw@iconnect.co.ke
- v. Caritas Kenya, c/o Kenya Episcopal Conference,
P.O. Box 13475, 00800 Nairobi, Kenya
Telephone: +254 727 802 810
Fax: +254 204 442 910
Email: caritaskenya@catholicchurch.or.ke info@caritaskenya.org
Website: <http://www.caritaskenya.org>
- vi. Tumaini Counselling Centre
Email: Tumaini.ac@aimint.net
Phone: 254-020 2614595, 254-733-687050, 254-020 2614596, 254-728-606911 (cell)

- vii. Kenya Institution of Professional Counselling
P.O. Box 14404
Nairobi, Kenya 00100
Phone: +254 020 336732
- viii. Mzima Springs Counselling Centre
P.O. Box 68198
Nairobi, Kenya
Phone: +254 020 572745
- ix. Oasis Counselling & Training Institute
Ufungamano House, 5th Floor, State House Road
P.O. Box 76117
Nairobi, Kenya
Phone: +254 020 2715023
- x. Psychological Services Ltd.
Gogo Falls Lane, Off Lang'ata South Road Hardy Estate, Lang'ata
P.O. Box 61342
Nairobi, Kenya
Phone: +254 020 891037
- xi. Rehabilitation Centre for Victims of Violence
Gogo Falls Lane Off Lang'ata South Road, Hardy Estate
P.O. Box 61342
Nairobi, Kenya
Phone: +254 020 890839

6. An indication of whether the data will be anonymous (contain no personal identifiers) or confidential (contain personal identifiers). If the latter, a description is required of the steps the researcher will take to protect the confidentiality of participants. Explain who will have access to information collected, as well as specifically where and how it will be stored. If neither anonymity nor confidentiality can be guaranteed, participants should be made aware of possible consequences.

To maintain confidentiality pseudonyms to represent all study participants.

A description of any form of credit or remuneration for participating, including when and how it will be provided.

Participants will not be compensated for participation in this study. Nevertheless, the implementation of the findings of this study is expected to facilitate sustainable conflict

transformation, reconciliation, and peacebuilding across the community divide which is the greatest indirect benefit or compensation the participants can ever ask for. This coincides with what TCPS terms as the 'need for research': "Research involving human subjects is premised on a fundamental moral commitment to advancing human welfare, knowledge and understanding, and to examining cultural dynamics...meant to: for example, to alleviate human suffering, to validate social or scientific theories, to dispel ignorance, to analyze policy, and to understand human behaviour and the evolving human condition."²⁸ However, during the interviews, respondents will be invited to share lunch and drinks. If the participants request to take photos with the researcher in the course of this study, copies of such photographs will be processed and given out as gifts.

7. A description of how the participant may withdraw from the research, without negative consequences.

This study respects and guards the principle of voluntariness. In this study, participation will be based on a voluntary will from the subjects. This means that the target participants will participate or withdraw willingly. As TCPS indicates, coerced participation may be in the form of "inducement, deprivation, or the exercise of control, or authority over prospective subjects" (Article 2.2). In this study NO form of coercion, inducement, or domination will be exercised. All the participants in this study will have the freedom and the right to withdraw from the research at any time if they wish, withhold information, or decline to answer certain question without negative consequences. When going through the informed consent information, the researcher will clearly make each participant aware about their right and freedom to withdraw. The freedom to withdraw from the study is entrenched in TCPS which describes the respect for human dignity which includes respect for privacy and confidentiality, respect for justice, balancing harms and benefits as the cardinal principle of modern research ethics.²⁹

8. A description of the debriefing, if any, that will be provided to the participant immediately after data collection. Such debriefing is normally required.

After data collection, the research will summarize the information that will have been disclosed during the interview process. Debriefing will start as follows: "*Well before we end this*

²⁸ <http://www.pre.ethics.gc.ca/eng/policy-politique/tcps-eptc/> Accessed 13-12-2009

²⁹ Ibid

discussion I would like to summarize what we have discussed...” The participants will be asked to confirm if everything said in the summary represents to the best of their knowledge what was shared and disclosed during the interview. Any discrepancy noted in the information will be corrected and re-confirmed with the participant. The researcher will end by thanking the participant for committing their time and energy to the process and for participating in the interview.

9. A description of how and to whom research results will be disseminated.

In this study participants will have a right to the results of research. This is echoed by the American Anthropological Association (AAA) which asserts that the integrity, transparency, accountability, and honesty can be promoted if, “scholars have full opportunity to study peoples and their culture, to publish, disseminate, and openly discuss the results of their research, and to continue their responsibility of protecting the personal privacy of those being studied and assisting in their research...”³⁰ Through the informed consent form, all the participants will have an option to receive a summary of the final report when completed. For those who would choose to receive a summary of the final report, they would receive it as a hard copy mailed through the post or a soft copy emailed as per their preferences. During the informed consent process, the participants will also be made aware that the research results will be disseminated to the researcher’s thesis committee before the writing of the final doctoral thesis.

10. A description of how and approximately when (MMYY) a brief (1-3 pages) summary of results will be provided to the participant. Normally, participants should be given a choice of mechanisms (e.g., mail, email) by which to receive a summary.

A summary of results will be provided to the participants either through mail or email as per their choice or preference. This is expected to be in December 2012, immediately after transcription of data is completed.

³⁰ Statements on ethics: Principles of Professional Responsibility. Adopted by the Council of the American Anthropological Association. May 1971. <http://www.aaanet.org/stmts/ethstmnt.htm> Accessed: 13-12-2009

11. A description of how and approximately when (MMYY) confidential data (if any) will be destroyed. Anonymous data may be kept indefinitely.

The original data that has the names of the subjects including all the audio recordings and field notes will be stored under key and lock in a safe within the researcher's office in the course of the research and after the research. After transcribing the data, the audio recordings will be deleted permanently while all the field notes and paperwork will be shredded and burned. This will be done after six months (December 2012), when data transcription is expected to have been finished.

Your signature on this form indicates that you have understood to your satisfaction the information regarding participation in the research project and agree to participate as a subject. In no way does this waive your legal rights nor release the researchers, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from the study at any time, and /or refrain from answering any questions you prefer to omit, without prejudice or consequence. Your continued participation should be as informed as your initial consent, so you should feel free to ask for clarification or new information throughout your participation.

The University of Manitoba Research Ethics Board(s) and a representative(s) of the University of Manitoba Research Quality Management / Assurance office may also require access to your research records for safety and quality assurance purposes.

This research has been approved by the [Joint Faculty Research Ethics Board]. If you have any concerns or complaints about this project you may contact any of the above-named persons or the Human Ethics Coordinator (HEC) at 1 204 474-7122. A copy of this consent form has been given to you to keep for your records and reference.

Participant's Signature..... Date

Researcher and/or Delegate's Signature.....Date.....