KENYA DEFENCE FORCES AND MILITARIZATION OF INTERNAL DISPUTES, 1963 - 2013

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DECLARATION AND RECOMMENDATION

Declaration

This thesis is my original work and has not been previously submitted for any award in this or any other institution.

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Recommendation

This thesis has been submitted with our recommendation as the University supervisors.

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DEDICATION

This work is dedicated to my grandmother, the late Willimina Akiko Itwani, her spouse the late Samuel Omongo, and to the six generations of the Ikamarinyang clan in the following descending chronology:

Okolo the father of Abelekwap

Abelekwap the father of Anyait

Anyait the father of Omongo

Omongo the father of Ichana Aguruma

Ichana Aguruma the father of Samuel Omongo

Samuel Omongo the father of David C.C. Ichani

David C.C. Ichani the father of Xavier Francis Ichani

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ABSTRACT

Military intervention has attracted a lot of scholarly attention in the recent past, with many scholars interested in interrogating the motives and justifications for the practice. Many of these studies have mainly focused on military intervention externally rather than the involvement of the military in internal security operations. By examining the rationale and dynamics of Kenya Defence Forces' (KDF) interventions, this study sought to put forward a prism for internal military intervention based on normative principles of military intervention short of war and justified under existing legal frameworks. The study analysed, the *Shifta campaigns* (1964-1967), *Operation Okoa Maisha* (2008) and the ongoing *Operation Linda Nchi*, in which the KDF interceded to explain how and why it was necessary for it to intervene in these internal disputes which should have been within civil police jurisdiction. The study was guided by the military centrality theory, the theory of securitization and the just war tradition. The military centrality and securitization theories explained circumstances warranting military intervention while the just war theory addressed issues relating to the right to intervene, the right conduct in operation and concerns of justice after the intervention. The conduct of the interventions were assessed against international norms and rules of military engagement. The study utilized both exploratory research and historical research design. The target population was subject to stratified and purposive sampling. Primary data was collected through oral interviews and Focused Group Discussions from a sample size of 210 informants. Collected data was grouped, and corroborated with archival and secondary data and presented using the qualitative research techniques in themes corresponding with the objectives of the study. From the analysis, this study found that there are many normative principles guiding internal military operations. However, operational challenges faced by the military may result in violation of human rights and other constitutional contravention which are often condemned by civil society organizations. Amidst these criticisms, the KDF was legally justified to intervene under the provisions of the UN Charter and the Constitution of Kenya. The major proposition of the study was that, although military interventions may not enlist local support, they are more decisive in ending disputes. As such, the state should not hesitate to deploy her military when such crises occur. However, caution must be taken to ensure that military interventions are conducted strictly in line with the existing normative principles of conduct of hostilities to mitigate excessive use of force.

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LIST OF ABBREVIATION AND ACRONYMS

3 KAR	Third Kings African Rifles
5 KAR	Fifth Kings African Rifles
AIAI	Al-Ittihaad al-Islami
AMISOM	African Mission in Somalia
ARPCT	Alliance for the Restoration of Peace and Counter Terrorism
ARS	Alliance for the Re-liberation of Somalia
ASTU	Anti- Stock Theft Unit
CIA	Criminal Intelligence Agency
CIMIC	Civilian-Military Cooperation
CMO	Civil-Military Operation
CMR	Civil-Military Relations
CSB	Collapsible Straight Baton
DFC	Defence Forces Act
DDR	Disarmament Demobilisation and Reintegration
DRC	Democratic Republic of Congo
ECOWAS	Economic Organization of West African States
ECW	Electronic Control Weapon
FORD	Forum for the Restoration of Democracy
GSU	General Service Unit
IBEAC	Imperial British East Africa Company
IBHR	International Bill of Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
ICU	Islamic Court Union
IEDs	Improvised Electronic Devices
IGAD	Inter-governmental Authority on Development
IHL	International Humanitarian Law
IHRL	International Human Rights Law

IOs	International Organizations
KA	Kenya Army
KADU	Kenya African Democratic Union
KAF	Kenya Air Force
KANU	Kenya African National Union
KAR	Kings African Rifles
KDF	Kenya Defence Forces
KHRC	Kenya Human Rights Commission
KLA	Kenya Land Alliance
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Police Service
LCHR	Law of Armed Conflict and Human Rights
LICs	Low Intensity Conflicts
LOAC	Law of Armed Conflicts
MIC	Militarized Intra-state Conflicts
MID	Militarized Intra-state Dispute
MOOTW	Military Operation Other Than War
MP	Members of Parliament
MRC	Mombasa Republican Council
MSF	Medicines sans Frontiers
NATO	Northern Atlantic Treaty Organization
NCTC	National Counter Terrorism Centre
NED	New English Dictionary
NFD	Northern Frontier District
NFDD	Northern Frontier District Delegation
NGOs	Non-Governmental Organizations
NPPPP	Northern Province Peoples Progressive Party
NPS	National Police Service
NYS	National Youth Service
OAU	Organization of African Union
OCs	Oleoresin Capsicum (spray)
PSO	Peace Support Operations
R2P	Right to Protect
RDU	Rapid Deployment Unit

RPG	Rocket Propelled Grenades
SLDF	Sabaot Land Defence Forces
SNA	Somali National Army
SNM	Somali National Movement
SNS	Somali National Society
SPM	Somali Patriotic Movement
SSDF	Somali Salvation Democratic Front
SYC	Somali Youth Club
SYL	Somali Youth League
TFG	Transitional Federal Government
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNDSS	United Nations Department of Security and Safety
UNPKO	United Nations Peace Keeping Operations
UNPSO	United Nations Peace Support Operations
UNPOS	United Nations Political Office for Somalia
UPDF	Uganda Peoples Defence Forces
US/USA	United States of America
USC	United Somali Congress
USSR	Soviet Union
VCPs	Vehicle Check Points
VIPs	Very Important Persons
WFP	World Food Programme

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Military intervention refers to the use of military force to restore and maintain peace in a conflict zone when all other instruments of state power or mechanisms have failed to solve a conflict by peaceful means.[1] Military intervention in internal conflicts poses challenges to the military as well as to the civilians in the area of the operation, given the accusations of human rights abuse and extra-judicial killings levelled against the military personnel as they strive to execute the mandate of the right to protect (R2P).[2] The military also faces a dilemma of whether to intervene or not in internal armed disputes. In some cases, a military operation that may be intended to last for a day may become protracted. Such military intervention may also intensify fighting, and thus worsen the situation. Interventions also lead to the presence of the military in conflict areas, which may translate to military occupation and attract divergent interpretations. Similarly, the widespread criticism that follows militarization of internal disputes may obscure any benefits of such operations. As such, military operations are not only a gamble but are also abhorred.

The end of the Cold War unleashed political forces previously kept in check by superpowers. This means that while there is relative stability in the international system, some sovereign states are embroiled in violent internal conflicts pitting state security agencies against civilian populations. Such conflicts between government forces and civilian factions take the form of civil wars, insurgencies, genocides, ethnic cleansing, coup d'états and secession wars, which have increased since 1990s.[3] Williams and Bunton refer to these conflicts as 'new wars' where non-state actors are increasingly challenging the legitimacy of state organizations as they seek rights and influence that have traditionally been withheld by the state.[4] A number of African countries, including Kenya, have experienced such wars. Indeed, these internal disputes create instability which subverts democracy and good governance, warranting military interventions.

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[1] Antonio, Oliveira. "The use of military force in the management and resolution of conflicts." JANUS.NET e-*Journal of International Relations*, Vol. 7, No. 1, 2016, 1-12.

[2] Roland, Paris. "The Responsibility to Protect and the Structural Problems of Preventive Humanitarian Intervention", *International Peacekeeping*, Vol. 21, No. 5, (2014)569-603.

[3] Hailey N. Bennet., "Causes of Third Party Military Intervention in Intrastate Conflicts" Senior Honors Project, (James Madison University, 2015), 7.

[4] Charles L. Williams and Martin Bunton, A *History of Modern Middle East* (Boulder: West View Press, 2013), 200.

Hauss argues that, until the early 2000s, military force was often used to achieve a state's geopolitical interests in international context.[5] It was rare for states to use force for humanitarian reasons or in pacifying internal disputes. The increase in intra-state conflicts has therefore provided new security challenges demanding increased use of the military to end internal disputes.[6] Military intervention aimed at enforcing law and order thus becomes an additional role of the military over its traditional role of protecting geopolitical interests of a sovereign state. This is in contrast to the fact that maintenance of law and order within the country is by law the jurisdiction of the civil police rather than the military.

Internal military operations are guided by special rules for opening fire.[7] The Hague Convention, the Law of Armed Conflict (LOAC) and the International Humanitarian Law (IHL) set rules of engagement regarding hostilities in internal military operations. For instance, the principle of non-intervention invokes the right of every sovereign state to conduct its own affairs without external interference. Management of internal disputes is also largely a state affair. According to David Lipmann, international law does not outlaw the use of force as a means to settle disputes occurring within states.[8] This is because international law treats intra-state conflicts as a matter of domestic jurisdiction to be decided solely by the affected state in accordance to the principle of sovereignty. Therefore, in the event that there is civil strife in any country, the state is at liberty to use civil police or involve the military to end the conflict. Whereas police deal with minor internal security operations, the military is deployed in more grave situations as sanctioned by the national constitution and national security policy. When called upon to assist the civil police in maintaining or restoring law and order, armed forces are expected to deal with the situation professionally. They are to exercise use of force that is commensurate with police force. Troops may also conduct the operation in the context of the regulations governing United Nations Peace Support Operations (UNPSO). The troops can only do so if they have been given comprehensive training and have a clear understanding of the law applicable to internal security operations. In Kenya pre-deployment training is only offered prior to Peace Keeping missions.

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[5] Charles Hauss, "Military Intervention," in *Beyond Intractability* ed. Guy Burgess and Heidi Burgess, (Boulder: University of Colorado Conflict Research Consortium, 2003), 26.
[6] Ibid, 28.
[7] Bonn O.G. Nwanolue Frhd, et al., "Military Operations Associated With Internal Security and Special Rules for Opening Fire in Armed Conflicts", *International Journal of Asian Social Science*, Vol. 2, No.7, (2012), 1151 -1160.
[8] David Wippman, "Change and Continuity in Legal Justification for Military Intervention in Internal Conflict", *Journal of Law Library*, Vol. 19, No. 3, (1995), 12.

Although the international humanitarian law does not apply in situations of internal disturbances, the LOAC and the IHRL define rules of engagement that enable state militaries to balance their national commitment while adhering to international legal instruments on use of force. Schindler and Toman posits that the LOAC and IHRL guide commanders to enable them to conduct military operations in accordance with the law.[9] These laws notwithstanding, parties to conflict including the military have, not once, flouted existing legal framework during armed hostilities. More so, the military may act in total disregard of rules concerning the use of force that may be pertinent in proper conduct of internal security operations as well as limiting instances of human rights violations.

The use of force to beget peace ascribed to realism and the centrality of military in state security has spanned centuries. The legendary Chinese philosopher Sun Tzu is quoted saying, "The art of war is of vital importance to the state. It is a matter of life and death. A road either to safety or to ruin."[10] Hans Morgenthau, the father of realism, believed that international politics is fundamentally a struggle for power and that peace is often tenuous in a world lacking a sovereign authority that can protect the interests and survival of individual states.[11] Assessment of current national capabilities have focused on gross military capability as their proxy for national power.[12] George Modelski and William Thompson further hold that the size of naval forces was an indicator of projectable national power in international politics between 1494 and 1983.[13] These assertions underscore the significance of the army in safeguarding the interests of the state and of all its citizens. Therefore, establishment of force with the capability to execute national defence policy is a prerequisite for any sovereign state.

Taking the central political function of the military into cognizance, the late Mzee Jomo Kenyatta, the first President of Kenya, considered the armed forces as a key pillar of the country's stability.[14] For this reason, the new state in did not only constitutionally formalize the establishment of the armed forces through an Act of Parliament in 1963 but also hastened the 'Kenyanization' process of the post-independence army by replacing colonial British

[9] Dietrich Schindler, and Jiri Toman, *The Laws of Armed Conflicts* (London: Martinus Nihjof Publishers, 2010), 1152
[10] Lionel Giles, *Sun Tzu on the Art of War* (London: 1910), 1.
[11]Hans Morgenthau, *Politics Among Nations*, 4th ed. (New York: Alfred A. Knopf, 1967),pp. 106–158
[12] Inis L. Claude, *Power and International Relations* (New York: Random House, 1962), 14.
[13] George Modelski and William R. Thompson, *Sea Power in Global Politics*, 1494–1983 (Seattle: University of Washington Press, 1987), 48.
[14] William F. Gutteridge, *Military Regimes in Africa* (Methuen & Co. Ltd. London 1975), 5.

commanders with natives promoted through ranks. The government also deployed the military to quell internal disputes in Kenya in the early years of independence.

Clausewitz's dictum that the application of military power should never be thought of as something autonomous but always as an instrument of policy,[15] continues to play a central role in the security policy of many nations. The US army for instance can be used in its purest sense to physically defeat an adversary. It may also be used to influence, coerce, deter, and compel other states or groups. Further, military power is used to reassure the public about the government's commitment to pursue national interests of the state.[16] Similarly, the proportion of the use or threat to use force as an instrument of national security is fundamental to Kenya. The military intervention against, Al-Shabaab for instance was instituted to advance Kenya's national interest against threats of terrorism propagated by extremist groups freely operating from Somalia.[17] As part of the conventional wisdom of statecraft, the military is regarded as a force of last resort when police and paramilitary police fail to contain the situation.[18] The IHL holds that priority should always be given to civil police in responding to domestic humanitarian needs, but it is also necessary to plan for the possibility of military intervention.[19]

Due to the prevalence of internal disputes, the United Nations (UN) has created avenues to exercise the use of force in internal conflict situations. The creation and implementation of an intervention brigade or regional standby forces to fight armed groups is one of the mechanisms adopted by the African Union (AU) for establishing safety zones.[20] Writing in support of military intervention, George argues that history supports the view that efforts to deal with conflicts solely by means of peaceful diplomacy do not always succeed and may

[15] Carl Von Clausewitz, *On War*, ed. and trans. Michael Howard and Peter Paret (Princeton, New Jersey: Princeton University Press, 1989), 75

[16] John F. Troxel, "Military Power and the Use of Force" in *U.S. Army War College Guide to National Security Policy and Strategy*, 2nd ed. Boone J. Bartholomeus, Jr (New York, U.S: Army War College, 2006), 217-241

[17] International Crisis Group. Africa Reports No. 95, *Counter-Terrorism in Somalia: Losing Hearts and Minds?* (2005), 16; and No.100, *Somalia's Islamists*, (2005), 37; and Briefing No.74, *Somalia's Divided Islamists*, (2010), 6.

[18] MCDA Guidelines, "Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies", (2006), 3.

[19] MCDA Guidelines, Guidelines on the Use of Military, 4.

[20] Mestre A. R. Venâncio, "The Use of Force as a Mechanism for Conflict Resolution: the Case of the Great Lakes Conflict". *Revista de Ciências Militares*, Vol. 3, (2015), 223-240.

result in substantial damage of any state interest.[21] Based on this school of thought, nations have always rallied their armies against internal threats to national security. In Africa, the deployment of the military for internal security operations is not new. Kenya deployed her military against the secessionist movement in 1964. Nigeria did the same in 1967 when it deployed her army to quell the Biafra secessionist conflict. Use of the military to avert crisis has also occurred in Democratic Republic of Congo (DRC), Sierra Leone, Liberia, Sudan, and in Uganda in the past. Similar strategy has also been used in quelling intra-state violence in Somalia, Ethiopia and Sudan.

The Kenya Defence Forces (KDF) owes its origins to the pre-colonial indigenous armed forces and the Kings African Rifles (KAR) established in 1902 to pacify the territory within Eastern Africa.[22] The military has played an integral part in intrastate conflicts in Kenya. In the colonial period the KAR and the British forces pacified any internal revolt against the colonial administration. After independence, KAR was renamed the Kenya Armed Forces. Following the promulgation of new constitution on 27 August 2010, the Kenya Armed Forces was rechristened the Kenya Defence Force.

Since 1963, the military in Kenya has been charged with the role of protecting the country against both external and internal aggression among others. Internationally, KDF participates in United Nations Peace Keeping Operations (UNPKO) and it is ranked sixth worldwide out of the ninety countries contributing troops to U.N Peace Keeping Operations.[23] Internally, KDF has been deployed to certain regions of the country, to quell internal disputes. As mentioned earlier, the first military assignment was against secessionist *shiftas* from 1964 to 1968. This internal operation lasted until the Wagalla massacre in 1984. Next, the military intervened during inter-ethnic strife resulting from cattle rustling in the North Rift through *Operation Nyundo.* Third, the military intervened against the Saboat Land Defence Force in the Mount Elgon conflict in 2008 in Operation *Linda Maisha.* The military has furthermore, intervened to resolve inter and intra ethnic disputes between agricultural and pastoralist communities in the country at different periods under dire circumstance of criminality and

[21] Alexander L. George, "Role of Force in Diplomacy: Continuing Dilemma for U.S. Foreign Policy" in *The Use of American Military Force in Post-Cold War World,* ed. Richard N. Haass, (Washington D.C. Carnegie Endowment 1994), 199-204.
[22] Donovan C. Chau, *Global Security Watch – Kenya* (Santa Barbara: Praeger, 2010), 26.
[23] Permanent Mission of Kenya to the U.N, Peacekeeping Operations: Kenya Mission to the United Sates, www.un.int/Kenya/peacekeeping.htm, Accessed on 29 May 2012.

humanitarian needs. The military also intervened during the Kenya post-election violence in 2007/2008.[24]

Urban violence in major cities and towns has also occasioned military intervention. As was in the case of violence that rocked the country during the post-election violence in 2007/2008. The military has also in the past intervened during mutiny and the attempted *coups d'état*. As to mutiny, the first post-independence assignment of the Kenya military occurred January 1964 when the members of 11th battalion of the Kenya Army Rifles mutinied over pay.[25] Similar mutinies in 1971 and 1973 in Lanet also attracted military action. The army also intervened during the attempted military coup by disgruntled Kenya Air Force soldiers in 1982.[26] Internal upheavals in Kenya have therefore required military interception to restore normalcy.

Whereas most of these internal military operations were perceived to have delivered on the objectives set, internal military operations in Kenya faces two major challenges. Namely, sharp criticism from the civil society and cover-up from the government. On one hand, the military is accused of gross human rights violation and on the other hand the government has always defended the operations and absolved the military of any wrongdoing. The recurring trend of accusations and counter-accusations and the general outcry over the conduct of the operations raises more questions than answers. It also casts doubt on the level of professionalism of the military and the ability of it to apply international norms and principles in the conduct of domestic operations. More so, lack of proper communication strategy on military operation has kept the public ignorant of the 'truths' about internal security operations. The criticism form civil society and cover-up on the side of the military have proved counter-productive and continue to mask the significant role played by the military in enhancing national security. Moreover, the accusations levelled against the military operations have adversely affected the overall mission success of internal operations.

1.2 Statement of the Problem

As an internationally recognized sovereign state, Kenya is legally bound to protect its national interests. Such interests include preservation of territorial integrity, establishment of peace and security, maintenance of law and order, consolidation of mature and versatile

[24] CIPEV, *Report of the Commission to Investigate Post-Election Violence in Kenya* (Nairobi. Government Printers, 2009), 29.
[25] Chau, *Global Security Watch-Kenya*, 9.
[26] Ibid, 26.

political system and promotion of national development. The KDF is charged with the responsibility of fulfilling some of these functions. Whereas KDF's international operations are well known, little is being said about its internal operations making it to appear as an organization confined to the barracks and only visible during ceremonial parades. Further the debate and criticism surrounding the contentious use of the military in internal disputes resolution has discredited the role of KDF in promoting national security. Not until contentious issues surrounding internal military interventions such as circumstances warranting intervention, its justification and success are addressed, military interventions in Kenya will remain controversial. It is on the backdrop of these criticism that this study analyses the dynamics of selected cases of the Kenya military interventions in order to make policy recommendation on conduct of internal security operations that will help to demystify accusation levelled against internal military interventions.

1.3 Objectives of the Study

The main objective of the study was to contribute to a more refined understanding of the history of military operations in internal disputes in Kenya. The study was guided by the following specific objectives:

i) To interrogate the normative principles that guided military interventions in internal disputes in Kenya from 1963 to 2013.

ii) To examine the circumstances that warranted increased military intervention in selected internal security operations in Kenya between 1963 and 2013.

iii) To evaluate the justification for the KDF's intervention in selected internal disputes in Kenya from 1963 to 2013.

iv) To assess the outcomes of military interventions in the pacification of selected internal disputes in Kenya from 1963 to 2013.

1.4 Research Questions

The study broadly endeavoured to answer the following question. How did the Kenyan security agencies construct national security threats warranting the deployment of the military in internal disputes from 1963 to 2013? The study was guided by the following specific research questions:

i) Which normative principles guided the conduct of military interventions in internal disputes in Kenya from 1963 to 2013?

ii) What were the underlying circumstances that warranted increased military involvement in internal security operations in Kenya from 1963 to 2013?

iii) To what extent were military interventions in various internal disputes in Kenya from 1963 to 2013 justified?

iv) How successful were internal military interventions in Kenya between 1963 and 2013?

1.5 Purpose of the Study

Military action spans a continuum of operations ranging from peace time operations to full blown war. Conduct of such operations, requires the military to train and simulate various manoeuvres that depart from normal mission's essential list stipulated in war manuals. However, the current military doctrine and training manuals seldom address internal military operations. The purpose of the study was thus to contribute a body of knowledge that act as prism against which internal operation are modelled. This goes long way in improving the current conduct of internal military operations based on existing international and domestic legal frameworks as well as international best practices of military intervention in operations other than wars.

1.6 Significance and Justification of the Study

African Union resolution "Silencing the Guns in Africa by 2020" seeks to end all wars, civil conflicts, gender-based violence, violent conflicts and preventing genocide in the continent by 2020. With a year to go, there are doubts whether this is attainable. Going by history of similar resolution before, "never again", "responsibility to protect", the continent is certain that internal threats warranting military intervention are likely to persist given the recurring of more military adept insurgent groups requiring military power to resolve the existing controversies. Moreover, the last two decades have witnessed unprecedented use of the military in resolving internal disputes.[27] As states resort to military interventions in this new face of conflict, the use of the force though contestable will remain a source of hope for many nations. Since conflicts threaten development, it's prudent to understand how the government of Kenya utilizers her security organs to provide the much needed security to achieve vision 2030 and agenda 2063.

[27] James Mbaka, "Parliament will be Stripped of its Powers to have a Say in Internal Military Deployment, If Proposed Amendments See Light of the Day", *The Standard*, 14 July 2014, 11.

The study provides knowledge that will help to avert operational challenges posed by internal military operations as well as the allegations of human rights violations associated with it. For instance, Kenya deployed the military in intra-state conflicts against the *Shiftas* in 1964-1967, the Saboat Land Defence Force (SLDF) in 2008 and the Al-Shabaab militant group in 2011, amidst criticism that has distorted an attempt to analyse the legal justification and success of such operations.

The study in particular devoted its attention to addressing the following questions about the KDF internal operations. First, why would the government deploy the military to quell intra-state disputes where the civil police should be involved? Secondly, why would the government resort to military intervention when other pacific mechanisms would have been used to mitigate the dispute? Thirdly, what is the basis of sharp against military operations? Fourth, can the military intervention be void of criticism? Finally, is the government justified letting the KDF take up some roles that were traditionally assigned to the National Police Service (NPS)?

The study therefore, sought not only to explore why the state military intervened but also to understand the moral and ethical grounds for continued militarization of intrastate disputes in Kenya. More so, to answer questions regarding legitimacy and effectiveness military interventions. The study was necessary because many of the studies done explain reasons for military intervention without justifying or assessing their success. The study provides scholarly basis for understanding the principles of internal military interventions, the dynamics and rationale for internal military operations. The lessons learned from the application of knowledge gathered in this study will provide answers to essential concerns surrounding internal military operations. In general, the findings of the study provide insights on a nobble approach of conducting internal military intervention while provoking little or no criticism.

1.7 Scope of the Study

The study examined the merits of the use of military in internal disputes resolution in Kenya between 1963 and 2013. Whereas the study traced the use of military intervention as a tool of statecraft from 1963 to 2013, much of the attention was on three selected internal disputes in which KDF intervened. These are: the *Shifta campaign* (1964-1968), the *Operation Okoa*

Maisha (2008 - 2012) and *Operation Linda Nchi* (2011-2013). The choice of these three internal military interventions was informed by a number of reasons. The *Shifta* war involved was a secessionist movement intertwined with perennial banditry. *Operation Okoa Maisha* involved inter-clan disputes over land. Banditry, cattle rustling and historical land injustice have since independence poised a security threat to Kenya. The *Operation Linda Nchi* was selected because it was a conflict linked to a terrorist group as well as an intervention that warranted the military to pursue an internal threat across the border into its hideout in Somalia.

Though the terms dispute and conflict may be used interchangeably in the discourse of this study. It is important to note that the two terms are distinct in the context of military interventions. Disputes refer to a short-term disagreement that can be easily resolved, while conflicts, involve long-term and deeply rooted issues that are non-negotiable.[28] Something that is non-negotiable is pre-set within the mind and the process of changing such thoughts is difficult. If left unresolved, disputes easily turn into conflicts.[29] The choice of the word 'dispute' over 'conflict' in this study was based on the understanding that conflicts are serious and intense episodes involving armed struggles, whereas internal disputes are situations of intense disturbances and tensions such as riots, and sporadic acts of violence.[30] Premised on this understanding, militarized internal disputes are controversies within a sovereign state in which there is either a threat or actual use of military force.[31] Moreover, disputes are amenable to peaceful resolution if and only when parties to the conflict opt for compromise as conceived in the words of Thomas and Kilmann to the effect that 'conflict is inevitable but combat is optional.'[32] Hence the need to explore better options in handling internal military interventions.

The years 1963 and 2013 mark the start and end of the period of study. This period is very significant in the history of military in Kenya. The year 1963 is the year of Kenya's independence as well as the year when the KDF was established by act of parliament, while

[28]John W. Burton, *Conflict: Resolution and Prevention* (London: Macmillan and New York: St. Martin's Press, 1990), 32.
[29] John W. Burton, "Conflict Resolution as a Political System." Working Paper No. 1. Fairfax, Virginia: Institute for Conflict Analysis and Resolution, (George Mason University, 1989), 6.
[30] ICRC, "International Security Operations" (Geneva: ICRC, 2002) p. 5.
[31] United States Department of Defence, US DOD Dictionary of Military and Associated Terms, (New York: US DOD Joint Publication 1-02), p. 16.
[32] Kenneth W. Thomas and Ralph H. Kilmann, *The Thomas-Kilmann Conflict Mode Instrument (*Mountain View, CA: CPP, Inc., 1974), 36.

2013 marked fifty years of Kenya's independence as well as the year that marked the end of Kenya's unilateral military against Al-Shabaab on rehatting to African Mission in Somalia (AMISOM). The researcher therefore found it prudent to analyse the milestones achieved by the department of defence in this period which also coincides the first half century of the making of the Kenyan nation. The KDF is one of the state departments that have earned both praise and condemnation during this period and thus it deserves a documentations of its activities in the historiography of Kenya.

The study was limited to factors warranting increased military intervention in intra-state conflicts, its justification and success. Whereas studying one conflict in detail would have generated meaningful data for the study, analysing the three conflicts in a single study offered the advantage of examining the rationale and success of military interventions in a comparative manner. Examining military interventions in three conflicts chronologically also helped the study to illustrate the changing dynamics of intervention, starting from counter-secession, to inter-clan disputes and finally counter-terrorism.

1.8 Limitations of the Study

In the course of the study, the researcher encountered a number of limitations and shortcomings. First, the field work was conducted in diverse areas of the country, including the former North Eastern province of Kenya, Mount Elgon sub-county in Bungoma County and in Nairobi County. Some of these areas were prone to insecurity and were also distant from the researcher operational base. To mitigate issues of insecurity and distance, the researcher made use of research assistance hailing from these regions. The searcher also employed the use of snowball techniques, and documentary research to minimize the shortcomings faced during fieldwork.

Another challenge faced during the study was scepticism among informants from the military. Informants from the military were also afraid of divulging classified information for fear of victimization. They also feared contravening the oath of secrecy that is administered to all military personnel. This is because, military issues are regarded as top secret guarded away from the general public or academia. The researcher however addressed these limitations by assuring the informants of confidentiality of their responses.

Another teething challenge for this study is that *Operation Linda Nchi* is still ongoing and hence chapter five analysing the concerns of this operation is left sort of 'unfinished'. The researcher intends to follow up after defence by a subsequent article in an academic journal on post-2013 KDF engagement in the Somalian conflict especially with the impending withdrawal of the AMISOM forces in the coming years.

1.9 Definition of Terms

Internal Disputes – refers to short term or sporadic violence between the government and rebel organizations or between two or more armed groups largely within but not limited to the territory of the state in question and include: revolts, rebellions, secessionist movements, mutinies, coup d'état as well as civil ethnic strife that are susceptible to negotiation.

Kenya Defence Forces – Comprises of the Army, Airforce and Navy which were formally called the Kenya Armed Forces until 2010 when it was designated as such by the new Constitutional dispensation.

Militarization - refers to the use of martial strategies, equipment and tactics by security organs other than the military to enforce internal security as opposed to use of police and other traditional law enforcement mechanisms.

Military Intervention – refers to use of military force to restore and maintain peace in a conflict zone when all other instruments of power or mechanisms have failed to resolve a conflict peacefully.

Normative Principles of Military Intervention – Are theoretical, legal and constitutional frameworks as well as international best practices, usually codified into law, that guide military operations. They include circumstances that warrant military action and the ethics of intervention.

Operation *Linda Nchi* - (Operation protect the country in Kiswahili) is a code word for Kenya military operation along the border and deep inside Somalia targeting bases and training camps of Al-Shabaab.

Operation *Okoa Maisha* – (Operation **s**ave Lives in Kiswahili) is a code word used to refer to the military intervention in Mount Elgon conflict.

Shifta War – Kenya military campaign against irredentist's movements in the former Northern Frontier District of Kenya between 1964 and 1967 in which ethnic Somalis attempted seceded and to join their fellow Somalis in the Greater Somalia in the period 1964 to 1968.

1.10 Literature Review and Theoretical Framework

1.10.1 Literature Review

Military intervention in intrastate conflicts by any of its various names and in any of its many forms is one of the most intensively studied fields in the post-Cold War period. As a result, the literature in the subject is voluminous and of mixed quality. It is also multidisciplinary spanning several disciplines, such as military strategy, political science, religion, international relations and history. A number of scholars from these fields have contributed to a more refined understanding of this phenomenon through their works.

The purpose of this section was to identify the major theoretical works of the proponents who have shaped our understanding of military intervention in internal disputes as well as expounding on theoretical paradigms to be used in this study. The identification of these works and their brief summaries allows the readers to put this study in perspective. Several books, journal articles were synthesized and analysed to identify important themes and aspects of military intervention. Thus, the literature review in this section is presented in themes corresponding to the objectives of the study rather than the funnel approach desired by most social studies. The first section of literature review examined the normative principles of military intervention in internal disputes. This is sometimes regarded as internal military operations. The second section examined issues and threats that have warranted increased involvement of the military in internal disputes in the world, particularly in Africa. The Third section examined literature on justification of military intervention and the fourth and final part examined literature evaluating success of military interventions.

1.11.1.1 Normative Principles Guiding Internal Military Interventions

In regards to first theme, normative principles of military intervention, it is worthwhile to note that military interventions in Nigeria fall under general internal security operations. Azinge defines internal security operations as those acts carried out by domestic security agents such as the police, customs services, immigration services, and others for the purpose of containing domestic threats to national security.[33] These threats are often of serious magnitude and include dire cases of riots, demonstrations, strikes, communal clashes, terrorism, election related violence, civil wars, and ethnic clashes, civil strife and the likes,

[33]Epiphany Azinge, "Military in Internal Security Operations: Challenges and Prospects." A Paper Presented at the Nigerian Bar Association 53rd Annual General Conference on 23 August 2013. (Tinapa Calabar, 2013), 4.

which normally fall outside the constitutional duty of the military.[34] Although the main function of the military is to protect the nation against external aggression or threats, occasionally the military may be required to assist the civil authorities to deal with internal violence and suppress internal tension. For instance, the military may be required to assist the police in restoring law and order in any part of the country. This function of the military is called aid to civil authority. Azinge's findings are relevant to study as it points out that military is mandated to aid civil authority in maintaining national security. It however silent on under what circumstances or threshold of insecurity should the military be called upon to intervene internally.

Military aid to civil authority is necessary in enhancing state security. According to Brown, Nigeria's national security is predicated on her national interest as well as her strategic calculations within the region and in the global arena.[35] The nation's strategic interest must therefore be protected by all means including military force. This is because a nation's stability attracts investment and boosts its entrepreneurial needs. Therefore, the overall implementation of the country's foreign policy cannot be achieved by one sector alone. A combination of all elements of national power is needed. Thus the military remain a vital element in the overall national security strategy.[36] This study examined the national security objectives that military interventions seek to attain. It also interrogated the nature of insecurities that warrant military intervention.

The end of the Cold War thrashed countries into the miasma of civil wars, ethnic violence and other internal disputes. Internal disputes have increasingly polarized national security, which in most cases is defined in military terms. Thus military involvement in the internal security operations is inevitable as the need for higher levels of aggression to counter civil strife continues to reveal itself. A major issue in the post-Cold War period among new democracies is whether military forces should be deployed in domestic law enforcement missions. In many developed countries, this practice is not even questioned due to the traditional involvement of the military in law enforcement missions.[37] However, in some

[34] Ibid, 4.
[35] Peterside Z. Brown, "The Military and Internal Security in Nigeria: Challenges and Prospects," *Mediterranean Journal of Social Sciences,* Vol. 5 No 27, (2014), 2.
[36] Ibid, 5.
[37] Maria J. M. Rasmussen, "The Military Role in Internal Defense and Security: Some Problems", Occasional Paper No. 6, the Center for Civil-Military Relations, (California: Naval Postgraduate School Monterey, 1999), 16.

nations the involvement of the military in internal operations is abhorred due to gross human rights violation that come with military operations. The study drew parallelism in terms of conduct of military operations between Kenya, Nigeria and Uganda in attempt to discern human rights violation committed by the military in the three intervention under examination in this study.

María José Moyano Rasmussen argue that since 1999, Nigeria has witnessed different forms of conflict ranging from sectarian to ethno-religious crises, mass abductions, hostage taking, arsons, incidents of cattle rustling and terrorism. These internal disputes have subjected Nigeria's democracy to test.[38] Further, rampant crimes of armed robbery, kidnappings, pipeline vandalism, crude-oil theft and civil unrest, abduction, hostage taking and ritual killings have had severe consequences on human and material resources of the nation. The study explored how civil strife and other non-military threats in Kenya made military intervention inevitable in selected internal disputes between 1963 and 2013 and whether all these were genuine or constructed threats to internal security in Kenya.

Within the overall context of internal operations, policing is a vital aspect of a nation's security. These functions may be performed by various organizations including civil police, paramilitary, and military forces.[39] The operations may also include normal police operations such as: investigation, detection, detention, and intelligence collection.[40] These normal operations are generally carried out under stipulated national laws and military codes of justice. There are, however, situations that warrant serious tactical operations with more robust force. In these situations, the military is best situated and trained to do so. The police functions under these circumstances is then relegated to provision of intelligence, search and seizure and manning checkpoints and roadblocks. The general control of the population and resources is then assumed by the military. These observations were relevant to the study as it points out that military and paramilitary can carry out policing operations and purely military operations depend on severity of the threats and from country to country.

[38] Rasmussen , "The Military Role in Internal Defense and Security," p. 17

[39] US Department of the Army, *Advisor Handbook for Stability Operations*, FM31-73, (Washington, D.C. US Army, 1967), p.5.

[40]Norman. A., Lacharite and Joan R., Wolfgang, *Police Role of Internal Security Forces in Internal Defense* (Maryland Kensington: American Institutes for Research, 1972), p.7

According to Puls, a variety of laws apply to the United States (US) forces during a peace operations. These may include the law of war, international human rights law, laws of the host nation, and US law and policy.[41] There is, however, no specific code of legal regulations to guide the military in internal disputes. This study examined laws applicable to external military intervention in the US leaving out universal practices. The study examined a list of general legal principles of the law of peace operations that guide troops globally and in Kenya. The study also examined the extent to which these laws and international best practices are implemented in Kenya and whether the military interventions contravened these rules.

The Law of Armed Forces stipulates the rules that guide all types of military operations associated with internal security operations.[42] The law stipulates the types of force available during military aid to civil power. It also outlines human rights law and standards that apply as well as guidelines on use of force. It states that in such circumstances, the primary role of the military is not to conduct hostilities against an organized armed opponent but to fulfil some of the functions normally carried out by the police in restoring and maintaining law and order. They must apply the constraints that guide police forces. The International Committee of the Red Cross (ICRC) however notes that the military do not become police overnight and since they are not trained to undertake such operations they have to adjust to their new role. The study undertook to establish whether internal military intervention in Kenya are guided by international law.

Internal security is very vital for the enhancement of sovereign and territorial integrity of any state. In this vein, any military operation is usually guided by special rules for opening fire in both international and non-international armed conflict. However, warring parties, including military operators have, at one time or the other slightly observed and or maximally disregarded these rules during armed hostilities.[43] In the foreword to the Handbook of International Rules Guiding Internal Operations, Bill Nott notes that application of the law of

[41] Keith E. Puls, "The Principles of the Law of Peace Operations' Practical Framework for Judge Advocates", A Master of Laws in Military Law Thesis, The Judge Advocate General's School, United States Army. (2001), 2.

[42]ICRC, *The Law of Armed Conflict: Internal security Operations –Part A* (Geneva: International Committee of the Red Cross. 2002), 1.

[43] Bonn O.G. Nwanule, et al., "Military Operations Associated With Internal Military Security and Special Rules for Opening Fire in Armed Conflicts," *International Journal of Asian Social Science*, Vol.2, No. 7 (2012), 1151-1160.

armed conflict and other regulation in the conduct of internal military intervention has proved to be a challenge. He argues that a common complaint heard from legal and non-legal military officers alike is that the international law relevant to their operations is a patchwork of provisions from many different treaties and customary rules, often without obvious operational meaning. And that these instruments are difficult to stitch together into operationally-relevant doctrine to guide internal operations.[44] Nott further asserts that another common complaint raised by troops is that terminology used in the laws and regulations tends to dominate discussions of this body of laws. These findings were relevant to this study as they sought to explore how Kenya military commanders interpret the laws of armed conflicts and whether they are faced with similar challenges when intervening internally.

Dill argues that the principle of proportionality has been deemed crucial to the regulation of armed conflict by international law, yet it is largely ineffective.[45] The principle prescribes that belligerent parties in war should not inflict collateral damage that is excessive in relation to the military advantage they seek with any hostile action. According to Janina Dill, the principle of proportionality as a rule of International Humanitarian Law (IHL), remains extremely vague because the law of proportionality fails to sufficiently guide combatants in the field. It also fails to adequately protect civilians in armed conflicts. Furthermore, the law has also failed to provide a standard for an unbiased assessment of the conduct of hostilities. Dill's argument is important for the study as it suggest it is an uphill task for a combatant acting in good faith to observe the principle of proportionality amidst operational challenges faced in hostile situations.

The 2010 Constitution of Kenya provides for military action in instances of internal disturbances. It stipulates that the duties of the Kenya Defence Forces, that is the Army, Navy and Air-force will be to defend the country from external aggression, maintain its territorial integrity and secure its borders from isolation on land, sea or air, suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President but subject to such conditions as may be prescribed by an Act of National Assembly. The military is also to perform such other functions as may be prescribed by an Act of the National Assembly. Thus, although the main function of the military is to protect the nation

[44]Andrew J. Carswell, *The Handbook on International Rules governing Military Operations* (Geneva: International Committee of the Red Cross, 2012), 2.

[45] Janina Dill, *Applying the Principle of Proportionality in Combat Operations* (Oxford: Oxford University Press, 2009), 2.

against external aggression or threats, occasionally the military may be required to assist the civil authorities to deal with internal violence and suppress internal tension.[46]

The literature reviewed in this section, has demonstrated that role of the military in internal security operations cannot be over-emphasized. The military is a central player in maintenance of internal security of a state. It has also demonstrated that international law regulates the conduct of internal security operations but the application of such laws has been a challenge. The study endeavoured to assess the justification and success of the Kenya Defence Forces operations in line with internationally defined norms and principles.

1.11.1.2 Circumstances that have Warranted Internal Military Intervention

Moving to the second theme of literature review on militarized internal disputes that have warranted increased military intervention, the study first identified a number of disputes and conflicts that are likely to attract military intervention. These disputes include: civil war, secessionist movements, state collapse regime legitimacy, mutiny, and military coup d'état as well as ethnic conflicts and resource-based conflicts. The study then interrogated what various scholars have documented about these threats.

The first iconic work that addresses military intervention in intra-state disputes is Murat Onder who argues that instances of military interventions in politics have become very common both in developing democratic or totalitarian regimes because of a number of reasons. [47] Onder articulates five outstanding theories that account for military intervention. These include: socio-economic development theory, socio-political development theory, the centrality of military theory, the conflict theory and regional difference theory.[48] From this discussion, we can conclude that military intervention is caused by a complex mix of historical, political, economic, personal, military, social, ethnic, and cultural factors. Thus, military interventions are random phenomena as many have argued. The study therefore analysed factors and circumstances that warrant military intervention in internal disputes in Kenya.

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[46] Council of Law Reporting, *The Constitution of Kenya, 2010, Article 241* (Nairobi. Council of Law Report, 2010), 39.
[47] Murrat Onder, "What Accounts for Military Intervention in Politics: Across National Comparison," Thesis, Florida State University, (2010), 17.
[48] Ibid. 17.

According to Mao Tse Tung, the essence of guerrilla warfare is not primarily military strategy of creating uproar in the East and strike in the West but on societal problems that lead to revolutions. He argues that understanding revolutions calls for understanding of the society in which social revolution is taking place.[49] Mao argues that revolutions are products of serious problems in social structure of its rural society, for instance in a society that is stratified and dominated by a few rich landlords and multitude of small holders. The first phase of guerrilla war starts with defeat and victory where the weaker forces conserve their strength, organize population through propaganda and form an army. Phase two is strategy building and counter-offensive and the final stage is when insurgency transforms themselves into a regular army capable of operations to defeat the official army.[50] Griffith's analysis of Mao's military thought had relevance to the study because it laid the foundation for investigating societal problems that provoke insurgencies warranting military intervention. This study investigated the societal problems that warranted military intervention in Kenya.

An example of societal problems that can cause a revolution was the case of Nigeria civil war. Norman Lowe argues that when Nigeria gained independence in 1960, it was a potentially wealthy state. However, in 1966 the government was overthrown in military coup and in the following year, the Biafra civil war broke out and lasted until 1970. Lowe further argues that a combination of Nigerian tribal differences, severe economic recession and savage massacre of Ibo soldiers led to the civil war and the desire for the Eastern region to secede from Nigeria to form the state of Biafra.[51] Lowe's finding shows that societal problems lead to war and secessionist tendencies warranting military intervention.

Another case where government forces have fought organized armed groups is in Ethiopia. According to Hizkia Assefa, Ethiopia was embroiled in civil war between the central government and a multitude of liberation movements for close to thirty years until 1990 when government forces were defeated by a joint assault of insurgency.[52] Assefa further argues that just like war in the Horn of Africa, the civil war that plagued Ethiopia was described by

[49] Samuel B. Griffith II, *Mao Tse-tung on Guerrilla Warfare*, (Baltimore, Maryland: The Nautical and Aviation Publishing Company of America, 1992), 3.
[50] Ibid, 18.
[51] Norman Lowe, *Mastering Modern World History*, 4th ed. (New York: Palgrave Macmillan Publishers, 2005), 548.
[52] Hizkias Assefa, "Ethnic Conflicts in the Horn of Africa, Myths and Reality", in *Ethnicity and Power in the Contemporary World*, ed. Kumar Rupsenghe and Andrei Tishkov, (Tokyo: United Nations University, 1995), 96.

analysts as ethnic conflicts.[53] Assefa's findings offer a threefold synthesis of facts about intra-state disputes. First, the national army has always been deployed to quell intractable intra-state conflicts. Secondly, intra-state conflicts are usually downplayed as ethnic violence. And thirdly, victory is not always for the government forces.

While analysing a dataset that included both violent and nonviolent domestic conflicts between 1960 and 1967, Pearson found that violent conflicts were more likely than nonviolent conflicts to attract foreign military interventions.[54] Pearson also observed that military interventions, including pro-government ones, prolong the conflict and increase the intensity of violence. Further, Pearson argues that military intervention was a foreign policy instrument used by both "large and small powers interested in preserving rather than destroying a target government", which ironically leads to longer and more violent internal conflicts.[55] These findings were relevant in this study as pointed out that intervention may protract the conflict. It also shows different motives of interventions. This study examined the role of the military in ending violent conflicts.

The choice to intervene in an internal dispute is tricky and risky. According to Reagan, intervening in civil conflicts is a risky business, even though the frequency with which outside actors do so may mask the extent of the risk.[56] Drawing examples from France, Rwanda and Nicaragua, Reagan argues that militaries intervene in some conflicts and not others because of the risks involved. For instance, France's decision to intervene in Rwanda at the later stages of the genocide in 1994, which epitomized the tenuous nature of unilateral intervention decisions. In the case of the United States' intervention against the Sandinista government in Nicaragua, domestic and international political considerations were made. At the international level, the US had to endure condemnation and a legal defeat at the World Court, while domestic opposition led to Congressional curtailment of funding and ultimately the basement operations of Oliver North. In Bosnia-Herzegovina, nobody intervened as Yugoslavia broke up, but once conflict broke out in the independent state of Bosnia nearly everybody intervened.

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[53] Ibid. 96.
[54] Fredrick S. Pearson, "Foreign Military Interventions and Domestic Disputes." *International Studies Quarterly* Vol 18, No., 3, (1974), 259-289.
[55] Pearson, "Foreign Military Interventions and Domestic Disputes, 262.
[56] Patrick M. Regan, "Choosing to Intervene: Outside Interventions into Internal Conflicts as a Policy Choice" *Journal of Politics,* Vol. 60, No. 3 (1998), 259-289.

Besides civil war, another type of intra-state disputes that has attracted military intervention in Africa and Kenya in particular is mutiny. Mutiny is defined as open revolt against constituted authority by a disciplined force such as army or navy.[57] It is an act of defiance against military authority. Writing about military regimes in Africa, Gutteridge argues that there are two types of mutiny: a mutiny about pay and promotions and a fully-blooded attempt to overthrow the existing government.[58] Gutteridge's findings are key to this study as it points out two types of mutinies both of which the study examined if they did occur in Kenya in 1964 and 1982 respectively.

Coup d'état is yet another issue that has attracted military attention. Coup is an etymological French conception meaning blow or stroke concerning a state.[59] Edwin Madunagu as quoted by Toyin defines a coup d'état as "a violent and unexpected reformation of state policy" or "unexpected and sudden measure of state often involving force or threat of force."[60] A coup is therefore a sudden and decisive action in politics, especially one resulting in a change of government illegally or by force. There are three categories of military coups in African states: successful and attempted coups, and plots.[61] Where successful refers to coups d'état that is fruitful in overthrowing of government, whether or not the group that initiated the action actually assumed power; attempted *coup d'état* is where there were overt actions but the initiative failed in its bid to overthrow the government. A plot is a conspiracy to stage a *coup d'état*, i.e. allegations by the state that certain people were planning a *coup d'état*.[62]

Samuel Decalo noted that coups emerged as the most visible and recurrent characteristic of the African politics. By the late 1990s, quasi-permanent military rule had become the norm of much of the continent. The first military coup in Africa occurred in Togo in 13 January 1963. Africa's reaction to the military coup d'état in Lome was immediate and sharp-vociferous verbal attack on the junta and international ostracism of the new government with the

[57] Richard Woodman, *A Brief History of Mutiny* (London: Constable & Robison Ltd, 2005), 1.
[58] William F. Gutteridge, *Military Regions in Africa* (London: Methuen & Co., 1975), 54.
[59] Simeon O. Toyin, "The Impact of Military Coup d'état on Political Development in Nigeria," *International Journal of Business and Social Science*, Vol. 6, No. 10 (2015), 8.
[60] Toyin, "The Impact of Military Coup d'état on Political Development in Nigeria", 8.
[61] Pat MacGowan, "African Military Coups d'état and Underdevelopment: A Quantitative Historical Analysis" *The Journal of Modern African Studies* Vol. 22 No. 04, (1984), 633.
[62] Samuel Decalo, *Coups and Army Rule in Africa: Studies in Military Style* (New Haven: Yale Universities Press, 1976), ix.

intention to warn aspiring military commanders in Africa.[63] The findings by Decalo present two important conclusions. First and foremost, *coups d'état* were common in Africa. Secondly, *coups d'état* attract international condemnation but not third party intervention. Therefore, counter coups operations remain jurisdiction of a sovereignty in which the coup takes place.

Secessionist conflicts have also generated military intervention. Besides the Biafra war in Nigeria, the earlier case of secession in Kenya attracted military intervention. Much of the existing literature describes the *Shifta* War (1963–1968) as a secessionist conflict in which members of the Somali ethnic group inhabiting the NFD of Kenya attempted to join with their fellow Somalis in a Greater Somalia.[64] The Kenyan government named the conflict "Shifta", after the Somali word for "bandit" as part of a propaganda effort.[65] The NFD came into being in 1925, when it was carved out of the Jubaland region in present-day southern Somalia. Previously under British colonial administration, the northern half of Jubaland was ceded to Italian control as a reward for the Italians as reward for their support to the Allies during World War I.[66] This literature offers this study, historical context of the origin and causes of the *Shifta* War that will form a basis for interrogating circumstances that warranted military intervention.

The issue of military intercession in the *Shifta* war is also addressed by Chau who argues that one of the major concerns in the early politics of Kenya, even prior to independence, was relations with neighbouring Somalia. During the Lancaster House Conference in September 1963, Mzee Jomo Kenyatta, who then would be elected the first president of Kenya, had warned against negotiating with Somalia over the NFD. The region which had boycotted the first general election earlier in the year was a direct challenge to Kenya's unity and territorial integrity. To counter the threat, Mzee Jomo Kenyatta decided to deploy the nascent military alongside police in the region. For five years, Kenya fought an insurgency against Somali *Shifta*, eventually maintaining the status quo.[67] This literature sheds light on the history of

[63] Ibid. ix.
[64] Africa Watch Committee, *Kenya: Taking Liberties* (Yale University Press: 1991), 269.
[65] Women's Rights Project, *The Human Rights Watch Global Report on Women's Human Rights* (New Haven: Yale University Press: 1995), 121
[66]Francis Vallat, "First Report on Secession of States in Respect of Treaties," Report Presented to the International Law Commission Twenty-sixth Session, 6 May – 26 July 1974, (New York: United Nations: 1974), 20.
[67] Donovan Chau, *Global Security Watch-Kenya* (Santa Barbara: Praeger, 2010), 9.

regional interaction between Kenya and Somalia that led to the *Shifta* war. The study endeavoured to examine the legal basis of Somalia involvement in the secessionist movements inside Kenya.

Further, Whittaker argues that in ensuring security during the *Shifta* war, the government of Kenya enforced all means possible to eradicate the said *Shiftas*.[68] For instance, in June 1966, the Kenyan government adopted a policy of forced villagization in the NFD. A region that covered an area of approximately 102, 000 square miles, about half of Kenya's total landmass. The villagization programme required all people living within NFD to reside within designated government villages under security guard. By September 1967, about a half of the total population of an estimated 200,000 people in the NFD were successfully villagized. The Kenyan government argued that this villagization would facilitate security operations against *Shifta*.[69] As a counter-insurgency measure, the use of population re-concentration was a colonial precedent. It was used by the Spanish in Cuba, the British in Kenya and Malaya, and the Portuguese in Angola and Mozambique.[70] The study evaluated the success of villagization as a security policy in fostering peace in former NFD. It also assess the suitability of this strategy and other military strategies used by KDF during the interventions.

According to Whittaker, the notion of *Shifta* was used to veil various forms of violence in the NFD. The author argues that by securitizing banditry, the Kenyan government 'discovered a powerful political weapon in the 'shifta' that provided a pretext for forcing social and political change, including criminalizing the Somali community.[71] This study showed how the *Shifta* war was used to force social change amongst the Somali in the NFD. It thus sheds light on why violence meted against the people in the disguise of military intervention to enhance internal security.

The occurrence of ethnic conflict within countries has also attracted military intervention. Ethnic induced conflicts in Africa keep on recurring in various parts of Africa and many nations have resorted to military intervention to provide solutions to this periodic

[68] Hannah Whittaker, "Forced Villagization During the *Shifta* Conflict in Kenya, 1963–1968" *International Journal of African Historical Studies,* Vol. 45, No. 3 (2012),343.
[69] Ibid, 324.
[70] Ibid. 343
[71] Hannah Whittaker, "Pursuing Pastoralists: The Stigma of *Shifta* During the 'Shifta War' in Kenya", *Eras Edition* 10, (2008), 17, Accessed on 30 January 2018, http://www.arts.monash.edu/publication/eras

phenomenon. Arbitrary colonial boundaries is one of the causes of ethnic conflict. During the partition and scramble of Africa, colonialist lumped people of different ethnic background together and this historical antecedent has never been lost on African politics. As constituted, the present nature of the African state system provides the basis for ethnic identity conflicts in different parts of Africa in countries such as Nigeria, Sudan, South Sudan, Central African Republic, Democratic Republic of Congo, Rwanda, Burundi, Cameroon, Uganda, Mali, Chad, and Kenya among others. Negative ethnicity, identity and cultural differences are major causes of conflict.

According to Samuel Huntington's theory of clash of civilization, the fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great divisions among humankind and the dominating source of conflict will be cultural.[72] In the contrary, Nnoli argues that ethnicity *per se*, in the absence of its politicization, does not cause conflict and that ethnic conflicts that have emerged in Africa have always occurred because of political machinations.[73] Nnoli further argues that, politicization of ethnicity often takes place in a situations where there is inequitable access to resources. As a result of this grievance there emerges the "in group" and the "out group" with the latter trying to break the structure of inequality as the former responds by building barriers to access that ensure the continuation of its privileged position. At the centre of this scenario are the elites who, feeling excluded or threatened with exclusion, begin to invoke ethnic ideology in the hope of establishing a "reliable" base of support to fight what is purely personal or elite interests.[74] Nnoli further argued that the problem of ethnicity, emerged during the colonial period, and has been progressively accentuated since independence with the emergence of ethnicity as a factor in national politics. The study examined how ethnic mobilization was used to foster conflict the NFD and in the Mt. Elgon conflicts.

According to Simiyu, Mount Elgon district has had a long history of ethnic conflict based on historical injustice relating to land.[75] The land question dated back to the colonial period. Simiyu argues that the colonial government alienated land in Mt. Elgon, rendering the Sabaot community squatters. This assertion is given credence by the Kenya Land Alliance report,

[72] Samuel P. Huntington, *The Clash of Civilization and the Remaking of the New World Order* (New York: Simon and Schuster, 1997), 2.
[73] Okwadiba Nnoli, *Ethnic Conflict in Africa*, Nnoli ed. (Dakar: CODESRIA Book Series, 1998), 9.
[74] Nnoli, Ethnic Conflict in Africa, 1998, 9
[75] Robert R. Simiyu, "Militianisation of Resource Conflicts The case of Land-based Conflict in the Mount Elgon Region of Western Kenya, Moi University, Monograph 152, (2008), 17.

which propounds claims that subsequent failure by post-colonial governments to address the historical land injustice aggravated the conflict.[76] Simiyu further argues that the re-introduction of multiparty democracy in 1991 saw the start of unprecedented conflicts as a result of various underlying historical injustices. Though multi-party politics may not automatically lead to conflict as suggested by Simiyu, it imperative to note that electioneering period comes with ethnic mobilization which is likely to create divisions among ethnic communities leading to conflict. For instance, the Sabaot attacked and evicted the Bukusu and the Iteso who were labelled 'foreigners', and took over their land and property in 1992. Similar violence was re-occurred in 1997, 2002 and in 2006.[77] In an effort to restore peace in the area, the government deployed security forces comprising of the regular and administration police, the Anti-Stock Theft Unit (ASTU), the General Service Unit (GSU), the Rapid Deployment Unit (RDU) and finally the Army.[78]

This section has examined a number of security threats with special reference to Africa that have warranted military intervention. These threats range from civil war, secession tendencies, mutinies and coups among others. The studies have shown the diverse circumstance that warranted military intervention but fail to illustrate the justification for the intervention which the next section of literature review seeks to examine.

1.11.1.3 Justification for Military Interventions in Intra-state Disputes

The third section of the literature review examined works that explain the justification of military interventions in intra-state disputes. This discussion begins with the review of an insightful piece of work by W. J. Lahneman. In this study, Lahneman highlights ten fundamental questions that act as principles for military intervention in internal conflicts. These are: first, what are the principal circumstances that prompt military intervention? Second, what is the nature of intervention force - police or military? Third, at what phase of the internal conflict did the intervention occur? Fourth, what are the goals of intervention - is it political, military, economic or social justice? Fifth, in what ways may the intervening forces have improved their goal attainment? Sixth, would an earlier intervention have improved the situation? Seventh, would a more powerful force improve the situation? Eight,

[76] Kenya Land Alliance, "The Mount Elgon conflict: Results of a Failed Resettlement Programme", *A newsletter of Kenya Land Alliance*, Vol. 6, No. 1, (2007), 15.
[77] Xavier F. Ichani, "Women in Post-conflict Peace Building: the Case Study of Mount Elgon District 2008-2011," MA Thesis University of Nairobi. (2012), 56.
[78] George Gagnon, "Kenya Army and Rebel Militia Commit War Crimes in Mt. Elgon" *Human Rights Watch*, (2008), 13. Available at: http//www.hrw.org/Enlish/doc/2008/kenya 18421, Accessed on 5th Feb 2016.

to what extent was the military intervention sufficient in resolving the conflict? Or, to what extent would a non-military intervention be sufficient to produce long lasting peace? Nine, did a clear exit strategy of the intervening force exist at the start of intervention? Finally, was the intervention a "success"?[79] Lahneman's principles for assessing military intervention laid the foundation principles for understanding the role of KDF in internal disputes.

According to Sun Tzu war is essential for the state, it leads to its success or failure.[80] This assertion can be interpreted to mean that military interventions are also justified for safeguarding national interest. Sun Tzu asserts that militaries must only intervene in the interest of the state by saying, "If not in the interests of the state, do not act."[81] Founded on this philosophy, states are justified to use force to safeguard national interest. According to the realist school, states compete for power and may use any available means to maximize her interests.[82] Kenya's national interests include the following: protection of state sovereignty and territorial integrity. This study will investigate the national interest at stake that warranted military intervention Kenya between 1963 and 2013.

Anne Noronha Dos Santos examines how, when, and whether secessionist endeavours deserve military intervention.[83] What emerged from her discussion was that, secessionist movements remain a serious threat to national security. Dos Santos identifies the conditions that make national military to intervene in a secessionist war more likely. These include the threats of the secessionist group and instability of the state. The study examined the factors that wanted KDF to intervene in the *Shifta* irredentist war.

There are many forms of military intervention in Africa. Edeh argues that the first form of military intervention internally occurs during the state of emergency. The second type of internal military intervention occurs when terrorists overrun a society and troops are sent to restore constitutional order. Further, it is a military intervention when a country is envisaged

[79] William J. Lahneman, *Military Interventions: Cases in Context for Twenty First Century* (Lanhary, USA: Rowman and Littlefield Publishers Inc., 2004), 116.
[80] Lionel Giles, *Sun Tzu on the Art of War* (London: 1910), 1.
[81] John F. Troxell, "Military Power and The Use of Force" in *U. S. Army War College Guide to National Security Issues, Volume I: Theory of War and Strategy, 5th* edition, ed. J. Boone Bartholomees, Jr.(PA: US Army War College, 2012), 159.
[82] Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 1948, 123.
[83] Anne N. Dos Santos, *Military Intervention and Secession in South Asia: The Cases of Bangladesh, Sri Lanka, Kashmir, and Punjab*, (Prager, 2007), 16.

to be building nuclear weapons and others send troops to destroy them.[84] The study investigated the forms and nature of military intervention in internal operations in Kenya to explain the dynamics of threat warranting interventions.

Military interventions are controversial when they occur or fail to occur. They are unwelcome and subject to criticism when they occur and the state is blamed if it fails protect citizens in the event of humanitarian crisis. Gutteridge argues that looking back to military regimes in Africa, the image of the military is generally negative and it is probably the reason why there is traditional abhorrence to military intervention. The fear of military intervention is also associated with the abhorrence of strong British rule in Africa. This explains why there is rare support of the military in Africa.[85] Gutteridge further argues that there has been a legacy of fear and distrust of soldiers in many African countries. The recruitment policy of the military that ensured tribal imbalance has also made the military not to have a national outlook. The military is also disliked because, as some analyst have maintained, its behaviour is determined by few social and political elites in the society.[86] The findings by Gutteridge are relevant in assessing the opinions of the informants about military intervention in Kenya between 1963 and 2013.

1.11.1.4 Evaluating the Success of Military Interventions

The fourth and final part of the literature review examined works that provide theoretical understanding of assessing the success of military intervention in pacifying intra-state conflicts. Defining success of military intervention is problematic. Success may mean ending violence or attainment of specific security objectives of the operations. Success may also be about controlling human rights violation during and in post-intervention period. In ascertaining the success of KDF operations, the study distinguished between traditional and modern concept of intervention success. Traditionally, intervention success was narrowly defined using the objective of the intervention: 'end human suffering', 'regime change,' 'securing a capital city,' 'opening up corridors of humanitarian assistance,' and 'rescuing captured troops.' There are numerous advantages of relying on this definition. First, the narrower the objective, the greater extent to which success can be achieved. Secondly, it

[84] Herbert C. Edeh, & Michael I., Ugwueze, "Military and Politics: Understanding the Theoretical Underpinning of Military Incursion in Third World Countries", *Mediterranean Journal of Social Science*, Vol 5. No. 20 (MCSER Publishing, Rome-Italy, 2014), 112-132.
[85] William F. Gutteridge, *Military Regions in Africa* (London: Methuen & Co., 1975), 16.
[86] Gutterridge, *Military Regions in Africa*, 6.

reduces the risk of getting bogged down where there is no clear mandate. Thirdly, it shortens the steps to an exit strategy.

The modern definition of success military intervention can be judged against three theoretical perspectives of success in military intervention. The human centric approach, strategic approach and the restorative justice approach. The human-centric approach advanced by Seybolt, relied on tenets of just war principle of 'do-more-good than harm'.[87] For this reason, human centric success of intervention is achieved when and if in a humanitarian intervention some people who would have died if no military assistance was granted, fail to die because of the actions of military personnel. [88] According to this approach, if an intervention saved lives immediately, then it served its purpose regardless of the aftermath of the war. However, scholars and conflict practitioners increasingly consider jus *post bellum* (justice after war) as an important component of examining intervention success.

The strategic approach to success of military intervention can be examined a number of issues. First, what were the target objectives of the intervention? For instance, 'Did the military kill or capture our enemy?' When this is achieved then the 'mission was accomplished.'[89] Those who advocate for this approach perceive that simply killing or capturing a particular target is deemed as military success. This argument may both be true as well misleading. It is true since the ultimate purpose of military action is to subdue the enemy. The enemy will only comply through exercise of military force. The statement is however, misleading because it wholly ignores the political, economic, systemic, and humanitarian consequences of intervention such as violation of human rights and destruction of property and environment. All of these issues must be part of any effort to evaluate overall success of military intervention and thus the need of the restorative approach.

Restorative approach of judging military success borrows heavily from the theory of restorative justice. *Restorative justice* is a theory of *justice* that emphasizes repairing the harm caused by criminal behaviour during the intervention. Proponents of these theory recognize that conflict is a veil underneath crime is committed. They also assert that intervention causes harm to justice. Successful military intervention should focus on repairing that harm. In this

[87] Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford: Oxford University Press, 2008), 30.
[88] Taylor B. Seybolt, *Humanitarian Military Intervention*, 31.
[89] Taylor B. Seybolt, *Humanitarian Military Intervention*, 31

context, the restorative approach to judging military success acknowledges that military intervention may result in violation of human rights and disruption people relationships. Success in military intervention should therefore not just focus on the immediate human centric needs or missioned tasks accomplished but rather focus on restorative justice by seeking to repair harm caused by military intervention. It involves the perpetrators denouncing crimes committed and both the victims and perpetrators actively participating in truth justice and reconciliation process. Military intervention is successful if interventionist uphold human rights during the operation and perform social work that enhances civil military relationship.

Taking all these factors into consideration, the study evaluated the success of the military intervention inferring from combination of both the traditional and modern definition of military success. For instance, if military intervention should first and foremost be undertaken to save lives. Secondly, if military intervention should have reasonable success, based on principles just war. Thirdly, if military intervention should take into consideration political dynamics of the dispute including the justice of intervention, justice during the intervention and justice after the intervention.

According to Talentino, the success of any conflict resolution strategy depends on support from international community, local participation, military leadership and command, military equipment among others factors.[90] Lieutenant Colonel James Lambert, argued that many missions are doomed from the start by the absence of international resolve. [91] Theodora-Ismene Gizelis and Kristin Kosek argue that local participation is necessary for success or failure of humanitarian interventions. [92] The third factor is the regional adversaries' interest in a sustainable peace.[93] Paul Lederarch argues that peace is illusive when regional support and commitment in the peace process is absent. The fourth factor is the sheer complexity of

[90] Andrea Kathryn Talentino, *Military Intervention after the Cold War: the Evolution of Theory and Practice* (Ohio: Ohio University Press: 2005), 200-238.
[91] James Lambert., "The United Nation and Military Intervention: Factors for Success and Ability to Lead in Comparison with an International Coalition" School of Advanced Military Studies Monograph, (Fort Leavenworth, Kansas, 2011), 7.
[92] Theodora-Ismene Gizelis and Kristin E. Kosek, "Why Humanitarian Interventions Succeed or Fail: The Role of Local Participation" Cooperation and Conflict: *Journal of the Nordic International Studies Association* Vol. 40 No, 4: (2004) 363–383.
[93] William J. Durch, *UN Peacekeeping, American Policy, and the Uncivil Wars of the 1990s* (New York: St. Martin's Press, 1996), 69-102.

the conflict operating environment.[94] The fifth factor is about resources. This includes the training of troops and equipment readiness. This offers the military the capability to achieve their mission and mandate and execute all their given tasks. Limitations in terms of equipment and training can seriously hinder the tactical capabilities of the military.[95] This study sought to establish if these factors influenced the success of military intervention in Kenya.

Military leadership and command also determine the success of intervention. Gardiner and Spring argue that military bureaucracy in particular competent leadership and clear command structures determine the success of military operation. [96] This assertion is further backed by Diehl who argues that the genius of military commanders depends on command and control.[97] Command and control refers to the exercise of authority and direction by a properly designated commander over troops to achieve accomplishment of the mission objectives. Command and control functions are performed through an arrangement of personnel, equipment, communications, facilities, and procedures employed by a commanders. This include: planning, directing, coordinating, and controlling.[98] This study investigated how command and control influences the success of the military interventions in Kenya.

Doyle and Sambanis argues that the success of military intervention is dependent on timely deployment of the military.[99] They argue that the longer a conflict has raged before the intervention, the larger the chances of its success and that war-weariness strengthens the parties' desire for peace.[100] William Zartman calls, this conflict ripeness.[101] According

[94] Richard Holbrooke, *To End a War* (New York: The Modern Library, 1998), 39-40.
[95] LGen Romeo Dallaire, *Shake Hands with the Devil: the Failure of Humanity in Rwanda* (Random House Canada, 2003), 444.
[96]Nile Gardiner and Baker Spring, *Reform the United Nations*, (The Heritage Foundation, 2003) http://www.heritage.org Accessed on December 7, 2018.
[97] Paul F. Diehl, *International Peacekeeping: With a New Epilogue on Somalia, Bosnia, and Cambodia* (Baltimore and London: Johns Hopkins University Press, 1994), 169.
[98] Dictionary of Military and Associated Terms. US Department of Defense 2005.
[99] Jaïr van der Lijn, "If only There Were a Blueprint! Factors for Success and Failure of UN Peace-Building Operations" (The Hague: *Netherlands Institute of International Relations 'Clingendael'*
[100] Michael W. Doyle and Nicholas Sambanis, *Building Peace: Challenges and Strategies after Civil War* (New York: World Bank, 1999), 23.
Doyle and Nicholas Sambanis, 'International Peacebuilding: A Theoretical and Quantitative Analysis', *American*
Political Science Review, Vol.94, No.4, (2000), 779-801.

Zartman, a conflict must have produced a mutually hurting stalemate on the battlefield and the parties must be sufficiently exhausted in order to consider a political solution to the conflict. If such a deadlock is too painful and a victory is not in sight, parties perceive negotiations as a way out. The study evaluated whether KDF interventions seized the very moment of 'ripeness' during conflict in order to ensure intervention success.

Another factor that yields mission success is the duration of the intervention. Heldt assets that that missions with longer duration have a larger chance of success than shorter operations.[102] Chesterman argues that although a lengthy international presence does not ensure success an early departure guarantees failure of a mission.[103] Long military presence in a conflict area deters belligerents from regrouping for another attack. Achievement of sustainable peace and success in the intervention requires the troops to stay on for several years to manage a fragile peace process. The UN reconstruction and peacebuilding mandates sometimes require a presence of peacekeepers several years beyond the end of the armed conflict. This study analyses the duration of internal military interventions to ascertain if they translated to intervention success.

In regards to whether military intervention lead to durable peace or not, Prendergast and Plumb argues that the ending of civil war does not end societal suffering, division, and conflict.[104] The authors argues that although military interventions and signing of peace agreements may bring about semblance of peace, positive peace still remain elusive as most post-war communities continue to be beset by ethnic, political, economic, social and religious rifts. The authors' assertion is relevant to this study as it argue that structural root causes of armed conflict may remain intact or may even be exacerbated long after military intervention. The study investigated the success of KDF interventions in fostering positive peace.

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[101] William I. Zartman, 'Ripeness: The Hurting Stalemate and Beyond', in *International Conflict Resolution after the Cold War* ed. Paul C. Stern and Daniel Druckman (Washington DC: National Academy Press, 2000), 225-250.

[102] Heldt, *Conditions for Successful Intrastate Peacekeeping Missions*. 42 Simon Chesterman, *You, the People: The United Nations, Transitional Administration and State-Building* (Oxford: Oxford University Press, 2004).

[103] Simon Chesterman, *You, the People: The United Nations, Transitional Administration and State-Building* (Oxford: Oxford University Press, 2004), 103.

[104] John Prendergast, and Emily Plumb, "Building Local Capacity: From Implementation to Peace-building", in *Ending Civil War: The Implementation of Peace Agreements*, ed. Stephen John Stedman, Donald Rothchild and Elizabeth Cousens, (Colorado, USA: Lynne Rienner Publishers, Inc., 2002), 327.

The concept of total war presupposes that decisive victory in war can provide a durable resolution to a conflict. Carl von Clausewitz argues that victory in war through the application of armed forces breaks the will of the enemy and compels him to submit to ours.[105] Howard's finding gives credence to military intervention since military force is the only state apparatus capable of inflicting annihilation to an enemy and providing decisive victory. The study assessed whether KDF secured decisive victory in its interventions.

Though military victory is required in ending protracted conflicts, it does not translate to reconciliation. Wendy Lambourone, asserts that the ending of overt violence via a peace agreement or military victory does not mean the achievement of peace unless it is followed by reconciliation and justice because post-conflict situation may provide a new set of opportunities that can be grasped or thrown away. She further argues that both justice and reconciliation are significant for successful post-conflict peace-building processes.[106] Lambourone argues that warring communities need to overcome enmity through the acknowledgement of chosen traumas and developing shared histories. Lambourone offers this study a critical analysis tool beyond the narrow conception of peace-building associated with military intervention. It offers a basis for evaluating the success of military interventions in Kenya.

In analysing the responsibility of military intervention in protecting civilians in cases of human rights violations during conflict, Smith argues that there are limits of good intention in military intervention. He further asserts that good intentions do not always produce good results.[107] The success of any military intervention therefore, hinges on the intervening force's ability to manage realities and operational challenges during the intervention. Smith further argues that interventions often fail because the military first fails to adequately distinguish between coercive and consensual operations. Secondly, the military fails to recognize the root causes of the conflict.[108] These observations aided the study as it analysed the operational challenges military strategy.

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[105] Michael Howard, *Clausewitz* (New York: Oxford University Press, 1983), 14.
[106] Willy Lambourone, "Post Conflict Peace-building: Meeting Human Needs for Justice and Reconciliation" in *Journal of Peace Conflict and Development*, Volume 2, No. 16, (2004), 215.
[107] Joshua G. Smith, *The Responsibility to Reflect: Learning Lessons from Past Humanitarian Military Interventions* (Georgetown University, 2013), 5. Available at: jgs13@georgetown.edu. Accessed on 10th July 2017.
[108] Ibid. 16.

Military thinkers such as Agypong advocate for military intervention. Agypong asserts that military interventions create an atmosphere conducive for peace. Making reference to military intervention in West Africa, the author argues that ECOMOG created conducive atmosphere for ECOWAS secretariat to promote dialogue that eventually resulted in peace and stability in Liberia, Burkina Faso, Cote d'Ivoire, Mali, Niger and Senegal.[109] In line with Agypong's views, the study examined whether military intervention in internal disputes created conducive conditions for positive peace and reconciliation in Kenya.

1.10.2 Theoretical Framework

Military intervention is multidisciplinary. As such military intervention can be explained by the diverse theories of the disciplines. A socio-economist may for instance explain the propensity of civil war using the Paul Collier and Anke Hoeflers' greed and grievance theory. Military intervention in circumstances of gross violation of human rights can be understood using the theory of humanitarianism and interventionism. External military intervention in the wake of threat of weapons of mass destruction as in the case of Iraq in 2003 could be explained using either the deterrence theory or the interventionist approach. Since military intervention is multidisciplinary, there is no single holistic theory capable of explaining the phenomenon. The study therefore, adopted three theoretical frameworks namely: military centrality theory, securitization theory and the just war theory.

Murat Onder's theory of military intervention in politics propounds that military interventions in politics are very common both in developing democratic or totalitarian regimes. The theory further argues that with increased internal instability in states in Africa, the involvement of the military in determining who gets what, when, and how has become inevitable. The military is expected to carry out defence policies formulated by the legislative and executive branches of the government. The military is also charged with protecting the regime from internal and external threats.[110]

The centrality of military theory as originally advanced by Jenkins and Kposowa argues that the military plays a central role in politics and that there is virtually no country in the world

[109] William Agypong, "Military Intervention in Intrastate Conflicts in West Africa: Economic Community of West African States Monitoring Group as a Case Study." M A Thesis, US Command and General Staff College, 2005, 12.
[110] Murrat Onder, What Accounts for Military Intervention in Politics: Across National Comparison, 16.

where the military does not intervene internally.[111] Onder argues that, the centrality of the military to the states makes the armed forces to play a major role in countering internal violence and that the military intervenes in politics because other civilian institutions are weak. The theory further argues that the "national guard" function of the military makes it very powerful and sometimes irresistible when it begins to exert an almost unrestrained influence on government; the height of which may involve supplanting of civilian administration.[112] Fourney too observed that no individual can have a significant effect on military budgets, including presidents. [113]

The theory of military intervention in politics has been used to explain the occurrence of *coups d'états* in Africa as well as military intervention in civil wars. It is relevant to this study as it explains government's over-reliance on military intervention as a tool of statecraft and why governments continue to militarize societies but fails to explain how threats are constructed as security issue hence the need for the theory of securitization.

Securitization is the process by which state actors transforming subjects into matters of security. [114] Securitization theory was propounded by the Copenhagen School (CS) in the 1970s and 1980s in reaction to indiscriminate use of force by government machinery in solving security related issues. The CS raised debate upon traditional response to issues in which everything becomes security issue warranting extraordinary measures.[115] Issues that become securitized do not necessarily represent issues that are essential to the objective survival of a state, but rather represent issues where someone was successful in constructing an issue into an existential problem.[116] A common example used by securitization theorists is how terrorism is a top priority in security discussions, even though people are much more likely to be killed by traffic accidents or preventable diseases than from terrorism.

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[111] Jenkins, J.Craig and & Augustine S. Kposowa, "The Political Origins of African Military Coups", *International Studies Quarterly*, Vol. 36, No. 3, (1992), 271-292.
[112] Onder, What Accounts for Military Intervention in Politics, 16.
[113] David Fourney "Congress and the Budgetary Process: The Politics of Military Appropriations", in *Making Public Policy*, ed. John Brigham, (Massachusetts: D.C. Heath and Company, 1977). 65-137.
[114] Barry Buzan, Ole Wæver, and Jaap. de Wilde, *Security: A New Framework for Analysis* (Boulder: Lynne Rienner Publisher, 1998), 25.
[115] Catharine Charrett, Acritical Application of Securitization Theory: Overcoming the Normative Dilemma of Writing Security, International Catalan Institute of Peace, 2009, 9.
[116] Buzan, et al, Security*: A New Framework for Analysis*, 32.

According to the CS, securitization as a process involves three components: first, a securitizing actor or agent: an entity that makes the securitizing move or statement or speech (the state in this case). Two, a referent object: an object or ideal that is being threatened and needs to be protected (peace and internal security); and third an audience: the target of the securitization act (for this case Kenyans) that needs to be persuaded and accept the issue as a security threat.[117] If a subject is successfully securitized and termed a threat to national security, then it is possible for the government to legitimize extraordinary means to solve a perceived problem. This could include declaring a state of emergency or martial law, mobilizing the military or attacking another country.[118]

The power structures in securitization process play an important role in determining its success. The power of the securitizing actor, a person who puts forward a claim to securitize an issue determines the perception of the target population. For this case, the possible securitizing agents of national security include, the Presidents, Defence minister or military elites. The CS explains that the successful securitization of a referent object will depend on the intersubjective agreement among the subjects as to whether the claim made by the actor is legitimate or not. Given their influential position the securitizing authority take matters into their own hands and employ extraordinary measures "swiftly and outside the normal democratic rules and regulations".[119]

Securitization theory has been used in analysing government strategies in combating violence in many regions of the world. In the case of the 2003 Invasion of Iraq by United States of America (USA), the conflict was securitized militarily; with Iraq being blamed of possessing weapons of mass destruction. However, the war was also securitized as a societal problem; human rights violation by Saddam. In northern Uganda, the Uganda Peoples Defense Force (UPDF) continues to engage the Lord's Resistance Army that is perceived to be a threat to peace in the country. Furthermore, the events of 11 September 2001 in the USA cited as the grounds for the tight control of borders and the war on terror. Thus, the *Shifta*, and SLDF were construed as threat to national security.

[117] Michael C. Williams, *Words, Images, Enemies, Securitization and International Politics*, International Studies Quarterly 2003 (47):512.
[118] Andrej Zwitter and Jaap de Wilde, "Prismatic Security Expanding the Copenhagen School to the Local Level", 24.
[119] Ibid, 12.

Both the military centrality theory and securitization however fail to explain the justification for resorting to force as well as issues of justice after intervention. Thus the study needed, a third theory, the just war theory to complement the two. The proponents of the just war theory include: Saint Augustine, Saint Thomas Aquinas and contemporary Michael Walzer among others. The theory argues that war is morally justifiable under certain criterion. The criterion is originally split into two categories namely, the "right to go to war" (*jus ad bellum*), and "right conduct in war" (*jus in bello*). The first concerns the morality of going to war, while the second concerns the moral conduct in war.[120] Some theorists, such as Gary Bass, Louis Lasiello and Brian Orend, introduced a third strand of just war theory. Thus *jus post bellum*, which concerns justice after a war.[121] The third strand therefore lays the basis of assessing intervention success in terms of suitability of military strategy, trial of perpetrators of human rights violation, restorative justice and victim reparation.

According to Michael Walzer, the rules of *jus ad bellum* are first and foremost addressed to Heads of States. Since political leaders order armed forces into action they are to be held accountable to the principles of *jus ad bellum*.[122] If they fail to adhere to these principles, then they commit war crimes and are liable to prosecution. Walzer argues that what constitutes a just or unjust resort to armed force is disclosed by a set of six principles. First, 'just cause' principle, implying that a state may launch a war only for the right reason. The just causes include: self-defence from external attack; the protection of innocents; and punishment for wrongdoing.

The second principle is 'right intention'. Walzer argues that it is not enough just for a state to wage war only for the sake of a just cause, but must have the right reason for launching a war. He says that the actual motivation behind resorting to war must also be morally appropriate. It further must have an objective of securing peace. Since war is a political action, Walzer warns that there is "no pure good will in war".[123] The third principle is proper authority and public declaration of war. This states that a state may go to war only if the decision has been made in public by the appropriate authority. It is only the head of state who can declare war with approval of parliament. Fourth, the principle of last resort. A state may

[120]Brough W. Michael, John W. Lango, and Harry van der Linden, eds. *Rethinking the Just War Tradition* (Albany, New York: Sunny Press, 2007), 123.
[121] Brooks Thom *Studies in Moral philosophy: Just War Theory* (New York: Brill, 2012), 187.
[122] Michael Walzer. *Just and Unjust Wars* (New York: Basic Books, 1977), 31.
[123] Ibid. 31.

take up arms only if it has exhausted all plausible, peaceful alternatives to resolving the conflict in question. Fifth, is the probability of successes, which means a state may not consider war if it can foresee defeat. Sun Tzu warned, 'If you cannot succeed, do not use troops.'[124] The aim here is to block mass violence which is going to be futile. Finally, the principle of proportionality. According to Walzer, a state must, prior to instigating military action, weigh the universal goods expected to result from the war, against the universal evils expected, notably casualties. Only if the benefits are proportional to, or 'worth,' the costs of war should the state proceed with the military action.[125]

In regards to right conduct in war (*jus in bello*) and concerns of justice after war (*jus post bellum*), proponents of just war tradition argue that the conduct of war is a matter of moral concern. Even if a nation is justified in waging war, its actions in the course of war are limited by existing international treaties and conventions. During hostilities the conduct of the military is limited by principles of conduct of hostilities such as the principles of proportionality, discrimination and the principle of responsibility. Only permissible force should be used. The military must also discriminate between combatants and non-combatants. Innocent non-combatants must not be attacked. A country is also responsible for unexpected side effects of the war. A good military action must therefore, produce good consequences. Bad unintended effects must be minimized so that the good of war outweighs the damage done by it.

The three strands of the just war theory discussed above provide the basis for analysing the justification of military interventions as well as success of the military action in the post-intervention period. The just war theory though viewed by many as addressing inter-state warfare has lately been used to explain the war on terror and civil war. As such it is relevant to military action in the context of internal operations.

The choice to use three theories to explain military intervention in internal disputes is grounded on three assumptions. First, none of these two theories can singularly explain military intervention in internal disputes since intervention is not mono-causal. The two theories therefore play a complementary role to each other. The second reason is that, the causal factors and dynamics of each of the three internal disputes in the *Shifta* war, Operation

[124] Sun-Tzu, Shang Yang, *The Art of War*, 142.
[125] Walzer, *Just and Unjust Wars*, 31.

Okoa Maisha and *Linda Nchi* are varied. As such each of the conflicts needs to be examined using different and suitable theoretical paradigm. Moreover, the three themes under analysis, circumstances warranting intervention, its justification and success need multi-theoretical approach.

1.11 Methodology

This section presents the methodology adopted in this study. It describes research designs, study area, target population, sampling procedures: sampling frame, sample size and unit of analysis. It also expounds on methods of data collection, instruments of data collection and means of analysing data among other items of methodology. It finally examines the ethical considerations taken into account during the research.

1.11.1 Study Area

The study was carried in three selected areas in Kenya, where intra-state conflicts that warranted military intervention had occurred. The areas are in the former Northern Frontier District, Mount Elgon Sub-county in Bungoma County and in Lamu County. As shown in the map below, the study focused primarily on the epicentres of the military interventions including deep in the villages and specific urban centres. It is also worth mentioning that extensive field visits and engagement was done to gather information regarding Operations *Okoa Maisha* and *Linda Nchi* where there were eyewitness and victims of the military intervention. According to the British Chief prosecutor during the Nuremberg trial of the Nazi war criminals, Sir Hartley Shawcross, evidence given or testified after long lapse of time would be unsafe after four weeks and hopeless after forty years.[126] Therefore, true account of eyewitness and victims of the *Shifta* war would not have been gathered through interviews 50 years after the conflict. For this case there was extensive reliance on secondary data and primary data collected from archival sources and other documents such as Hansard records of parliamentary proceedings.

Fieldwork was also conducted in military barracks, in Lanet and Gilgil as well as at the Defence Headquarters in Nairobi. Lanet and Gilgil barracks were chosen because they were the military regiments that contributed the 11 Kenya Rifles and the Para battalion from which most of the troops that intervened in the *Shifta* war and *Operation Okoa Maisha* respectively

[126] Herbert R. Reginbogin, Christoph J. M. Safferling, eds. *The Nuremberg Trials International Criminal Law Since 1945* (Druckund Bindung: Strauss GmbH, Mörlenbach Germany, 2006), 53.

were drawn from. Besides these military camps, military personnel serving and retired were interviewed in various barracks and regions to ascertain circumstances that warranted military interventions, the conduct of the operations as well as to verify facts gathered from other categories of informants.

The map below shows the study areas, especially areas, where conflicts that have warranted internal military intervention in Kenya have been carried. The epicentres of the intervention are indicated by a red stars, while the general areas of the study are as indicated in the key.

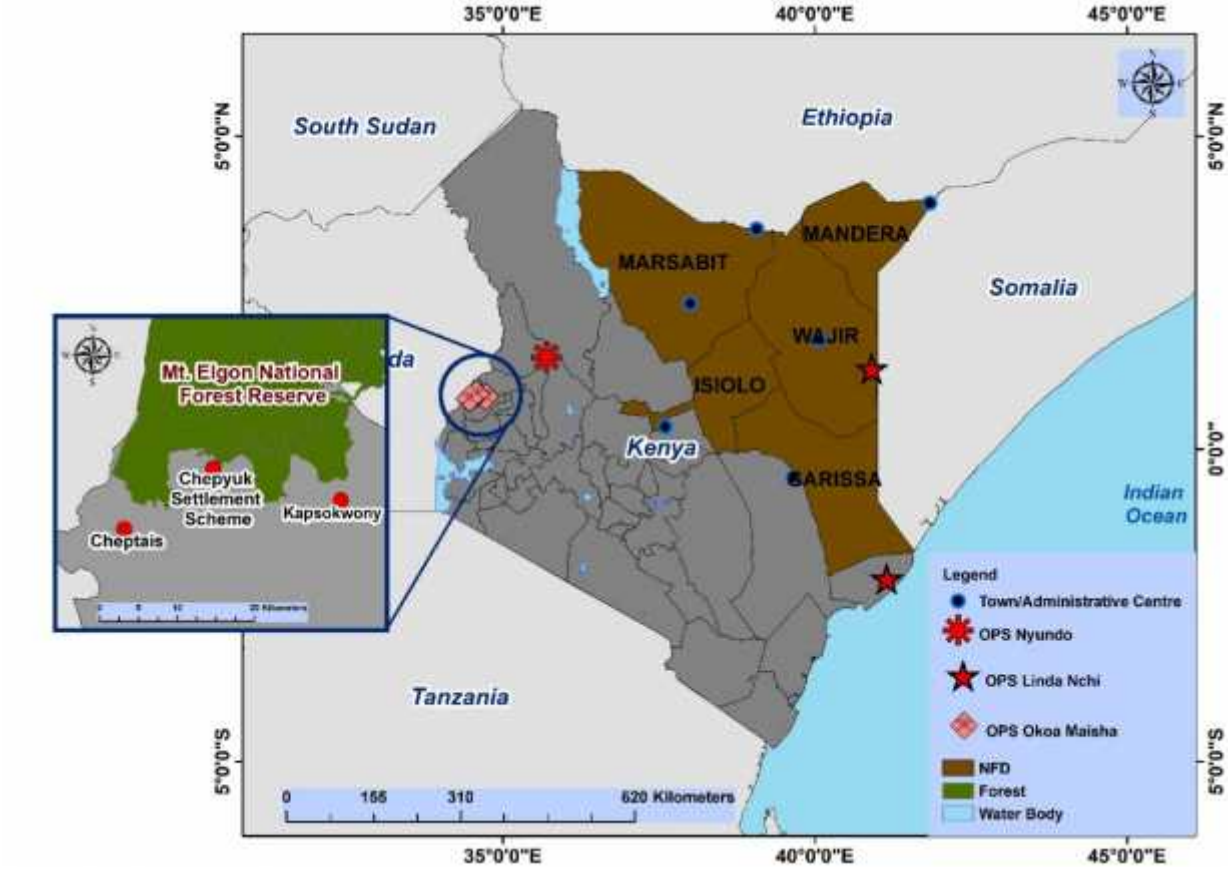

Figure 1: Map of Study Areas
Source: Researcher/Kenyatta University GIS Laboratory, March, 2019.

1.11.2 Research Design

Research design is a scheme or plan of action for meeting the objectives of a study. According to Orodho and Kombo, a research design is an arrangement of conditions for

collecting and analysing data.[127] The function of a research design is to ensure that the evidence obtained will enable the researcher to effectively address the research problem logically and as unambiguously as possible.[128] Each design has its peculiar application depending on the problem and objectives of the study. It also depends on the attributes and geographical dispersion of the subjects under study. The choice of research design was also influenced by the nature of research and the kind of data to be collected. This study adopted mixed design by utilizing the following two designs of qualitative research namely, the exploratory and historical research design.

Exploratory research is a methodological approach that is primarily concerned with discovery and with generating or building theory. Exploratory research is conducted for a problem that has not been studied more clearly.[129] Exploratory research often relies on techniques such as: reviewing available literature and data, in-depth interviews, focus group discussion and case studies. [130] Exploratory research helped in formulating more relevant research questions and tools of data collection used to bring to light one of the least studied aspect of Kenya's militarised past. The design also gave some indication as to the 'why', 'how' and 'when' military intervention occurred. However, the exploratory design had its own limitations. The design could not reveal information in regards to 'how often' or 'how many' about the interventions under study. To address these gaps unfilled by the exploratory research design, the study utilised the historical design.

The historical design involves examining past events in order to draw conclusions and make predictions about the future. This approach was applicable to the study since historical analysis uses the past to envision the future.[131] The historical research design involves a number of steps: conceptualization of the idea or topic, locating evidence through background review, evaluation of evidence, synthesis of evidence, development of the explanatory model of the synthesis and finally development of a narrative exposition of the findings. This design was chosen because it helped to analyse the phenomena of past KDF

[127] John A. Orodho and Kisilu D. Kombo, *Research Methodology: Methods and Techniques*, 2nd ed. (Willy Easter, 2012), .36.
[128] David A. De Vaus, *Research Design in Social Research* (London: Sage Publication, 2001), 45
[129]Shields, Patricia & Nandhini. A Rangarjan, *Playbook for Research Methods: Integrating Conceptual Frameworks and Project management* (Stillwater, UK: New Forums Press, 2013), 67.
[130] Robert A. Stebbins, *Exploratory Research in the Social Sciences* (Thousand Oaks, CA: Sage Publication, 2001), 56
[131] Sussan Wyche, Phoebe Sengers and Rebecca E. Grinter, "Historical Analysis: Using the Past to Define the Future," in *Ubiquitous Computing* ed. Paul Dourish and Andrian Friday (Berlin: Springer, 2006) 35 – 51.

military interventions. This design also utilized a number of secondary sources and primary documentaries like war diaries and security reports that were in tandem with the sources of data for this study. The historical design was also found to be unobtrusive in unpacking how the Kenya military became an intractable part of conflict resolution perceived to have blurred the justification and success of the interventions under study.

1.11.3 Target Population

The target population is the group of elements to which the researcher wants to make inference According to Borg and Gall, a target population is defined as all members of the real population of people from which a researcher wishes to generalize the results of the study.[132] The target population included KDF Generals and other senior military officers, field commanders, and foot soldiers. Others include, retired military officers, County security chiefs, and members of National Police Service (NPS), politicians, researchers in conflict studies, members of the civil society, victims and alleged members of the militia and members of the general population.

1.11.4 Sampling Procedures and Techniques

The study utilized probability and non-probability sampling techniques complementarily. In the former case, the study applied stratified probability sampling techniques. In this technique the strata were subgroups of the target population study which included two main categories: the national security organs and the civilians. The specific sub-groups of national security agencies comprised of, KDF Generals and senior military Officers, field commanders, and foot soldiers. Others included: retired military officers, County security chiefs, and members of National Police Service (NPS). The civilian category included: politicians who included area Member of Parliament (MP) or Member of County Assembly (MCA), researchers in conflict studies, members of the civil society organization, victims and alleged members of the insurgencies. The aim of stratified random sampling according to Mugenda and Mugenda is to achieve a required representation from various sub-groups in the population.[133]

The study also used purposive non-probability sampling technique which involves the conscious selection of certain people to be included in the study. In purposive sampling, the

[132] Meredith D. Gall, Joyce P. Gall, Walter R. Borg Gall, *Educational Research: An Introduction*, 8th ed. (Boston: Pearson/Allyn &Bacon, 2007), 126.

[133] Olive Mugenda, and Albert G. Mugenda, A. *Research Methods: Qualitative and Quantitative Approaches* (Act Press: Nairobi, 1999), 24.

participants were selected because they had particular characteristics such as experience that were of interest to this study. In this method the researcher purposively identified informants with the desired information on military intervention such as senior military officers, political leaders and researchers on peace and security. The choice of civil societies to participate was also purposive to include only organizations rendering services such as humanitarian aid, human rights and women empowerment in the conflict areas under the study. The choice of researchers interviewed in this study was based on availability and reputation of public media commentaries in mainstream media houses in Kenya.

1.11.5 Sampling Frames

A sampling frame is the source material or device from which a sample is drawn.[134] It is a list of all those within a population who can be sampled. The sampling frames adopted by the study does not explicitly list population elements but only clusters. A frame may also provide additional information about its elements such as sex, age, rank years served in the military. Sampling frames also minimize cost and time wastage. [135] For this reason, the sampling frames for this study were designed to include the following informants. First, the military personnel comprising of, Generals and senior military officers, field commanders, and foot soldiers. Secondly retired military officers. Third, County security chiefs, and members of National Police Service (NPS). Lastly, the civilian category comprising of politicians, researchers in conflict studies, members of the civil society, victims and alleged members of the militia and experts in internal security operations.

1.11.6 Sample Size

A sample refers to the number of units or individuals chosen in the target population from which data is gathered. Several statistical formulas are available for determining sample size. The study used a relatively small sample in the three selected interventions. Creswell and Baskarada argue that qualitative studies focus on relatively few participants who have the ability to describe their experiences or knowledge.[136] The sample size of the study was

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[134] Carl E. Särndal, Bernard Swensson and James Wretman, *Model Assisted Sampling* (New York: Springer, 2003), 9–12.

[135] Arlene Fink, *How to Sample in Surveys* (Thousand Oaks, CA: Sage Publications, 1995), 12.

[136] See. John W. Creswell, Research Design: Qualitative, Quantitative, and Mixed Methods Approaches, 2nd ed. (Thousand Oaks, CA: Sage, 2003) and Sasa Baškarada, Qualitative Case Study Guidelines. *The Qualitative Report*, *19*(40), 2014, pp 1-18. Retrieved from https://nsuworks.nova.edu/tqr/vol19/iss40/3,

arrived at using Onwuegbuzie and Collins typology.[137] According to Onwuegbuzie and Collins, a minimum sample size recommended for both quantitative and qualitative social science research depends on the design and data collection procedure. For Subgroup, sampling three participants per group is adequate. In terms of data collection procedure, Onwuegbuzie and Collins assert that 12 participants are sufficient for interviews, while 3-6 Focused Group discussions of 6-9 participants is sufficient for a study. Based on this criterion, a non-partisan political non-apolitical, religious and gender sensitive interview was carried out on a cosmopolitan population of about 70 informants in each conflict totalling to approximately 210 informants in all the three conflicts under study. The sample size for each conflict was stratified as follows:

Table 1.1: Sampling Frame and Sample Size

Category	Sub-group	Specific groups	No of Participants
Members of Security Organs	Military Personnel	General Officers	1
		Senior Military Officers	2
		Field Commanders	5
		Foot soldiers	10
	County Security Chiefs	County Commissioner	1
	Members of NPS	County Commander	1
		Sub-County Commander	2
Civilians	Politicians	Member of Parliament	1
		Member of County Assembly	3
	Civil Society Organizations		5
	Researchers in Military Interventions		10
	Victims	Male	20
		Female	20
Total			70

Source: Researcher, 2019

[137] Anthony .J. Onwuegbuzie and Kathleen M.T. Collins, "A Typology of Mixed Methods Sampling Design in Social Science Research" *The Quarterly Report*, Vol.12, No. 2, (2007), 288.

As shown in the Table 1 above, this study identified two categories of informants. These were members of security organs and civilians. The sub-categories of the members of security organs included: the military, county security chiefs and the members of National Police Service, while those of civilians included politicians, civil society organizations researchers and victims.

1.11.7 Unit of Analysis

The unit of analysis in a study, is the major entity being studied. It is the 'what' or 'who' being investigated.[138] The main unit of analysis of this study was the KDF that the study sought to analyse why and how the military intervened in three internal disputes to explain the motives, dynamics and justification of military intervention as well as the success of such military interventions in Kenya between 1963 and 2013. To attain the stated objectives, the researcher incorporated the following: researchers, civil society organizations and victims who were useful in providing information used in justifying the interventions as well as assessing its success.

1.11.8 Data Collection Instruments

To collect primary data, the researcher developed an interview guide for different categories of informants. The categories included, Generals, senior military officers, field commanders and troops, County administration officers, politicians, conflict practitioners and researchers on human rights and security. Other groups include: civil society, victims and survivors of KDF military intervention. The Focused Group Discussions guides were also used for homogenous groups such as victims of KDF military intervention, and the soldiers undertaking military interventions. A minimum of five Focussed Group Discussion comprising of four informants were conducted. Of this, two were for security organs and three gender sensitive FGD for victims and survivours. Interview guides and Focused Group Discussion guides gave more detailed data and saved time in carrying out fieldwork.

1.11.9 Methods of Data Collection

The study was based on primary and secondary data. Primary data was obtained from archival sources from the Kenya National Archives and the military museum. Primary data was also gathered through oral interviews. Oral interviews were conducted using an open-

[138]William M. Trochim, *The Research Methods Knowledge Base*, 2nd ed. (Cincinnati OH: Atomic Dog Publishing, 2006*), 142*

ended interview guide. This gave the informants a complete freedom of responses. Probing technique was used to ensure informants remained focused on the research questions. The informants of the study were members of the County Security Committee, serving and retired military officers and personnel as well as victims and witness of the operations. To create good rapport and confidence with the respondents, the researcher enlisted the support of research assistants while conducting interviews in conflict zones.

The secondary data was obtained from interdisciplinary documentary analysis and reviews of books, journal articles, and chapters in edited works, published research papers and reports prepared by various non-governmental organizations involved in international security matters and human rights. Internet sources also constituted part of secondary data. To investigate particularities of each intervention, the researcher accessed the KDF declassified war diary.

1.11.10 Reliability and Validity

Reliability is the consistency with which the research will produce the same results if repeated over and over again while validity refers to accuracy or correctness of the findings.[139] Validity and reliability of research instrument determine the consistence, accuracy, dependability, and predictability of research findings. In order to ensure reliability and validity, the research subjected instruments of data collection were subjected to peer and professional vetting. The findings of the study were also subjected to triangulation, which is a means of verifying accuracy that involves cross-checking information from multiple perspectives. The findings were further subjected to dependability test of congruency through corroboration and cross referencing with secondary data obtained from interdisciplinary documentary analysis and reviewed literature.

1.11.11 Data Analysis and Interpretation

In order to present the findings of the study, collected data was, grouped, collated and analysed qualitatively. The collected data was presented using simple descriptive statistics, including frequencies and percentages, and in narratives in the following typologies corresponding to the objectives of the study: circumstances warranting military intervention, justification of the intervention and the success of the interventions. The results and

[139]Anthony J. Onwuegbuzie and Nancy L. Leech, Validity and qualitative research: An oxymoron? *Quality & Quantity*, Vol. 41 No. 2 (2007), 233-249.

discussions were analysed in three analytical frameworks. These include theoretical reflections, documentary reviews, and content or discourse analysis. Theoretical interpretations were majorly based on the military centrality theory and the just war theory. The military centrality theory, securitization theory and the just war tradition used to weave together circumstances warranting military intervention in internal disputes, its justification and success. Documentary reviews included the normative principle of military intervention and published works on the *Shifta* war, the Mount Elgon Conflict and the military account of the Operation *Linda Nchi* among other refereed texts. Content analysis involved corroboration and verification of gathered data against numerous discourse published by other authors cited in the study.

1.11.12 Ethical Considerations

Ethical issues are present in any research. The major ethical issues in conducting research include informed consent, respect for anonymity and confidentiality as well as respect for privacy. Ethical considerations in research are necessary for the protection of the dignity of the subjects and the publication of the information in the research. Informed consent means that a person knowingly, voluntarily and intelligently, gives his acceptance to participate in the research. Informed consent in this study was obtained in writing or verbally. Prior to interviews, the informants were informed of the purpose of the research through interview consent form or through submission of the proposal on demand to prospective key informants. The researcher briefed the informants about the methods which were being used to protect anonymity in regard to their names appearing in the study. For instance, no actual names were used where sensitive information was given. The research ensured confidentiality by assuring informants that they were free to give or withhold as much information as they wish to. The research also undertook to maintain confidentiality in reporting. The researcher also took precaution in order to manage anticipated emotional moments especially when interviewing victims of military interventions. For example, in the case of interviewing victims of violence, where the interview could trigger painful experiences and emotional feelings or the participant becoming distressed during the interview, the researcher was in company of counsellor. In such a situations, the researcher also planned to refer such victims to a counsellor. The researcher ensured that confidential security information was treated as such by upholding the military oath of secrecy.

CHAPTER TWO

NORMATIVE PRINCIPLES OF INTERNAL MILITARY INTERVENTIONS

2.1 Overview

Normative principles of military intervention refer to utopian philosophical, legal, theoretical and best practices that guide military intervention. They are derived in the context of internal operations or in the realm of United Nations Peace Keeping Operations (UNPKO). They encompass number of issues. First, what circumstances or threshold of violence warrant internal military intervention. Secondly, what is the nature, type and amount of force applicable to internal military operations? Third, what internal threats warrant military intervention? Finally, what international best practices and norms guide military intervention internally? Such issues are the basis of this introductory chapter. By examining the normative principles of military intervention in internal operations, the chapter not only draws readers' attention to utopian principles of military intervention but also idealizes a prism for internal interventions in Kenya. The chapter also lays the foundation for subsequent discussions of the study.

2.2 The Concept of Militarised Internal Disputes

It is imperative to reiterate that defence of the state is the primary purpose of the armed forces.[1] This traditionally involved fighting in symmetrical or interstate wars. However, dynamics in international peace and security have nonetheless transformed the role of military in the contemporary society. With the decline of interstate warfare, the role of the armed forces shifted more towards provision of internal security.[2] Modern militaries therefore, address both interstate and intrastate threats to national security. In particular, civil wars and the war on terror, have made the use of military in internal armed conflicts necessary. The military is obligated to aid civil authorities to deal with much lower levels of internal tension, violence, and civil disturbances. They may for example, assist the civil police in restoring law and order when the magnitude of violence overwhelms it. When called upon to aid the police, the military is expected to operate in the legal framework of their own countries as well as in the context of United Nations Peace Support Operations.

[1] DCAF, *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance, Security Sector Reform (SSR) Backgrounder* (Geneva: DCAF Publishers, 2012), 2.

[2] Albrecht Schnabel and Marc Krupanski, *Mapping Evolving Internal Roles of the Armed Forces, SSR Paper 7* (Geneva: DCAF Publishers, 2012), 6.

Internal military interventions are also called internal security operations. The Additional Protocol II to the Geneva Conventions uses the term low intensity conflict to describe the same operations. In the US, internal military interventions are known as military operations other than war (MOOTW). In the United Kingdom (UK), such operations are referred to peace support operations (PSO).[3] Article 1(2) of the Additional Protocol II to the Geneva Conventions, describes low intensity conflicts as situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature.[4] For purposes of clarity of the concept of internal disputes, we adopt the definitions put forward by the International Committee of the Red Cross (ICRC) at the first session of the 1971 Conference of Government Experts.[5] In this regard, internal military interventions are defined as situations of internal confrontation, characterized by a certain seriousness or duration of acts of violence between more or less organized groups and the authorities in power. Such disagreements may degenerate into open struggles that warrant the authorities in power to call upon extensive police forces, or even armed forces, to restore internal order. [6]

The use of the military in internal violence to assist civil authority is referred to as aid to the civil power. In such operations, the military undertakes a supporting role and will be deployed only when existing police resources are over stretched. For instance perennial cattle rustling in the Counties of Baringo, West Pokot and Turkana of Kenya has often occasioned the government to order the military into action as a temporary measure. The *Operation Nyundo* in West Pokot in the 1980s was one of such a case where the military intervened because police resources were overwhelmed.[7] During such operations, the primary role of the military was not to conduct hostilities against armed opponents but to fulfil some of the functions normally carried out by the police in the maintenance of law and order. In such cases, the military is expected to apply the principle of restraint, particularly in relation to the use of force and firearms.

[3]Kerry Long Hurst and Marcin Zaborowski, *Old Europe, New Europe and the Transatlantic Security Agenda.* (London: Routledge, 2013), 147.
[4] Article 2 of the Additional Protocol II of the Geneva Convention.
[5] ICRC, "Protection of Victims of Non-International Armed Conflicts Vol. V," Document Submitted by the ICRC to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in Geneva from 24 May 24 - 12 June 1971 (Geneva: ICRC, 1971), 79-85.
[6] International Committee of the Red Cross, *The Law of Armed Conflict: Internal Security Operations* (Geneva: ICRC, 2002), 5.
[7] Oral Interview, General (Rtd) Mohamed, Nairobi, 20 December 2018.

According to Nzau and Mwanzia, the armed forces, like the police, the paramilitary, and the General Service Unit (GSU) are used to impose curfews and to instill discipline in internal disputes.[8] It is for this reason that the military intervened in the *Shifta* war, Mt. Elgon, the Mathare slum in Nairobi; Laikipia, Likia, Molo, Lamu and in Tana River conflicts. The rationale of the internal military intervention was premised on the fact that internal disputes can be neutralized before they escalate.[9] When the military is called in, the civil authorities must clearly define the nature of the unrest and the legal status under which military forces function. Their powers and limitations also need to be clearly defined. It is also essential that members of the forces taking part are fully briefed beforehand so that they are aware of the mission requirements, the type of strategy and force exercised.

2.3 Internal Threats Warranting Military Interventions in Africa

A number of incidents and events in Africa have attracted military intervention in national security. Before making reference to these threats, it is worthwhile to conceptualize internal or national security. Internal security refers to the protection of a nation from attack or other danger or threat. Threat is a potential danger that could exploit vulnerability to breach security and therefore cause harm to the country. The most common threats to national security in Africa and by extension Kenya include: civil wars, *coups d'etat*, genocides, election-related violence, civil disobedience and acts of terror. This section examines ten common threats to national security that have warranted military interventions beginning with civil wars.

According to Singer and Small, civil war can be defined as any form of armed conflict that involves military action against civilians internally. [10] Civil wars are therefore characterized by active participation of state actors and effective resistance by non-state actors. According to Regan as quoted by Jung-Yeop Woo, civil war is organized combat between groups which occurs within a territory of a state and results in at least about 200 casualties. The violence must also last for at least six months.[11] This assertion is further expounded by Sambanis who who presents a criterion for classifying armed conflict. According to Sambanis, for an armed

[8] Mumo Nzau and Charles Mwanzia. "Diplomatic Manoeuvre and Kenya's Military Campaign in Somalia" Africa *AMANI Journal,* Issue 1 Vol. 1, (2014), 1-8.
[9] Ibid. **1**-8.
[10] David J. Singer and Melvine Small *Resort to Arms: International and Civil Wars, 1816-1980* (Beverly Hills: Sage 1982), 210.
[11] Jung-Yeop Woo, *Foreign Intervention in Civil Wars* (Cambridge: Cambridge Scholars Publishing, 2017), 81.

conflict to be classified as civil war, it must first take place within the territory of a state with an approximate population size of 500,000 or more. Secondly, the parties to the conflict must be politically and militarily organized. Third, the parties must have also publicly declared their political objectives. Fourth, the government, through its military or militias, must be a principal combatant. Fifth, the main insurgent organization must be a local actor recruiting combatants locally. Finally, the start year of the civil war is the first year that the conflict causes at least 500 to 1,000 deaths.[12] Fearon and Latin also define civil war as combat involving agents of a state and organized non-state groups which seek either to take control of a government, to take power in a region, or to use violence to change government policies.[13] The conflict must cause at least 1,000 deaths over its course, with a yearly average of at least 100 fatalities. The last condition is intended to rule out massacres where there is no organized or effective opposition.[14]

Africa has experienced various civil wars. The Biafra war or the Nigerian civil war began on 6 July 1966, and ended on 15 January 1970 with more than a million people dead mainly from starvation.[15] The war was fought between the Federal Government of Nigeria and the former Eastern Region which was seeking secession as Biafra. Besides Nigeria, other African countries like Liberia, Sierra Leone, Uganda, Sudan, Ethiopia, Somalia and Kenya have experienced civil wars. In such circumstances, the state through the military, finds itself in war against its own citizens.

The second type of intrastate conflict leading to military action is genocide. Genocides have occurred in various parts of the world. Some of the worst documented genocides in history include: the Armenian genocide, the Jewish Holocaust and genocide in former Yugoslavia. According to Stapleton, Africa has experienced incidences of genocide in Namibia, Rwanda, Burundi, Democratic Republic of Congo, Sudan, and Nigeria to the Central African Republic.[16] The 1994 Rwandan genocide where approximately one million Rwandese died

[12] Nicholas Sambanis, Conceptual and Empirical Complexities of an Operational Definition, *The Journal of Conflict Resolution* Vol. 48, No. 6 (2004), 814-858
[13] James D. Fearon and David D. Laitin, *Nigeria Random Narrative* (Oxford: Stanford University, 2003), 76
[14] Fearon and Latin, *Nigeria Random Narrative*, 76.
[15] Roy S. Doron, "Forging a Nation While Losing a Country: Igbo Nationalism, Ethnicity and Propaganda in the Nigerian Civil War 1968 -1970," PhD Thesis, The University of Texas at Austin, 2011, 46.
[16] Timothy J. Stapleton, *A History of Genocide in Africa* (London: Prager, 2017), 91.

was recorded as one of the worst in the history of Africa. Koigi wa Wamwere has argued that Kenya was on the verge of genocide during the 2007/2008 post-election violence.[17]

Genocide was declared by the United Nations as a crime against humanity in 1946. In response to this declaration, the Convention on Prevention and Punishment of the Crime of Genocide was adopted in 1948. The convention came into force in 1951 after 130 countries ratified it. In the 119 articles, the convention on genocides raises the aspiration to eradicate the crime. Article 1 indicates that the crime of genocide can occur both during war time and peace time.

Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as:

> Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.[18]

Genocide often occurs in societies in which different national, racial, ethnic or religious groups become locked in identity-related conflicts. However, it is not the differences in identity *per se* that generate conflict, but rather the gross inequalities associated with those differences in terms of access to power and resources, social services, development opportunities and the enjoyment of fundamental rights and freedoms. It is often the targeted group's reactions to these inequalities, and counter-reactions by the dominant group, that generate the conflict that could escalate into genocide.

The United Nations Office of the Special Adviser on the Prevention of Genocide has developed an analytical framework used to determine the risk of genocide in a given situation.[19] The framework highlights the following eight factors that increase the threat of genocide. First, tense inter-group relations, including a record of discrimination and or other human rights violations committed against a group. Secondly, weak institutional capacity to

[17] Koigi wa Wamwere, *Towards Genocide in Kenya: The Curse of Negative Ethnicity* (Nairobi: Mvule Africa Publication, 2008), 61.
[18] UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, 2.
[19] Aidan Hehir, The special adviser on the prevention of genocide: adding value to the UN's mechanisms for preventing intra-state crises? *Journal of Genocide Research*, Vol. 13, No. 3, (2011) 271-286.

prevent genocide, such as the lack of an independent judiciary, ineffective national human rights institutions, the absence of international actors capable of protecting vulnerable groups, and a lack of impartial security forces and media. The third, is the presence of illegal arms and armed elements. Other factors include: sudden or gradual strengthening of the military or security apparatus, killings, abduction and disappearances, torture, rape and sexual violence, "ethnic cleansing" or the deliberate deprivation of food. Finally, evidence of the "intent to destroy in whole or in part of the population during elections".[20]

The state carries the primary responsibility for protecting citizens from genocide.[21] The duty of the international community is to encourage and assist states in fulfilling this responsibility. Further, the concerns of the international community in genocide prevention include the use of appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the UN Charter.[22] In the UN millennium report of 2000, the former UN Secretary General, Kofi Annan, recalling the failures of the Security Council to act decisively in Rwanda and the former Yugoslavia suggested that states should take the responsibility to protect their own citizens against acts of genocide. This led to coining of the phrase responsibility to protect (R2P).[23]

Responsibility to protect refers to a vow signifying a nation's pledge to prevent and punish those who commit the crime of genocide. The term was first presented in the report of the International Commission on Intervention and State Sovereignty (ICISS) set up by the Canadian government in December 2001.[24] Prior to the idea of responsibility to protect, the international community's commitment to prevent genocides and crimes against humanity was captured in the phrase, "Never Again" which referred to the vow made by 140 states that ratified the genocide convention in 1948.[25] In the gathering of the UN General Assembly in 2005, heads of states and governments agreed to the R2P populations from genocide, war

[20] Ibid. 273.
[21] David A. Hamburg, *Preventing Genocide: Practical Steps towards Early Detection and Effective Action* (Boulder: Paradigm Publishers, 2008), 41.
[22] Ibid. 41.
[23] Ibid. 41
[24] Ibid. 41.
[25] William Chalmers, "Never Again: The Genocide Convention in Review," Dissertation, Seton Hall University, ETDs, 2013, 10.

crimes, crimes against humanity and ethnic cleansing. They asserted that sovereignty gave a state the right to "control" its affairs and to protect its citizens.[26] Informed by these utopian ideals, the UN declared that states could intervene militarily to end genocides within their jurisdictions.

Ethnic cleansing is another threat that has attracted military intervention. The term "ethnic cleansing" is etymologically Serbo-Croatian literal translation of the expression '*etnictco ci&enje*,[27] which refers to the deliberate and systematic removal of a racial, political, or cultural group from a specific geographical location with the intent of making the resident population homogeneous.[28] The UN defines ethnic cleansing as, "the planned deliberate removal from a specific territory, persons of a particular ethnic group, by force or intimidation, in order to render that area ethnically homogenous."[29]

Ethnic cleansing is similar to forced deportation or population transfer whereas genocide is the intentional murder of part or all of a particular ethnic, religious, or national group. The Rome Statute 1998 defines forced deportation or forcible transfer of population as forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law. The war in former Yugoslavia the early 1990s, especially in Bosnia and Kosovo was an example for ethnic cleansing. Locally, the Waki report documented attempted ethnic cleansing in the former Koibateke District of Kenya. The report noted that violence witnessed in the district during the 2007/2008 post-election violence amounted to ethnic cleansing because it was mostly perpetuated by members of the Kalenjin community against members of the Agikuyu and Gusii communities.[30] Further**,** oral interviews conducted by this study, cited the formation of ethnic-based districts during President Moi's era in Kenya created homogenous groupings that consciously excluded other communities perceived as 'outsiders'. Turkana District for Turkana, Teso District for Iteso, Kisii District for Gusii, Samburu District for the

[26] Evans Gareth and Sahnoun Mohamed, "Responsibility to Protect", *Journal of Foreign Affairs,* Vol. 3, No. 81, (2002), 99-110.
[27] Drazen Petrovic, "Ethnic Cleansing: An Attempt at Methodology," *European Journal of International Law*, Vol. No.3, (1994), pp. 342-359
[28] James M. Rubenstein, *The Cultural Landscape: An Introduction to Human Geography* (London: Pearson, 2008), 79.
[29] "Ethnic Cleansing Law and Legal Definition" US Legal, Inc. Available at: https://definitions.uslegal.com. Retrieved on 1 December 2018.
[30] The Waki Commission, *Report of the Commission of Inquiry on Post-Election Violence* (Nairobi; Government Printer, 2008), 91.

Samburu people and Mount Elgon for the Sabaot. Under such set up, those perceived as natives of the district presumably 'cleansed' the district through forceful removal of persons perceived as aliens in the district as was the case of Mt. Elgon Conflict in 2008.[31]

Though related to genocide, ethnic cleansing is distinguished from genocide because it closely focuses on forced removal of members of certain ethnic groups from particular geographic areas than genocide. The logic behind ethnic cleansing is to get people to move out of an area illegally.[32] The greatest overlap between ethnic cleansing and genocide takes place when forced removal of population leads to a group's extinction.[33] Some of the measures of ethnic cleansing that attract military intervention include summary executions, deliberate killing and torture.[34]

Key informants of the study also pointed acts of rebellions as another cause of military intervention in Africa. The term rebellion refers to a conflict that involves armed resistance to the government of the day. Rebellion is undertaken by a group of people aiming to replace the government in a state or to break away from the state in question.[35] Rebellions originate from resentment and disapproval of the status quo or a situation perceived to be illegitimate or illegal to the rebels. Rebellion manifests itself when the people begin to refuse to submit to or to obey the existing government. Rebellion can be staged by individuals or by collective groups. It may be peaceful in the form of civil disobedience and civil resistance or violent in the form of terrorism, sabotage or civil war. In political terms, rebellion and revolt are often distinguished by their differential aims. Rebellion generally seeks to evade and/or gain concessions from an oppressive power by replacing the mode of production with a new system of political economy, while a revolt seeks to overthrow and destroy that power, as well as its accompanying laws.[36]

[31] Oral Interviews, Focused Group Discussion, Cheptais, 23 October 2018.
[32] Drazen Petrovic, "Ethnic Cleansing: An Attempt at Methodology," *Journal of European Union of International Law*, (2018), 13. Available at: http://www.ejil.org/pdfs/5/1/1247.pdf Accessed on 23 June 2018.
[33] Andrew Bell-Fialkoff, *Ethnic Cleansing*, (New York: St. Martin's Griffin, 1996), 3.
[34] Drazen Petrovic, "Ethnic Cleansing, 13.
[35] Stathis N. Kalyvas, "The Ontology of Political Violence: Action and Identity in Civil Wars". *Perspectives on Politics*. Vol. 1 No. 3 (2003), 475–494.
[36] Theda Skocpol, *States and Social Revolutions: A Comparative Analysis of France, Russia, and China.* (Cambridge: Cambridge University Press 1979), 291.

Focussed Group Discussion conducted by this study also pointed out that *coups d'etat* in many African countries to have attracted military interventions.[37] The terms coup d'état, revolution and mutiny are sometimes used interchangeably. However, they elicit different meanings. Coup refers to a violent overthrow of an existing government by a small group operating in secrecy. *Coups d'état* are sometimes executed by individual civilians with the aid of the military. The chief prerequisite for a coup is control of all or part of the armed forces, the police, and other security organs. Unlike a revolution, which is usually achieved by large numbers of people working for basic social, economic, and political change, a coup is a change in power from the top that merely results in the abrupt replacement of the political leader.[38] A coup rarely alters a nation's fundamental social and economic policies, nor does it significantly redistribute power among competing political groups. Mutiny on the other hand refers to an occasion when a group of people, especially soldiers or sailors, refuse to obey orders and or attempts to take control from the people in authority. As such mutiny is applicable to the armed forces. Etymologically, the term mutiny comes from an old English verb, *mutine,* which means "revolt." There are two types of mutiny. First, mutiny about pay and promotions and secondly, a fully blooded attempt to overthrow the existing government.

The history of illegal assumption of power is long. In the Old Testament Absalom, one of King David's sons, staged a military coup against his father. The conspiracy against King David was, however, divulged and he managed to flee from Jerusalem before Absalom entered the city. Since King David had time to escape from the city, no coup was staged. David therefore retained his authority as king. Absalom was killed and his forces were eventually defeated in battle paving way for the return of King David to Jerusalem.[39]

Military coups in Africa do not constitute an isolated case. Almost a half of African countries have experienced military takeover. Algeria, Benin, Nigeria, Equatorial Guinea barely completed the first six years of independence without coups d'état. In the period under study, 1963 to 2013, the following African states witnessed coups or attempted coups as follows. Algeria witnessed three coups, Benin six, Burundi twelve, Ethiopia six, Egypt and Libya five each and Nigeria eight.[40] Kenya was not spared either. During the last week of January 1964

[37] Oral Interview, Focused Group Discussion, Nairobi, 21 February 2019.
[38] Kalyvas, "The Ontology of Political Violence, (2003), 475–494
[39] The Holy Bible, 2 Samuel, 15:13
[40]Patrick McGowan, & Johnson T H, "African Military Coups d'état and Underdevelopment: Quantitative Historical Analysis", *Journal of Modern African Studies,* Vol. 22 No. 4, (1984), 624.

the men of the 11th Battalion of the Kenya Rifles broke into the armoury at Lanet Barracks and demanded a meeting with Prime Minister Jomo Kenyatta to discuss their grievances. The soldiers demanded higher pay and the removal of expatriate British officers from the newly established national armies.[41] Another incident occurred on 1 August, 1982 when disgruntled Kenyan Airforce personnel attempted to overthrow the government of then President Daniel Arap Moi. It took the intervention of Kenya Army to prevent the takeover.[42] As much as coups may pose serious threats to national security and democracy, they are in most cases interpreted as purely domestic affairs.[43] As such military coups do not attract external military intervention. They only attract international condemnation from democratic governments.

Military overthrow of elected regimes have been common in Africa. Majorly because the military, with diverse specializations amongst its rank and file, is sometimes viewed as the answer to acute the social and political unrest bedevilling the continent. Nigeria political history is full of coup d'états. On 15 January 1966, a group of majors, mainly Igbos attempted to take over the Federal Government of Sir Abu-Bakr Tafawa Balewa. Many authors argue that military intervened because the political leaders of the first republic (1960-66) had demonstrated ineptitude, parochialism, injustice and corrupt tendencies in the handling of national affairs and these had bred serious alienation of the masses as well as general disillusionment such that the rulers had virtually lost legitimacy after five years in office.[44]

Acts of terror have in the recent past warranted the deployment of military forces in Kenya. The 1998 bomb blast targeting the US embassy in Nairobi not only saw the Kenya military intervene in the rescue efforts but also attracted the attention of the Israel Defence Forces.[45] The government also launched *Operation Linda Nchi* on 14 October 2011 to safeguard the country against Al-Shabaab terror threats.[46] Why is terrorism a security issue? By definition terrorism is the calculated use of violence or the threat of violence to inculcate fear in order to

[41] Timothy Parsons "The Lanet Incident, 2-25 January 1964: Military Unrest and National Amnesia in Kenya" *International! Journal of African Historical Studies* Vol. 40, No 1 (2007) 51-70
[42] Oral Interview, General (Rtd) Mahamud Mohamed, 12 December, 2018
[43] Steffan Wiking, *Military Coups in Africa* (Uppsala, Sweden: Scandinavian Institute of African Studies, 1989), 53.
[44] James D. Fearon and David D. Laitin, *Nigeria Random Narrative* 1.2 (Oxford: Stanford University, 2010), 43.
[45] Oral Interview, Focused Group Discussion, Lanet Barracks, 14 February 2019.
[46] Oral Interview, Focused Group Discussion, Nairobi, 21 February2019

coerce or intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.[47] There are different types of terrorism. They include: state-sponsored, dissent, left and right wing, religious criminal and ideological terrorism among others.[48]

Terrorists employ strategies that provoke military intervention. According to Lutz and Lutz, terrorists employ the following military strategies to pursue their political aims: attrition, intimidation, provocation, spoiling, and outbidding.[49] Attrition, is a strategy, where terrorists seek to persuade their targets to believe that they are strong enough to impose considerable costs if the target continues to pursue a particular policy. In intimidation, terrorists try to convince the population that they are strong enough to punish disobedience and that the government is too weak to stop them. So that people behave as the terrorists wish. The strategy of intimidation is mostly used when the perpetrators wish to overthrow a government in power or gain social control over a given population.

Provocation is an attempt to induce the target to respond to terrorism with indiscriminate violence, which radicalizes the population and moves them to support the terrorists. A provocation strategy is often used in pursuit of regime change. Terrorists use spoiling attack in an effort to persuade the people to believe that moderates on the terrorists' side are weak and untrustworthy, thus undermining attempts to reach a peace settlement. Terrorists pursuing a spoiling strategy are likely to be more successful when the enemy perceives moderates on their side to be strong and therefore more capable of halting terrorism. Groups engaged in outbidding use violence to convince the public that the terrorists have greater resolve to fight the enemy than rival groups, and therefore are worthy of support. Outbidding arises when two key conditions hold: two or more domestic parties are competing for leadership of their side, and the general population is uncertain about which of the groups' best represents their interests.

Bomb attack is one of the commonest techniques employed by terrorists inside Kenya. The attacks may involve the use of suicide bombers, improvised electronic devices (IED) or any other form of pressured or electrically detonable mines, booby traps or bombs. Since 1980

[47] U.S. Department of Defence, Glossary of terms, 13.
[48] Omar A. Lizardo and Albert J. Bergesen, "Types of Terrorism" *Homboldt Journal of Social Relations,* Vol. 27. No. 2, (2014), 162-189.
[49] James Lutz and Brenda Lutz, *Terrorism: The Basics* (London: Routledge, 2011), 57.

there have been numerous such attacks in Kenya. In 1980, the Jewish-owned Norfolk Hotel in Nairobi was attacked by the Palestine Liberation Organization (PLO) and in 1998, the United States Embassy in Nairobi was bombed, killing over 213 people and injuring more than 5,000 people.[50] In 2002, an Israeli-owned hotel called Paradise at Kikambala in the Coastal city of Mombasa was bombed alongside an Arkia airliner. In these two cases, Kenyan and Israel troops participated in rescue operations. In 2013, the Al-Shabaab militant group which is linked to international terrorist formations claimed the responsibility in the attack at Nairobi's Westgate Shopping Mall where 68 people were killed and hundreds injured.[51]

Newspaper headlines such as "Five police officers killed in Kenya," "Bomb blast kills eight on Kenya-Somalia border," and "Roadside bomb blows up passenger vehicle," have become a common feature in local dailies as alleged Al-Shabaab fighters use IEDs against police and military patrols in the northern and eastern border regions with Somalia. According to a Kenya Human Rights Commission report, Al-Shabaab terrorists based in Somalia, claimed responsibility for several attacks that killed dozens of Kenyan police and soldiers in 2013.[52]

Key informants of this study, especially from the military and National Police Service (NPS) from Garissa also identified ambushes and sporadic sabotage attacks on Kenya as one of the security threats that warranted intervention of national security agencies. Ambush or a sneak attack is long-established military tactics in which combatants take advantage of concealment and the elements of surprise to deal with unsuspecting enemy combatants from concealed positions, such as among dense bushes or behind hilltops. Ambushes have been used consistently throughout history, from ancient to modern warfare. The enemy's aim is not only to inflict casualties but to also capture arms and ammunition.

Though Kenya had witnessed terror attacks before, it believed that there has been an upsurge in insecurity as result of her fight against global terrorism. Cases of insecurity have been manifested in such forms as terrorist attacks targeting public facilities, civilians and security personnel, (including police stations in Garissa, Wajir, Mandera, Mombasa, Nairobi and Lamu). Sabotage attacks have also been meted against military installations in Mombasa and

[50] Emmanuel Wanjala, "Terror Attack: How August 7 Bomb Blast Happened in Nairobi," *The Star*, 7August 2018, 6.
[51] Faith Karimi, Steve Almasy and Lillian Leposo, "Kenya Mall Attack: Military Says Most Hostages Freed, Death Toll at 68" CNN, September 23, 2013. Accessed on September 25, 2018.
[52] KNCHR, "Are We under Siege? The State of Security in Kenya: An Occasional Report 2010 – 2014" (KNCHR, 2014), 13.

Lamu. Security expert argue that it is not easy to prevent sabotage attacks because of the difficulty of screening. The military repose in the event of ambush remains as being responsive to attacks. [53]

Governments around the world have tried various approaches in dealing with terrorism. According to Sederberg, acts of terrorism can be treated as equivalent of war through military intervention or dealt as crime through the court system. The most relied upon counter-terror strategy is repression. Other strategies include: increased physical security, intelligence gathering, attacking terrorist financial sources, retaliation, international cooperation, concession and reforms as well as negotiations.[54] Kenya is pursuing a military-led-counter terrorism strategy called *Operation Linda Nchi* since 2011. The military intervention is aided by an array of counter-terrorism strategy under the National Counter Terrorism Centre (NCTC). This is a multi-agency instrument primarily of security agencies built to strengthen coordination in counter terrorism. The NCTC was established in law by the Security Law Amendment Act 2014, however it has existed since 2004 when it was created by a decision of the Cabinet.[55] In general there are many counterinsurgency strategies that are available to Kenya, but no one technique is a "magic bullet" that will always work to deal with every terrorist situation.[56]

Civil disobedience or disturbances may also warrant deployment of the military. Civil disobedience and disturbances are two close and related terminologies involving protestors. Civil disobedience is the active refusal by citizens to obey state laws, orders or commands issued by security agents.[57] Civil disobedience is sometimes equated to the non-violent resistance and is contrasted to civil disturbance which is a form of collective violence capable of interfering with peace and security. Acts of civil disobedience include: unlawful assemblies, strikes and picketing, civil disobedience, riots, arson and looting. Civil disobedience or disturbance is mostly perpetuated by protestors. A protester is a person who

[53] Oral Interview, Capt (Rtd) Werunga, 15 January 2019.
[54] Peter C Sederberg, "Global Terrorism: Problems of Challenge and Response" in *The New Global Terrorism, Characteristics, Causes, Control*. ed. Charles W. Keegly Jr. (New Jersey: Prentice Hall. 2003), 78.
[55]The National Counter Terrorism Centre home page available at https://www.counterterrorism.go.ke/
[56] Lutz and Lutz, *Terrorism*, 57.
[57] John Morreall, "The justifiability of Violent Civil Disobedience," *Canadian Journal of Philosophy*, Vol. 6, No. 1, (1976), 35–47.

actively participates in a civil disobedience campaign, be it through protesting, striking, or using other means of resistance that are primarily nonviolent.[58]

There have been countless examples of civil disturbance situations around the world. Though the constitution of Kenyan authorizes the use of legally sanctioned means to push for any constitutional, legal or policy changes the citizens may desire. However, the Kenyan government often frustrates citizens' efforts to use these channels to express their democratic rights. For example, it frequently declines to grant licenses for demonstrations and political rallies organised by perceived opponents, and goes ahead to violently disperse them. This was the case during the clamour for the restoration of multi-party politics in the 1980s and early 1990s, after the 2005 referendum "the Wako Draft", and in the aftermath of the disputed 2007 and 2013 general elections, among others.

The size and scope of these civil disturbances vary from small gatherings of people who were verbally protesting to full-blown riots. Not all civil disobedience campaigns result in many civilian deaths, or destruction of property. However, some fully blown riots may result in death of civilians and destruction of property. In such instances, the military are deployed to disperse protestors. The use of force to disperse crowds should however be considered as the last resort. [59] This is because coercive dispersal of protestors may provoke violence. For instance, civil disobedience may turn violent if the military perceives protestors belong to opposition based on ethnic, religious and political affiliation. The study noted that militaries in non-democratic regimes are more likely to perpetrate violence against protesters perceived to belong to the opposition. Similarly, dispersal of civil disturbance in weaker states is likely to be more violent than in democratic states. [60] According to Ore, militaries that are not logistically supported or well-equipped are more likely to prey on the local population which they are supposed to defend. Finally, militaries that have close ties with the political leadership of a state tend to perpetrate violence against members of the opposition.[61]

[58] Gene Sharpe, *The Politics of Nonviolent Action* (Boston: Porter Sargent Publishers, 1973), 117–433.
[59]UN, "Crowd Dynamics in Public Order Operations," *UN Peacekeeping PDT Standards for Formed Police Units* 1st ed. (New York: UNPKO, 2015), 11.
[60] Oral Interview, Captain (Rtd) Werunga, 15 January 2019.
[61] Koren Ore, Military Structure, Civil Disobedience, and Military Violence, *Terrorism and Political Violence*, Vol. 26, No. 4, (2014), 688-712.

2.4 The Degree of Force Applicable to Internal Military Operations

State security organs are by law permitted to use various levels of coercion to cope with diverse internal security situations. What forces are used in internal security operations is entirely a matter of the state.[62] Kenya has three state organs of national security and consequently three main types of force at their disposal ranging from police to paramilitary forces, and the military in exceptional circumstances. The level of force used in internal security operations also vary depending on the type of threat.[63] For instance, force applicable to the threat of riots will be less indiscriminate as compared to force to counter terrorism. Similarly, force unleashed to threats of sabotage by small groups will be different from that meted to secessionists' movements. Though state military such as KDF is deemed impartial and apolitical, the degree of force which the military uses is sometimes influenced by the political climate. In civil disturbance or rebellion, the military essentially supports the government of the day.[64] The degree of force used by security organs also depends on the prevailing circumstances in particular situation. For instance, there are situations when the police are placed under the direction of the military. In worse situation the police may be withdrawn from the scene to pave way for an exclusive military operation. In other circumstances, the police and military may conduct joint operations.[65]

Though citizens and security guards are the obvious first responders to security threats, the police is usually the first line state agency for addressing threats to security.[66] The police is a constituted body of persons empowered by a state to enforce the law, to protect people and property, and to prevent crime and civil disorder.[67] Their powers include the power of arrest and the legitimate use of force. The police are usually trained and equipped for traditional policing roles and often also for certain levels of internal security operations. A state deploys the police for internal security reasons for as long as possible. However, if the violence escalates, the police might be overextended and the civil authorities may request military assistance. The paramilitary force will no doubt be the first to provide reinforcements under such circumstances.

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[62] David Wippman, and Mathew Evangelista, *New Wars, New Laws: Applying the Laws of Armed Conflicts.* (Brine: Meynts, 2009), 64.
[63] ICRC, Internal Security Operations, 6.
[64] Oral interview, Major (Rtd) Osundwa, Security Expert, 24 November, 2018.
[65] Oral interview, Focused Group Discussion, Nairobi, 21 February 2019.
[66] Oral interview, Captain (Rtd) Weruga, 15 January 2018.
[67] "The Role and Responsibilities of the Police" Policy Studies Institute, p. xii. Retrieved on 10th September 2018.

All security agents including police officers have a range of force options to choose from in a tactical situation. These levels of coercion are often described in terms of a continuum. The use of force continuum is an instructional model that provides law enforcement officers with guidelines as to how much force may be used against a resisting subject in a given situation. It describes each of the different levels of force that may be used in response to subject behaviour.[68] Desmedt and Marsh outline the following levels of force; cooperative controls, contact controls, compliance techniques, defensive tactics and deadly force.[69] These level of force in the officer response category are matched against the subject level of resistance as illustrated in the use of force continuum model below.

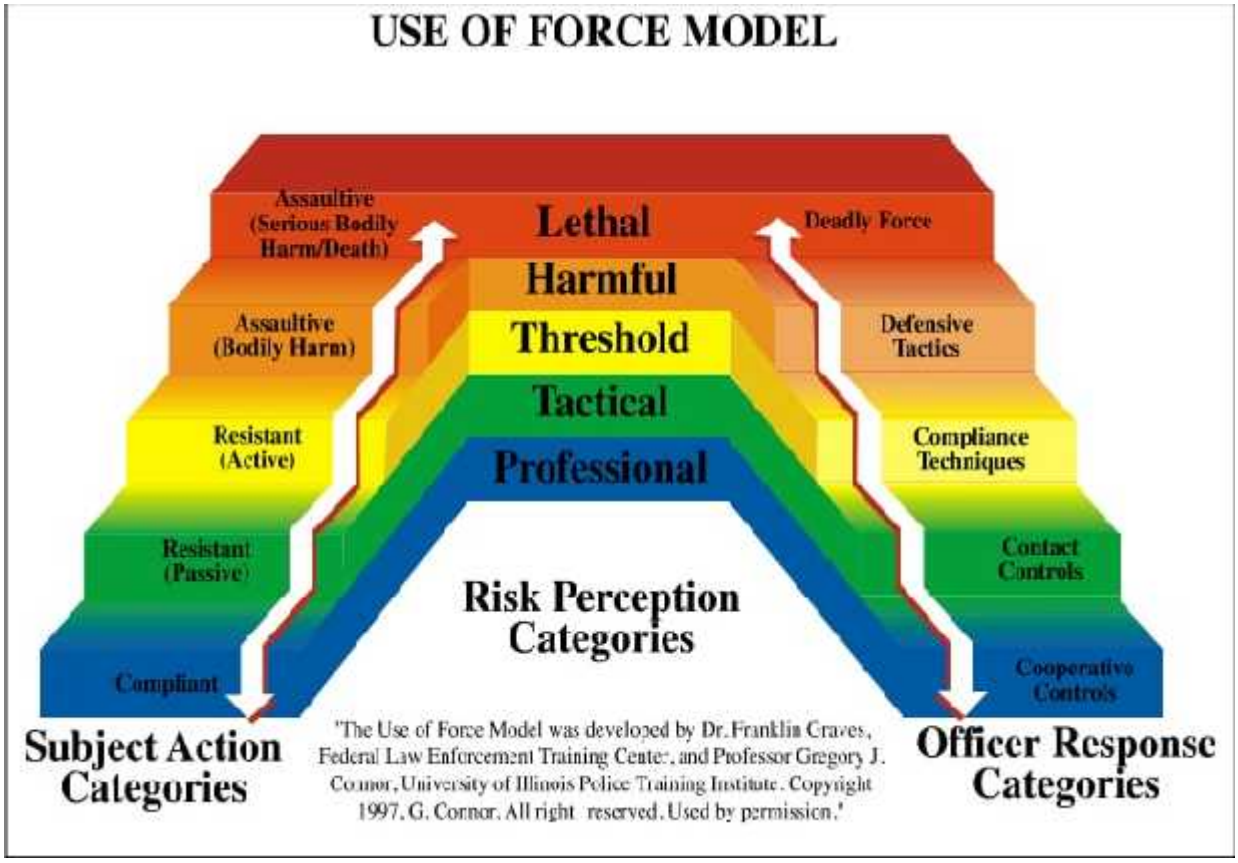

Figure 2: The Use of Force Continuum
Source: Federal Law Enforcement Training Centre Manual, 2009, 6.

[68]US Custom and Borders Protection "CBP Use of Force Policy, Guidelines and Procedures Handbook" New York, Department of Homeland Secueiry, (2014), 3.
[69] John C. Desmedt, and James F. Marsh, "The Use of Force Paradigm for Law Enforcement and Corrections," *The Police S.A.F.E.T.Y. System* (Baileysburg Lane, Nokesville: VA 22123, 1990), 12.

According to the use of force continuum, the levels of coercion used by security agents are arranged in ascending order of severity. The force is justifiable only if it is reasonable and corresponds to the level of resistance exhibited by subjects.[70] Depending on the behaviour of the subjects, the levels of force are classified as: complaint, passive resistant, active resistant, mechanical resistant and assaultive resistant. Complaint subject is one who cooperates with a security agent's control efforts. Passive resistance is displayed by a subject who exhibits no signs of immediate threat or flight risk, and offers no physical resistance to the security agent's control efforts but is also not cooperative. Active resistance is displayed by a subject who offers physical or mechanical resistance to a law enforcement agent's control efforts. Mechanical resistance is a type of active resistance where a subject uses a mechanical object to resist arrest. In this situation, the subject's efforts are not directed toward the officer but rather appear intended to thwart any control efforts by physically securing or holding on to another object.[71]

The highest level of resistance a subject can exhibit is assaultive resistance. This comes in two types. The first, assaultive resistance which involves a subject whose resistance causes, or has the potential to cause, physical injury to the officer or security agent, others, or self. It includes a subject's attempts (or intent) to make physical contact in an attempt to control or assault the officer or agent. The second type is assaultive resistance that may cause serious physical injury or death to the officer/agent, others, or self.[72]

The level of force applied corresponds to the level of resistance subjects may exhibit.[73] They include cooperative controls, contact controls compliance techniques, defensive tactics and deadly force. Cooperative controls are measures (including verbal commands) used to maintain control over a compliant subject. Contact controls include physical measures taken when verbal commands and officer presence are not effective in gaining compliance. Contact controls may include measures such as strategic positioning, escort holds, joint manipulation or immobilization or touch pressure point stimulation.

[70] Ronald E. Hosko, *Use of Force: A Debate* (Chicago: National Black Police Association, 1990), 9.
[71] Desmedt, and Marsh, "The Use of Force Paradigm for Law Enforcement and Corrections", 13.
[72] Hosko, *Use of Force: A Debate*, 10.
[73] Ellen M. Scrivener, *The role of the Police in Controlling Excessive Force* (Washington D.C.: National Institute of Justice Research, 1994), 16.

Compliance techniques are actions taken when the subject is actively resisting the efforts of the officer to establish and maintain control. Examples of compliance techniques include the use of Oleoresin Capsicum (OC) spray, strike pressure points, stunning techniques, takedowns, joint manipulations and use of an Electronic Control Weapon (ECW). Defensive tactics may include actions taken when a subject has either assaulted the officer/agent or is displaying a willingness and intent to do so. Examples of defensive tactics are concentrated strikes involving the use of empty-hand techniques e.g., the use of body parts as weapons, the collapsible straight baton (CSB) and the electronic control weapon (ECW). Deadly force refers to actions taken when an authorized officer or law enforcement agent applies direct fire when he has a reasonable belief that the subject poses an imminent danger of serious physical injury or death to the officer or law enforcement agent or to another target person.[74]

Depending on the seriousness of a situation, the paramilitary police is usually the government second line agency to deal with internal strife after the regular police. The paramilitary police is a semi-militarized entity whose organizational structure, tactics, training, subculture, and function are similar to those of a professional military, though it is not part of a state's formal armed forces.[75] Though the paramilitary police is not a military force, it usually uses force equivalent to that of light infantry in terms of intensity, firepower, and organizational structure. The General Service Unit (GSU) is a specialized paramilitary wing of the Kenya National Police Service. It is an operational force not intended for use in day to day routine duties. The GSU comprises of highly trained special officers deployable in the event of war or terror attack.[76] A paramilitary police force may fall under the command of a military despite it not being part of the military. It can also assist the military in times of war.[77] The paramilitary police normally have two roles: to support armed forces' operations in defence of the state against external aggression and to conduct internal security operations alongside the regular police. Unlike the military, many paramilitary forces around the world are specially trained for internal security duties.[78]

[74] Scrivener, *The role of the Police in Controlling Excessive Force*, 16.
[75] *Oxford English Dictionary* 3rd ed. (Oxford University Press. June 2011).
[76] "Paramilitary and Special Forces Kenya-Kapolisi" Available at: www.kapolisi.com . Retrieved 1 December 2018.
[77] "Customary International Humanitarian Law – Section B: Incorporation of Paramilitary or Armed Law Enforcement Agencies into Armed Forces," *Icrc.org*. Retrieved 23 July 2018.
[78] Oral interview, Captain (Rtd) Weruga, 15 January 2018.

The organ of national security of last resort for a state in times of severe and pervasive violence is the military. In Kenya, the armed forces comprise of the Army, Air Force and Navy. These sister services of KDF are constitutionally established by an Act of Parliament. Their main role is to protect territorial integrity of a country from external threats. The military may also be deployed to aid the civil power as secondary role. After the Cold War there emerged a debate as to whether military forces should be deployed in internal operations. Advocates of military involvement in internal disputes saw it as a useful strategy for avoiding protracted conflict and gross human rights violations by insurgency groups.[79] Due to the traditional involvement of the military in peace enforcement missions, policy-makers and society-at-large assumed that the military was well placed to undertake these roles. The use of the military in internal operation then became normal in both the developed world and new democracies including Kenya.

Internal military operations can vary in size, purpose, and combat intensity within a range that extends from military engagement, security cooperation, and deterrence activities to crisis response and limited contingency operations and, if necessary, major operations.[80] Military operations other than war (MOOTW) focus on deterring war, resolving conflict, promoting peace, and supporting civil authorities in response to domestic crises. The objective of military intervention in internal disputes is to restore peacetime conditions.[81] Peacetime is a state in which diplomatic, economic, informational, and military powers are employed in combination.

Military strategy and tactics are essential for the conduct of warfare. Broadly stated, strategy is the planning, coordination, and general direction of military operations to meet overall political and military objectives. To orchestrate various military strategies, military commanders and theorists throughout history have formulated strategic and tactical principles of war. These principles also apply to military operations other than war. Some of the most commonly cited principles of war are the objective, the offensive action, surprise, and

[79]UN, United Nations Peacekeeping Operations: Principles and Guidelines, United Nations Department of Peacekeeping Operations Department of Field Support, (2008), 6.
[80] Nwanule, B.O.G. Frhd, Ojukwu Uche Grace and Vichor Chinedu Iwuoha, "Military Operations Associated With Internal Military Security and Special Rules for Opening Fire in Armed Conflicts, " *International Journal of Asian Social Science*, Vol.2, No. 7 (2012), 1151-1160
[81]Jennifer M. Taw, "Planning for Military Operations Other Than War: Lessons from US Army Efforts." *Australian Defence Force Journal*, No. 134, (1999), 57–68.

security, unity of command, economy of effort, mass, and manoeuvre.[82] These principles guide warfare and provide a powerful lens to examine the application of military power.[83]

Military commanders also argue that selection and maintenance of the objective or aim is the master principle of war. They further argue that a single, unambiguous aim is the keystone of successful military operations.[84] The principle of objective requires that every military operation should be directed toward a clearly defined and attainable goal. The ultimate military purpose of war is the destruction of the enemy's ability and will to fight. Offensive action is the most effective and decisive way to attain a clearly defined common objective. Selection and maintenance of a military aim is not only dependent on operations but also on politics. According to Clausewitz, war is a continuation of politics by other means.[85] The protection of the country is thus the primary reason for which the military exists and compulsory submission of the enemy to our will is the ultimate object of war in this regard.

Offensive operations are the means by which a military force seizes and holds the initiative while maintaining freedom of action and achieving decisive results. Security is about providing and maintaining an operating environment that gives freedom of action, when and where required, to achieve objectives. Security enhances freedom of action by reducing vulnerability to hostile acts, influence, or surprise. Security results from the measures taken by a commander to protect his forces. The cardinal principles is never permit the enemy to acquire unexpected advantage. Therefore, knowledge of enemy strategy, tactics, doctrine, and strength improve security measures.

Surprise refers to striking the enemy at a time or place or in a manner for which he is least prepared. Surprise can beat oven the strongest and can decisively shift the balance of combat power. By seeking surprise, forces can achieve success well out of proportion to the effort expended. Surprise can be in terms of tempo, size of force, direction or location of main effort, and timing. Deception can aid the probability of achieving surprise. Surprise is the

[82] Chris van Avery, "12 New Principles of War," *Armed Force Journal*, Vol.23, No. 7, (2007), 132-147.
[83] UK Defence, Joint Doctrine 0-01 5th ed. (JDP, 2000), 13.
[84] Chairman of the Joint Chiefs of Staff, *Joint Publication 3-0: Joint Operations*, (Washington, DC: US Government Printing Office, 2017), 17.
[85] Carl von Clausewitz, *On War*. Translated by Michael Howard. (New Jersey: Princeton University, 1984), 9.

consequence of confusion induced by deliberately or incidentally introducing the unexpected military action.[86]

Concentration of force involves decisively synchronizing and applying superior fighting power to realize intended effects, when and where required. Economy of effort is judicious exploitation of manpower, materials and time in relation to the achievement of military objectives. Flexibility is the ability to change readily to adopt new circumstances. It comprises of agility, responsiveness, resilience and adaptability. Cooperation incorporates teamwork and a sharing of dangers, burdens, risks and opportunities in every aspect of warfare. Sustainability requires generating the means by which fighting power and freedom of action are maintained. Maintenance of morale enables a positive state of mind derived from inspired political and military leadership, a shared sense of purpose and values, well-being, feeling of worth and group cohesion.

The concepts of exterminate, exhaust, intimidate, annihilate, and subversion are regarded conclusive strategies in terms of defeating the enemy. These five basic military strategies provide foundations of inexhaustible hybrid of modern military strategies and types of warfare. Extermination refers to a plan that describes how military means and concepts of employment are used to achieve the extinction of a group of people.[87] A war of extermination is characterized by systematic effort to not merely defeat the enemy, but to annihilate the enemy. Thus wars of extermination are also called wars of annihilation. In ancient times, the strategy of extermination was used either to take territory and its associated resources, but also to eradicate the enemy. The strategy of absolute extermination is told in the Old Testament. In the book of Samuel, God directed the Israelites to exterminate the Amalek, a hated enemy of the Jews.[88] Genocide is a modern aspect of this strategy. The strategy of extermination is today considered amoral by international law.

Strategy of annihilation seeks the immediate destruction of the combat power of the enemy forces. Contrary to the word itself, the strategy is not so much meant to completely destroy the enemy but the arsenal and other logistics. The aim of this strategy is to win one major

[86] Chairman of the Joint Chiefs of Staff, Joint Publication 3-0, (Washington DC, US Government Printing Press, 2011) pp. A–1 – A–4. Retrieved on 18 August, 2018.
[87] Randall G Bowdish, "Military Strategy: Theory and Concepts" Thesis, University of Nebraska, Political Science Department 2013), 203.
[88] The Holy Bible, 2 Samuel 15:3.

battle meant to cripple the military strength and morale of the opposing military. This is achieved through the use of tactical surprise, application of overwhelming force at a key points. The alleged bombardment of the SLDF hideout in Mt. Elgon was deemed as annihilation. In this strategy, it is not necessary to kill or capture the opposing army's soldiers so as to annihilate it. What is important is the destruction of the enemy army's will and cohesion to offer further resistance. When the will is destroyed, the enemy's morale to fight diminishes and the enemy surrenders or settles for peace.[89]

The strategy of exhaustion seeks the gradual erosion of an enemy nation's will or means to resist.[90] A strategy of exhaustion can take several forms: blockades, sieges, guerrilla warfare, and "scorched earth" policies that destroy the physical resources an attacker might use. Terrorist groups may also employ this strategy. The protracted *shifta* military campaigns from 1960s to 1980 and the strategy employed by Al-shabaab is according to military aimed at the gradual exhaustion of the security forces in Kenya.[91]

Intimidation, also called cowing, is intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm. It is a psychological operations which is defined broadly as the planned use of communications to influence human attitudes and behaviour. The strategy involves the use of propaganda, threats, and other psychological techniques to mislead, intimidate, demoralize, or otherwise influence. Whittaker argues that state-sponsored violence against the *Shifta* was an act of intimidation to force social change among the Somali of the NFD.[92]

Subversion is manipulation of politics. Blackstock refers to subversion as a process by which the values and principles of a system in place are contradicted or reversed.[93] It is an attempt to transform the established social order and its structures of power, authority and hierarchy. Subversion can be described as an attack on the public morale. Subversive actions can either

[89] Bowdish, "Military Strategy: Theory and Concepts", 203.
[90] Bowdish, Military Strategy, 203
[91] Oral Interview, Focused Group Discussion, Nairobi, 21 February 2019.
[92] Whittaker, Pursuing Pastoralists: the Stigma of Shifta during the '*Shifta War*' in Kenya, 12
[93] Paul W. Blackstock, *The Strategy of Subversion: Manipulating the Politics of Other Nations* (London: Quadrangle Books, 1964), 65.

be internal or external. This strategy was widely used by the secessionist movement in the *Shifta* war.[94]

Finally, attrition means reducing an adversary's physical capacity to fight while exhaustion entails wearing down the opponent's willingness to do so. Attrition is a strategy of wearing down the enemy to the point of collapse through continuous loss of personnel and material. Used to defeat enemies with low resources and high morale.[95] Both strategies can mean long wars, imposing heavy burdens on a nation's population and economy, meaning they are not always culturally acceptable or economically practical. The Allies' strategy in the Second World War was an example of attrition.

The military in most cases utilizes lethal or deadly force to safeguard the interests of the state. The guidelines on use of force in internal operations stipulate that firearms should not be used except when a suspected offender offers armed resistance. Deadly force may also be used when the subject threatens the lives of others. Deadly force may also be used when less extreme measures are not sufficient to restrain or to apprehend a suspect. In any internal security operations, firearms may only be intentionally used in unavoidable circumstance to protect life. According to Clifford, there ought to be a warning before opening fire.[96] Warning is not required under the law of armed conflicts. Troops are permitted to fire in order to defend themselves, their comrades' families, the police and all peaceable persons against serious attack. They also fire to protect against serious damage to government installations. Security agents may also fire to disperse a crowd likely to cause serious injury to persons and property if not forcibly prevented. Troops are also permitted to fire when they come under attack with arms or explosives. They also fire while performing sentry or escort duties.

Apart from the general guidelines, there are some special rules regarding opening fire in internal security situations. For instance, an individual soldier under direct orders of a military superior is authorized to fire and to act on the order of that military superior. Where a soldier is not under the direct orders of a military superior or under command, the soldier is expected to act on the principles of "minimum force". The soldier always has to assess the

[94] Bowdish, Military Strategy, 203
[95] Ibid, 65.
[96] Clark P. Clifford, *Military Development and Civil Wars in Europe* (Cambridge: Cambridge University, 2009), 74.

situation facing him before making a decision on what degree of force is necessary. It is important for soldiers to remember that they should not fire when it is obvious that he can achieve his object by other means. Troops should also never fire warning shot over people's heads since it may cause unintended casualties.[97]

2.5 Types of Internal Military Operations

Military intervention in internal disputes may be classified into two categories. The first category is limited contingency campaigns. These are basically crisis response operations. Limited contingency operations can be a single operation, or operation of limited duration, it may also constitute part of a major operation. The second category of internal military operation involves long term operations. They comprise of large-scale combat that place the troops in a wartime scenario.[98] The *Shifta* war and *Operation Linda Nchi* undertaken by KDF fall under this category. The common internal military operations undertaken by troops included: cordon and search, VIP protection, protection of vulnerable groups, casualty evacuation, crowd and mob dispersal, urban and rural patrols, joint operations, manning observation posts, guard duties mounting of road blocks or vehicle check points (VCPs), enforcing curfews, manning a peace line, escort duties, hostage rescue and ambush.[99] Some of these operations are discussed in the following subsequent paragraphs.

Cordon and search is a basic military mission conducted frequently in operation areas. Military insiders in Kenya indicated that there is virtually no operation lasting over a week that does not employ this strategy.[100] The Cordon and search involve assembling troops around an area to provide security (cordon) and then obtain permission to comb (search) the area. The aim of this operation is to capture wanted persons, arms, ammunition, supplies, explosives or documents. There are two types of cordon and search operations: cordon and knock, and cordon and kick.[101] Cordon and knock is a relatively new technique in military operations. It is more of normal house search and less violent compared to cordon and kick or enter. Cordon and enter is executed where no permission is granted or where resistance is expected. A cordon and kick or enter operation may be planned from the start or warranted by circumstance during the operation. The type and level of force used to gain entry into

[97] Sylvester .A. Christine, *Prohibitions and Restraints in War* (London: Oxford University Press, 2004), 56.
[98]Nwanule, Ojukwu and Iwuoha, "Military Operations Associated With Internal Military Security", 1151-1160
[99] Ibid, 1151-1160.
[100] Oral Interview, Focused Group Discussion, Nairobi, 21 February 2019.
[101] Oral interview, Major Otieno*, Lanet Barracks, 4 February 2019.

buildings may range from simply opening a door to using explosives.[102] The success of cordon and search operations is based on good intelligence and surprise.[103] Cordon and search is normally a joint police and military operation. It may also be executed by either of the two groups. In case of the joint operation, the military will normally be responsible for: providing the cordon, escorting the police searchers, setting up cages, guarding detained suspects. The military may also provide technical assistance such as mine and IED detection, explosive detonation and clearing of paths among other duties as undertaken in *Operation Linda Nchi*.[104]

Casualty evacuation, also known as CASEVAC, is a key role of the Kenya Air Force.[105] CASEVAC refers to emergency patient removal of the wounded and the dead from a combat or disaster zone. Casualty evacuation may be synonymous to medical evacuation in the context of aid to civil authority. Medical evacuation, often shortened as MEDEVAC, is the timely and efficient movement and route care provided by medical personnel to wounded soldiers being evacuated from a battlefield or injured patients being evacuated from the scene of an accident to receiving medical centres. The Kenya Air Force CASEVAC team has been used to evacuate casualties in North Eastern Province that is prone to terrorist attacks. Most of the casualties are victims of IEDs. Beside the air force team, the medical battalion of the Kenya army stationed at Embakasi Garrison in Nairobi is charged with the responsibility of providing medical support to the troops both during peacetime and wartime operations. They also collect, classify and evacuate the casualties.[106]

The military in Kenya also conducts patrols in insecurity prone areas such as Baringo, Pokot, Turkana, Laikipia, Isiolo as part of peace time operation or during limited security operations.[107] Patrols conducted in peace time are meant for training as well as to reassure the public of security. It should be noted that mere presence of officer or patrol vehicles is the first level of force used by law enforcement officer to gain control. During operations, patrols are conducted in order to dominate the area in which the military operates, and to maintain curfews as well as protect citizens' dependant on the operation. Patrols may also act as

[102] *"Tactics in Counterinsurgency", FM 3-24.2. Department of the Army, Headquarters (21 April 2009).*
[103] Oral Interview, Major Otieno* 4 February 2019.
[104] Oral Interview, Focused Group Discussion, Lanet Barracks, 4 February 2019.
[105] Oral Interview, Major Babuya*, Nairobi, 14 January, 2019
[106] Oral Interview, Focused Group Discussion, Lanet Barracks, 4 February, 2019.
[107] Oral Interview, Focused Group Discussion, Lanet Barracks, 4 February, 2019

display of military might meant to deter attack and reassure the public in conflict areas.[108] Foot Patrols are normally section strength and patrol in formation to avoid being ambushed. Vehicle Patrols include military police or any military patrols mounted in vehicles and equipped with radio. Clandestine patrols are coordinated with the overall patrol scheme. Small clandestine patrols on foot can also be effectively employed concealment.

Though rare in Kenya, crowd and mob dispersal is common operation military may be tasked to accomplish. Crowds are a gathering of a multitude of individuals and small groups temporarily assembled in the same place.[109] These small groups are usually composed of friends, family members, or acquaintances that represent a group belief or cause. There are three types of crowds namely casual, sighting and agitated crowds. Casual crowds are individuals or small groups with nothing in common to bind them together. Sighting crowds are casual crowds engaged in one single event, which could be a sport meeting, a fire outbreak, accidents, music concerts, labour strikes, a demonstration, and protests. Agitated crowds are generally casual or sighting crowds exhibiting strong emotions expressed verbally in the form of yelling, screaming, crying, and profane name-calling.[110]

A mobs is a crowd which has gone out of control.[111] Mobs have all the elements found in the first three types of crowds, with the addition of aggressive, physical and, sometimes, violent actions. Under these conditions, individuals within a crowd will often say and do things they usually would not. There are three types of mobs: the mob with a defined aim i.e. to kill or to destroy property; the escape mob running from perceived physical threat such as gun and fire; and the acquisitive mob out to loot and rob.[112]

Generally the size of the crowd is no indication of its attitude. A crowd may consist of nearly as many peaceful citizens and sightseers as unruly elements, and women and children may be present in large numbers. Troops should appreciate that a crowd which hither to has confined

[108] Oral Interview, Focused Group Discussion, Lanet Barracks, 4 February, 2019.
[109] UN *Peacekeeping PDT Standards for Formed Police Units*, 1st ed, (New York, UNPKO, 2015), 3.
[110] Ibid. 4
[111] Ibid. 4.
[112] UN Peacekeeping PDT Standards for Formed Police Units, 5.

itself to shouting slogans and creating noise may, in a brief space, be joined by other more violent elements or may spontaneously turn to more violent methods. [113]

The military is always called upon in instances where the police are overwhelmed with crowd. A case in point was the deployment of the paramilitary and the army to disperse rioters during the violence that rocked Kenya in 2007/2008 after a disputed presidential elections.[114] Under such circumstances it was prudent for the military to assess the direction to disperse the crowd as well as alternative dispersal routes to avoid stampedes. They also needed to assess the moods and intensions of the crowds. Other factors to be considered included the degree of urgency and the possibility of another threat developing. The principles governing crowd dispersal include early warning on crowd formation, intelligent handling of the crowd, and use of minimum force.

Fire power can be used in crowd control. This is however practical in advanced countries with appropriate equipment. Ammunitions such as the M1029 and 40MM are recommended for crowd dispersal. The M1029 crowd dispersal cartridge is a low-hazard direct fire with non-shrapnel projectile motion. The 40MM is non-lethal cartridge effective for crowd dispersions or routing of individuals. The M1029 and 40MM are also effective in rescue or street clearing operations. These two types of cartridge deliver a strong, stunning blow to a rioter's body without penetrating it. These cartridges have a wide range of capabilities for tactical law enforcement. In the absence of such non-lethal munitions, security forces are likely to use high calibre weapons and ammunition leading to death of victims. The commonly used ammunition in Kenya include 7.62MM, 5.6MM and 9MM. These are high-lethal ammunitions capable of causing serious injury or death.[115]

Aircraft, particularly helicopters, may be employed for crowd dispersal in developed countries. When using aircraft, reconnaissance aircraft are used to give advance warning about crowd formation. Helicopters are then used for shadowing and dominating a crowd by flying overhead, thereby causing confusion among the crowd. In developing countries like Kenya, the use of helicopters in crowd dispersal is unheard of. Instead, security agents make use of batons, electronic shock and chemical sprays for crowd dispersal. These tactics may be

[113] Robin Higham, ed. *Bayonets in the Streets. The Use of Troops in Civil Disturbances*, (Manhattan, KS: Sunflower University Press, 1989), 69.
[114] Oral Interview, Focused Group Discussion, Lanet Barracks, 14 February 2019.
[115] Oral Interview, Focused Group Discussion, Lanet Barracks, 14 February 2019.

necessary but not sufficient to persuade a crowd to disperse. Experience has shown that, charged crowds defy use of such tactics causing the police to use deadly force. Further, the military in Kenya is not widely used in crowd dispersal. They are only called upon when situations go out of control as in *Operation Rudi Nyumbani* (return home) launched during the 2007/2008 Post-Election violence.[116]

The military may also mount road blocks while carrying out internal security operations. Road blocks may be established with the aim to maintain a continuous check on road movement, to apprehend wanted person and to prevent the smuggling of arms, ammunition and supplies, and to assist the local authorities in enforcing food control. There are two types of road blocks, namely, deliberate and snap road blocks. Deliberate road blocks are placed on a main road and act as a useful deterrent to unlawful movement, but they are unlikely to produce spectacular result. Snap road blocks are used for spot checks, and their actual location is often related to some item of intelligence. During the *Operation Okoa Maisha* in Mount Elgon in 2008, the military mounted numerous roadblocks to nab the militia fleeing the area. Road blocks were also used to check the flow of smuggling of arms into and out of the region.[117]

The military also guard vulnerable points (VP) during security operations. VP are key installation at risk of attack. Vulnerable points may include: communications centres such as telephone exchanges and radio transmitters, public utilities such as power stations, water pumping station and pipelines, those bridges essential to the security forces, civilian stores of industrial explosives, government officers, industrial concerns such as oil storage tanks, refineries, jails and cantonments, especially during racial or religious disturbances. The task of a VP guard is to detect and deter anyone seeking to gain intelligence about the VP, to prevent damage; arson or looting, and ensure the maintenance of essential services. Guarding of vulnerable points in peacetime is normally a responsibility of the administration police.[118] In times of war, the police are withdrawn and replaced by the military manning the conflict zone. They are however other vulnerable points under the protection of the military twenty four seven.

[116] Oral Interview, Focused Group Discussion, Nairobi, 21 February 2019.
[117] Oral Interview, Major Boit*, Lanet Barracks, 4 February 2019.
[118] Oral Interview, Major Chacha*, Lanet Barracks, 4 February 2019

2.6 Principles of Conduct of Hostilities

A variety of international laws such as the law of armed conflict, the international humanitarian law, customary law, the Geneva Conventions and their Additional Protocols, and the domestic law, establish guidelines to regulate the conduct of both international and non-international armed conflicts. To this, the law of armed conflict establishes the following fundamental principles:

The principle of military necessity, which permits measures that are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by the law of armed conflict. In the case of an armed conflict, the only legitimate military purpose is to weaken the military capacity of the other parties to the conflict. As such the war of extermination which in particular seeks not merely to defeat the enemy but to annihilate it is considered amoral in modern warfare. The principle of necessity ensures that internal military operations do not affect or restrict human rights beyond what is necessary.

The principle of humanity prohibits the infliction of death, injury and destruction not actually necessary to achieve a legitimate military purpose. Under humanitarian intervention in times of conflicts, troops intervene to stop loss of life. The KDF intervened in Mt Elgon under this principle to avert indiscriminate killing of innocent civilians and wanton destruction of property initiated by the SLDF in the region. It is for this reason that military intervention was code named *Operation Okoa Maisha*.[119]

The principle of distinction requires that parties to an armed conflict distinguish at all times between combatants and military objectives on the one hand, and civilian persons and objects on the other, and accordingly attack only legitimate targets.[120] The principle of discrimination therefore, requires that soldiers treat civilians differently from enemy soldiers, generally not attacking the former except in extreme situations. The Geneva Conventions call for a clear separation of people into two camps: those who are protected from assault, including army medical personnel, injured soldiers, prisoners of war, and civilians on the one hand; and soldiers actively engaged in hostilities on the other hand. The application of this principle is however fluid owing to the fact that civilians may oscillate from perpetrators to abettors of armed violence. For example, during the *Shifta* campaign, the military was at pain to

[119] Oral Interview, Major Bii*, Lanet Barracks 10 September 2018.
[120] ICRC, Internal Military Operations, 14.

discriminate civilians from the bandits. The army, out of frustration, then resorted to the strategy of rounding up of villagers for interrogation. It is also alleged that in the Wagalla massacre of 1984, the Kenyan provincial commissioner ordered security forces to gather close to 5,000 men of the Somali Degodia clan at the Wajir airstrip, where they indiscriminately fired on them and then buried the casualties in a mass grave.[121]It is however not clear whether the Wagalla massacre targeted remnants of the bandits.

The principle of proportionality prohibits attacks which may cause loss of civilian lives, injury to civilians or cause damage to civilian objects, or a combination thereof. It prohibits attacks which would be excessive in relation to the anticipated concrete and direct military advantage. The principle of proportionality also prescribes that belligerent parties in war should not inflict collateral damage that is excessive in relation to the military advantage they seek with any hostile action such as an air strike.[122] Principle of proportionality also ensures that military action does not infringe human rights in a way that is disproportionate to the aim. Use of cluster bombs or aerial bombardment violates the principles of proportionality. Retaliatory attacks by the army against perceived wrong by an armed group also violates this principle.

The principle of precaution requires parties to a conflict to take constant care to spare civilians, the civilian population, and civil objects. It calls for three important considerations. First, taking all feasible precautions, notably in the choice of means and methods of warfare, so as to avoid or, in any event, minimize incidental harm to civilians and civilian objects. Secondly, issue effective advance warnings to civilians when the targeting of military objectives may accidentally harm civilians when the tactical distinction is not possible. Third, choose a strategy causing the least danger to civilians and civilian objects.

The principle of limitation means that the right of the parties to an armed conflict to choose means or methods of warfare is not unlimited, and that the infliction of unnecessary suffering is prohibited. The concept of total war has been widely criticized. For example, the British Naval blockade of Germany during WW1 caused great suffering and widespread malnutrition, leading to estimated 800,000 deaths, including civilians. Another criticism of

[121] Oral Interview, Abdi Ali Mohamed, Nairobi, 21 February, 2019.
[122] Janina Dill, "Applying the Principle of Proportionality in Combat Operation," Policy Briefs and Working Papers, Oxford Institute for Ethics, Law, and Armed Conflict, University of Oxford, 2010, 16.

total war has been failure by the belligerents to call to a halt to the carnage. Limited application of military power has always been associated with the alternative to massive retaliation or total war. Limited war strategy was developed by policy makers who wanted an alternative to annihilation in order to prevent wars from becoming "total". Limited war is meant to achieve specific political objectives, using limited forces and limited force. War limitation can be perceived in terms of limitation of purpose (objectives); limitation of level of violence or means (weapons); limitation of duration (time); limitation of locale (geography) or territory; and limitation of targets.[123]

Another principle guiding internal military intervention is the principle of prohibition of superfluous injury. Superfluous injury or unnecessary suffering refers to the effects of certain methods or means of warfare which unnecessarily aggravate the suffering of disabled men during hostilities. Rule 70 of International Humanitarian Law (IHL) prohibits the use of means and methods of warfare that cause superfluous injury or unnecessary suffering. This rule applies in both interstate and intrastate armed conflicts. Further, the prohibition of superfluous injury is set forth in a large number of treaties, including the St. Petersburg Declaration and The Hague Declarations. Other regulations include: the Geneva Gas Protocol, the Convention on Certain Conventional Weapons and the Ottawa Convention banning anti-personnel landmines.

There are other fundamental principles that govern all military action in regard to use of force. They include; first, the principle of justification, which argues that there must be justification at law for each separate act of force, and such an act should not be continued longer than is necessary to achieve the immediate aim. Second the principle of prevention, which states that the only object of the use of force is to suppress actual civil disturbances. Force must never be applied with punitive intent or as a reprisal. The principle of legal obligations ensures that all members of the armed forces are liable to prosecution in the event of committing human rights violations. Fourth, the principle of safeguarding loyal citizens. These principles ensure that care must be taken not to endanger harmless civilians during and after operations. Another principle addresses the maintenance of public confidence. The principle of maintenance of public confidence ensures that every effort must be made to win and foster public confidence and support during operations. There is also the principle of

[123] Oral Interview, Colonel Joseph* Kenya Army, 15 September, 2018.

evidence which demands that it is the responsibility of the commander on the spot to record accurate evidence of any incident involving human rights violation. Finally, the principle of minimum force that obligates commanders never to use more force than is absolutely necessary to achieve the immediate military aim.

2.7 Laws Applicable to Military Operations in Kenya

Internal military interventions are considered as non-international armed conflicts restricted to the territory of a single state. They involve either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other. Non-international armed conflicts may also occur across the international frontier, where a state army pursues and armed militia across the border to its safe haven in another state. One such case include the Kenya military intervention in Somalia. The study noted that a limited range of international and domestic rules apply to internal armed conflicts. The most common international obligations are laid down in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II. The International humanitarian law though only applicable to armed conflict and not internal tensions or disturbances such as isolated acts of violence still offer guidance in internal military operations. Other rules guiding military operations in Kenya are stipulated in the country's 2010 Kenyan Constitution and the Defence Forces Act of 2012. This section briefly explains how these sets of laws influence the conduct of internal military operations in Kenya.

First is the International Humanitarian Law (IHL) also known as the law of war or the law of armed conflict (LOAC). It defines the conduct and responsibilities of belligerent nations, neutral nations, groups and individuals engaged in warfare, in relation to each other and to protected persons, usually civilians. The LOAC is an internationally accepted legal code that is unconditionally binding to the conduct of all military operations. It regulates the conduct of armed hostiles. It also aims to protect civilians, prisoners of war, the wounded, sick and shipwrecked. According to Yoram, the LOAC applies to international armed conflicts and in the conduct of military operations, as well as related activities in armed conflicts.[124] To this end, laws of war are intended to mitigate the evils of war by ensuring protection of both combatants and non-combatants from unnecessary suffering. Safeguarding certain

[124]Yoram Dinstein, "Principles of Distinction and Cyber War in International Armed Conflict", *Journal of Conflict and Security Law*, Vol. 17, Issue 2, (2012), 16-32.

fundamental human rights of persons, who fell into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilian; facilitating the restoration of peace.

Secondly, the International Human Rights Law (IHRL) which is a body of international law designed to promote and protect human rights at the international, regional and domestic levels.[125] IHRL is primarily made up of treaties and agreements between states intended to have binding legal effect between the parties that have agreed to them. Enforcement of IHRL can occur on either a domestic, regional or international level. States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation. When domestic law fails to provide a remedy for human rights abuses, parties may be able to resort to regional or international mechanisms for enforcing human rights.

Three major instruments were in 1948 codified to form what is today referred to as the international bill of human rights. They include, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These three covenants and the Optional Protocol were followed by more than twenty human rights conventions, and treaties that became binding law in those countries that ratified them.
Another law regulating the conduct of internal operations is the Geneva Conventions. Kenya is a signatory of all the Geneva Conventions and the related Additional Protocols. In diplomacy, the term convention refers to international conference or treaty. In this vein, the Geneva Conventions are sets of international rules that apply only in times of armed conflict and seek to protect people who are not or are no longer taking part in hostilities. These include the sick and wounded of armed forces on the field, wounded, sick, and shipwrecked members of armed forces at sea, prisoners of war, and civilians.[126] All the articles of the Geneva Convention apply to international armed conflicts, except Article 3 common to all the four Conventions which applies to non-international armed conflicts. It states that, "In the case of armed conflict not of an international character occurring in the territory of one of the high contracting parties, each party to the conflict shall be bound to the provisions of these

[125] US Legal "International Human Rights Law and Definition." Available at: https://definitions.uslegal.com. Accessed January 29, 2019.
[126]Dietrich Fleck, *The Handbook of International Humanitarian Law* (Oxford: Oxford University Press. 2013), 322.

Convention." [127] This article further outline fundamental humanitarian rules that must be observed, regardless of the type of conflict. To this, the following acts are prohibited: murder, torture, corporal punishment, mutilation, outrages upon personal dignity, the taking of hostages, collective punishments, execution without regular trial, and all cruel and degrading treatment.[128]

The four Geneva Conventions of 1949 are regarded as the sources of international humanitarian law. They include: the Fist Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" (which was first adopted in 1864, revised in 1906, 1929 and finally 1949).[129] The Second Geneva Convention "for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea" (first adopted in 1949, as successor of the Hague Convention 10 of 1907).[130] The Third Geneva Convention "relative to the treatment of prisoners of war" (first adopted in 1929, last revision in 1949.[131] The Fourth Geneva Convention relative to the protection of civilian persons in time of war first adopted in 1949, based on parts of the Hague Convention (II) of 1899 and Hague Convention (IV) of 1907.[132]

These set of rules also give provisions for protection of civilians. Articles therein provide that persons affected by the hostilities must at all times benefit from a protecting power. A protecting power is a third party state that has agreed to look after the interests of a state that is a party to the conflict. The protecting power is a mediator enabling the flow of communication between the parties to the conflict.[133] The protecting power also monitors implementation of these conventions, such as by visiting the zone of conflict and prisoners of war. The protecting power must act as an advocate for prisoners, the wounded, and civilians. The protecting power may be the sovereign state in an internal dispute, the neutral state safeguarding their interests in the case of external intervention of the armed forces and the

[127] ICRC. "Commentary on the Geneva Convention." ICRC, 2016, 393.
[128]Geneva Convention I-IV, Article 3, Geneva, I-Il, Article 12, Geneva Convention llI, Article 13, Geneva Convention IV, Article 32, 34, The Additional Protocol I, article 75 and Additional Protocol ll, Article 4, 6.
[129] ICRC. "Additional Articles Relating to the Conditions of the Wounded in War, ICRC Report Presented to Geneva, 1868-State Parties." Retrieved August 9, 2018.
[130] ICRC. "Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea. Geneva, 12 August 1949. Retrieved August 9, 2018.
[131] ICRC. "Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949" Retrieved 9th August, 2018.
[132] ICRC. "Convention (IV) Relative to the Protection of Civilian Person in Time of War. Geneva, 18.
[133] James J. Blake, "Pragmatic Diplomacy: The Origins and Use of the Protecting Power", in *Diplomacy Under a Foreign Flag: When Nations Break Relations* ed. David D Newsom, (New York: St. Martin's Press, 1990), 56.

International Committee of the Red Cross (ICRC) or any other impartial humanitarian organization involved in the amelioration of the effects of the armed conflicts.[134]

The UN convention on the prevention and punishment of the crime of genocide also regulates the conduct of internal operations. This is one of the earliest UN conventions addressing violation of human rights of a group of persons. This convention was adopted in 1948 in response to the humanitarian atrocities committed during World War II. The UN General Assembly recognized that "genocide" is an international crime, which entails the national and international responsibility of individual persons and states. The convention provides for a precise definition of the crime of genocide, as involving any of the following acts: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.[135] It also specifies that the crime of genocide may be committed in time of peace or in time of war.

The Rome Statute of the International Criminal Court is another international law influencing internal military operations. International Criminal Court Statute or the Rome Statute is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002.[136] The Rome Statute established among other things, the functions, jurisdiction and structure of the ICC. According to the statute, the jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole. The court has jurisdiction in accordance with this Statute with respect to the following crimes: the crime of genocide; crimes against humanity; war crimes; and the crime of aggression.[137]Kenya has signed and ratified the Rome Statute. When a member state ratifies a covenant, it signifies its intention to comply with the specific provisions and obligations of the document. It takes on the responsibility to see that its national laws are in agreement with the Covenant. As state party

[134]See, Geneva Convention I-III, Articles 8, 9, 10; Geneva Convention IV, Articles 9, 10, 11 and the Additional Protocol I, Articles, 5.
[135]Article 2, of the Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by the General Assembly of the United Nations on 9 December 1948.
[136]United Nations Treaty Database, The Rome Statue of the International Court, Retrieved 10 March 2018, 12.
[137] ICC, *Rome Statute of the International Criminal Court* (The Hague International Criminal Court 2011), 3.

to the Rome Statute, the treaty prohibits commission of war crimes and crimes against humanity in Kenya.

The constitution of Kenya also regulates the conduct and deployment of the country armed forces. Chapter fourteen of the Kenyan 2010 Constitution outlines key aspects of national security. Articles 238 to 246 stipulate the principles of national security, the national security organs, the establishment of the national Security Council, establishment of defence forces and defence council. It also stipulates the establishment of National Intelligence Service (NIS) and the National Police Service (NPS) and their functions.[138] The KDF is one of the three national security organs in the country. The other two organs of security organs includes the NIS and the NPS.[139] Article 239 (2) sets out the objectives of the national security organs as to promote and to guarantee national security in accordance with the principles of national security. The principles of national security outline that national security of Kenya shall be promoted and guaranteed in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.[140] Article 241 (3) states that the defence forces: (a) are responsible for the defence and protection of the sovereignty and territorial integrity of the Republic; (b) shall assist and cooperate with other authorities in situations of emergency or disaster, (c) may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.[141]

Another legal body regulating the operations of the Kenyan military is the KDF Act established by parliament. According to the KDF Act, the defence forces shall, in fulfilling their mandate, observe and uphold the bill of rights, values and principles under Articles 10 (2), 232(1) and 238(2) of the Constitution of Kenya. The KDF shall therefore while fulfilling its mandate according to the constitution, respect human rights and freedoms, ensure highest standards of professionalism and discipline amongst its members. KDF shall also promote accountability and transparency in her operations.[142] The KDF Act also stipulates that the KDF shall assist and co-operate with other security organs in situations of emergency and disasters and report to the National Assembly. In this aid to civil authority, the KDF will be

[138] National Council for Law Reporting, Constitution of Kenya 2010, Article 238-246
[139] Ibid, 246.
[140] Constitution of Kenya, 2010, Article 238 (2)
[141] Constitution of Kenya, 2010, Article 241 (3), a,b,c.
[142] National Council for Law Reporting, The Kenya Defence Forces Act, 2012. National Council for Law Reporting.

deployed to restore peace in any part of Kenya affected by unrest or instability but only with the approval of parliament.

2.8 Operational Challenges in Internal Military Operations

The twenty first century has witnessed increase in insurrections in the world and especially in Africa. The insurrections have occurred at a time when military technology has revolutionized war and warfare. With sophisticated weapons readily available to combatants, belligerent groups have become more military adept. This new twist in warfare has increased the complexity and impacts of internal conflicts. Today more than before, the casualty rate of internal conflict is in tremendous rise. The cost of low intensity conflicts has also increased immensely. As result, the use of military force in internal operations has become inevitable.[143] Further, the recent rise of terrorism has justified the use of the military in quelling insurgencies. Reported military success in the management and resolution of conflicts in the international spheres has elevated military roles beyond traditional combat roles, to providing support, complementary or replacement roles of non-military capabilities.[144] This move is however without challenges of its own.[145] As militarization of internal disputes continues, military commanders and troops are more often than not faced with various operational challenges during internal operations. This last and final section of this chapter examines the operational challenges and dilemma of troops associated with internal military interventions.

One major challenge for armed forces in internal security operations is ignorance of what law they are operating under.[146] It is the commander's responsibility to ensure troops adhere to laws governing conduct of hostilities in internal security operations. It is most important that the armed forces understand and adjust to its provisions which directly affect operations and the IHRL applies both during armed conflicts and in peacetime. Its aim is to protect the rights of individuals against state authorities. Unfortunately, these laws and rights are not set forth in in the basic military training curriculum except in pre-deployment training sessions of

[143]Thomas S. Szayna, Angela O' Mahony, Jennifer Kavanagh, Stephen Watts, Bryan Frederick, Tova C. Norlen, Phoenix Voorhies, Conflict Trends and Conflict Drivers: *An Empirical Assessment of Historical Conflict Patterns and Future Conflict Projections*, (Santa Monica, Calif.: RAND Corporation, RR-1063-A, 2017), 15

[144] António Oliveira, "The Use of Military Force in the Management and Resolution of Conflicts." *Journal of International Relations*, Vol. 7, No. 1, (2016), 3.

[145] Epiphany Azinge, "Military in Intern al Security Operations: Challenges and Prospects. A Paper Presented at the Nigerian Bar Association' s 53rd Annual General Conference on 28 August 2013 held at Tinapa Calabar, 2013, 2.

[146] ICRC, "The Law of Armed Conflict", Geneva: Switzerland, ICRC, (2002), 5.

UNPKOs. The study noted that training on LAOC and IHL has be incorporated in the Cadet training and other short military courses.[147]

The second challenge facing troops during military intervention emanates from superiority complex and mind-set on use of the force possessed by the members of the armed forces.[148] Key informants in the study opined that the military is a noble profession compared to the police. This views resonate well with Brown's assertion who argues that society's construction of state security organs is such that the military is viewed as a more powerful agent than paramilitary police or civil police. This mentality poses challenges during internal security operation. For instance, when the military is called upon to engage in on internal security operation, some soldiers are of the opinion that they have a more-noble role than this and some even think they have been called upon because of the incapacity and inefficiency of the police in maintaining law and order.[149] In addition, military personnel are habitually oriented to believe that they are licensed to kill. As such they use more lethal force in within their mandate. Military orientation also dictates that any potential threat to national security has to be dealt with using maximum force. Having this type of mind-set during internal operations could be dangerous and violate the principle of discrimination.

Soldiers also face the challenge of restraint on use of minimum force.[150] The main role of the armed forces and the paramilitary is to deal with the enemy summarily. Their whole ethos, training and equipment is based on inflicting maximum damage and destruction on their opponents and defeating them in the shortest possible time within the rules and the law of armed conflict. Key features of internal security operations, on the other hand, is restraint and the use of minimum force, the exact opposite of what is usually required of soldiers in conventional warfare. The reason is clear: essentially they are now maintaining law and order among their own people in their own country. Soldiers need proper training to adjust to this new way of operating.

The study also noted that lack of pre-deployment training during internal operations exposes soldiers to operational challenges. Since the primary function of the military is to defend the

[147] Oral Interview, Focused Group Discussion, Nairobi, 7 March 2019.
[148] ICRC, "The Law of Armed Conflict", Geneva: Switzerland, ICRC, (2002), 6.
[149] Peterside Z. Brown, "The Military and Internal Security in Nigeria: Challenges and Prospects." *Mediterranean Journal of Social Sciences*, Vol. 5, No. 27, (Rome: MCSER Publishing, 2014), 1301-1306.
[150] ICRC, "The Law of Armed Conflict", Geneva: Switzerland, ICRC, (2002), 5.

country in times of war, military training during peace time operation comprise simulation of war scenarios.[151] Besides elaborate training in the conduct of symmetrical warfare, militaries are also trained to conduct UN Peace Keeping Operations. The United Peace Keeping Office also demands that troops must undergo pre- and post-deployment training. This is however not the case in internal military operations. In most cases, the military in Kenya has been deployed into internal security operations completely cold, without training and detailed briefings on the applicable law. The assumption is that internal security are not demanding and only require cool heads and maturity.

The KDF also face the challenge of applying minimum force due to use of inappropriate equipment and arms.[152] Often armed forces are not properly equipped to deal with internal security operations. Soldiers faced by a hostile mob and equipped with only a rifle will quite naturally use it if their lives are threatened. If they have defensive equipment, however (flak jackets, helmets with visors, batons and shields, rubber bullet guns, tear gas, water cannons, etc.), a graduated response can be used to dissuade or deter, without having to resort to extreme measures. It is difficult to demand restraint and minimum force from inexperienced soldiers whose lives are in grave danger if they are not properly equipped to do the job. The forces involved in internal security operations need a range of equipment to enable them to produce a graduated response. They must be trained in the use of that equipment.

The military and other security agencies also face a challenge of implementing the 'use of force continuum'.[153] The use of force continuum is an instructional model used to describe the levels of force an authorized officer or agent may need to utilize to gain control over a resistant subject. The level of force applied depends on the level of resistance the subject may exhibit. While the use of force continuum describes each of the different levels of force an authorized security agent may use in response to subject behaviour, it is not necessary to mechanically apply the levels of force step by step. Depending on the circumstances, an authorized security officer may have to rapidly escalate or de-escalate through the continuum, depending on the totality of facts and circumstances of the particular situation. [154]The

[151] Oral Interview, Focused Group Discussion, Nairobi, 7 March 2019,
[152] ICRC, "The Law of Armed Conflict", Geneva: Switzerland, ICRC, (2002), 5.

[153] Oral Interview, Focused Group Discussion, Nairobi, 7 March 2019.
[154] Desmedt, and Connor, the FLETC Use of Force Model, 14.

potential value of this visual and conceptual aid is that it provides a model that military officers can use to evaluate and plan their response without violating human rights.

Another challenge facing the military in internal operations is the negative attitude attached to such security operations. Some officers for reasons earlier stated in this section regard such operations with contempt.[155] The military generally consider themselves as having a nobler role of defending the country against external aggression. Internal security operations are therefore to be pursued by the police to conclusion. Military officers are often quoted saying, "The only reason they were called was because the police were inefficient and incapable of maintaining law and order".[156] This rather arrogant but nevertheless often prevalent attitude can create problems especially during joint operations. Armed forces in particular might be inclined to side-line the police and take the leading role in aid to civil authority. This in itself violates existing legal requirements based on police primacy. The poor management of the Westgate Mall attack in 2013 in which 67 People died was largely because of lack of a clear command and control structure as well as wrong attitude.

Management of joint operation is another challenge of internal military interventions. One problem with internal disputes is that there are many actors involved in a theatre of operations. Some operations like counter-terrorism require joint operation between the military and the police. Planning and management of joint operation poses operational problems especially in identifying the different characteristics and capabilities of friendly forces. A military force or other grouping derives its freedom of action, physical strength, or will to fight when operating exclusively on its own. Question of who is in charge? Who should undertake what task and how? When should military take over? Or what is the role of the police in joint operation are common dilemmas that military commanders are faced with during joint intervention. Such challenges faced the Kenya counter-terrorism strategy in the Westgate Mall operation.

2.9 Human Rights Accusations Levelled Against the Military in Internal Operations

All military or police-led operations by any of their names or nature involve the use of force defined within certain legal framework. When the military or the police use force against

[155] Oral Interview, Focused Group Discussion, Nairobi, 7 March 2019.
[156] Brown, "The Military and Internal Security in Nigeria, 1301.

civilians or other unauthorized targets, in excess of the limits provided by the law, they violate human rights. The excessive use of force in both internal and external operations has received widespread criticism. There have been numerous allegations levelled against the military of violating human rights during internal security engagements especially in Africa. The acts of human rights violation include forced disappearance, excessive use of force, extra-judicial killings, and degrading treatment of citizens, rape, torture and arbitrary arrests. Some of these accusations of human rights violation have been reported by both local and international media stations. In addition, human rights organizations such as Human Rights Watch and Amnesty International and other civil society organizations have consistently accused the military of human rights abuses in their reports, accusations that the military has strongly denied and disassociated with. While absolving itself of any wrong doing, the military argues that military operations are conducted professionally and in line with human rights law.

2.10 Summary

In this chapter, the study has shown that the onset of armed internal disputes necessitated internal military operations in the new international order. The conduct of internal military operations is largely regulated by domestic and customary laws. IHL does not aptly apply in situations of internal disturbances and tensions. For this reason, internal military operations should be subjected to the legal framework of both domestic and internal law. Failure to adhere to these yardsticks may subject internal military intervention into abuse. The chapter has also shown that professionalism is necessary in the conduct of internal military interventions. More so, there is need to train troops in internal military operations since there are significant differences between military operations during armed conflicts and internal security operations in terms of use of force. Further, soldiers need to be familiar with the law applicable to internal operations if they are not to be caught out or criticized of human rights violations. They also need to understand the overlap of the laws.

The chapter has also explained the different types of operations the military is expected to perform in aid to civil authority. These operations include, manning observation posts, guard duties at key points such as military installations, road blocks or vehicle check points, enforcing curfews, making arrests and detaining persons, acting as a reserve or reinforcement on standby duties for incidents, manning a “peace line” or “green line”, escort duties, hostage rescue and ambush. The chapter has also pointed out that during internal military operations

the military is expected to use force in accordance to the ‘use of force continuum’ applicable to the police. Exercising the ‘use of force continuum’ elaborately discussed in the study would go a long way in addressing some operational challenges affecting internal military operations. The chapter recommends that military training should incorporate doctrines of internal security operations. As constituted in the present, military training encompasses a doctrine of symmetric and asymmetric warfare with little regards to internal military operations that deal with civilians.

CHAPTER THREE

COUNTEERING IRREDENTIST MOVEMENTS: THE KENYA MILITARY INTERVENTION AND THE SHIFTA WAR

3.1 Overview

The previous chapter interrogated the normative principles of internal military interventions. The discussion laid the foundation for assessing the circumstances warranting internal military interventions as well as their justification and success. In the next three chapters, the study analyses three internal disputes that attracted military action in Kenya. This chapter examines the *Shifta* war. A war that started in 1964, when the Kenya Armed Forces waged hostilities against an irredentist movement in the then Northern Frontier District (NFD). The *Shifta* war was perhaps Kenya's first and only irredentist war so far. The war lasted for four year with probable loss of over ten thousand lives. It is therefore, one of the bloodiest wars in the history of Kenya. [1] Narratives by victims, illustrate the horrors of the military strategy and tales by survivors attract tremendous scholarly attention, while documentaries on the war make big media headlines. Some of the most significant scholarly writings on the *Shifta* war include works by Hannah Whittaker, Iona Lewis, Korwa Gombe Adar, Nene Mburu and H.K. Biwott. There is no doubt that these predecessors to this study did commendable work. However, it not futile to examine the *Shifta* war in this study because previous works did not approach the *Shifta* war in terms of factors that warranted military intervention, its justification and success. These are the central concerns of this chapter.

3.2 Causes of the *Shifta* War

The historical development and causes of this conflict is beyond the scope of this study. This chapter mentions, albeit briefly the socio-political agitation between irredentist movements in NFD, the rest of Kenya and the Republic of Somalia that triggered the war. The *Shifta* war can generally be understood in the context of two related perspectives, namely, secession and anti-secession. Throughout history, secessionist and anti-secessionist actors have clashed over the internal legitimacy of unilateral declaration of independence.[2] The *Shifta* war was primarily an irredentist attempt by members of the Somali community living in the NFD, who expressed the wish to join their fellow kinsmen in the Republic of Somalia. By irredentism we mean, a type of secession where members of an ethnic group seek to annex

[1] "Kenya's First Secessionist War". *The Standard*, 4 August 2011.

[2] Diego Muro and Eckart Woertz, (eds.) *Secession and Counter-secession: An International Relations Perspective* (Barcelona: Centre for International Affairs, 2018), 10.

part of a territory of one state to the territory of another state because of common ethnicity or historical links.[3] Irredentism is distinguished from secession which refers to a process by which a particular group seeks to separate itself from the state to which it belongs and to create a new state.[4] In the case of the NFD, the Kenyan Somalis owing to shared culture demanded to annex the area as a fifth regional state of the Republic of Somalia as such the *Shifta* war was about irredentism as opposed to secessionism as commonly referred to.

Irredentism and secession are global strategies of state formation. Since 1945, there have been numerous attempts by groups to secede. Such regions include Tibet (China); Kashmir (India); and East Punjab (India). Others are Karen and Shan states (Burma); and Tamil Elam (Sri Lanka) in Asia. In Europe, secessionist groups sought to form the Turkish Federated State of Cyprus (Cyprus).[5] Nor is Africa not immune to secessionist sentiments. In the 1960s, for example, Katanga Province proclaimed its independence from the Republic of Congo under Moise Tshombe.[6] The state of Biafra also attempted to secede from Nigeria in 1967.[7] Other secessionist attempts in Africa include South Sudan (Sudan) and Somaliland (Somalia). In all these cases, the governments in question resisted attempts at secession.[8]

According to Coggins, secessionist nationalism is caused by a number of factors. First and foremost, ethno-national mobilization where ethnic minorities are mobilized to pursue states of their own. Secondly, institutional empowerment where the empires collapse due to inability maintain colonies. Thirdly, the relative military strength of secessionist groups seeking to achieve statehood. Finally, secessionist nations may be formed through negotiated consent where states and the international community consent to the secessionist demands of a group. [9] Based on this, the causes of the *Shifta* war can be elucidated by analysing the theoretical, geo-political, economic, security and ideological factors of that time that led to dissatisfaction of the status quo and rise of secession sentiments.

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[3] Allen Buchan, "Secession", Stanford Encyclopaedia of Philosophy, 2007, 82.

[4] James Crawford, *State Practice and International Law in Relation to Unilateral Secession* (Cambridge: University of Cambridge, 1997), 3.

[5] James Crawford, *State Practice and International Law in Relation to Unilateral Secession,* .6

[6] Antony Mockler, *The New Mercenaries: The History of the Hired Soldier from the Congo to the Seychelles* (New York: Paragon House Publishers, 1987), 37–55.

[7] Tekena N. Tamuno, "Separatist Agitations in Nigeria since 1914," *The Journal of Modern African Studies* Vol. 8 No. 4, 563–584.

[8] James Crawford, *State Practice and International Law in Relation to Unilateral Secession,* 6

[9] Bridget L. Coggins, "Friends in High Place: International Politics and Emergence of States from Secessionism" *Journal of International Organization.* Vol. 65, No. 3, (2000), 433–467

There are two theoretical explanations that can be used to illustrate the justification of the people of NFD to demand secession prior to and in the early years of independence in Kenya. The first school is the rational choice theory. The rational choice theory assumes that people make calculated decision whether to secede or not. Through proper analysis, they estimate the value of secession in terms of individual and group preferences.[10] This may be a promise of inclusion, economic development and provision of civil liberties. If the benefits outweigh the risks, then secession is worth undertaking and the group will demand it at all costs.

The second school of thought, the rights-only theory, emphasizes that secession is just and considered as the only means to rectify grave injustices a community faces.[11] Under the rights only theory, Allen Buchan argues that groups have a general right to secede if and only if they suffered certain injustices for which secession is the best cause of action and a last resort to address historical injustice.[12] The case of the NFD can be demonstrated along these theoretical underpinnings as follows.

To begin with, the study established that at the eve of Kenya's independence, the Somalis living in Kenya had chosen to separate and join the Republic of Somalia on basis of shared culture.[13] Because the Somali living in the NFD exhibit similar social cultural characteristics similar to their brothers living in the republic of Somalia. They speak the same language with little dialectal variations.[14] They also belong to the same clan and are united by the bond of Islam. Thus, the Somali in NFD share a history that cannot not be altered by the artificial colonial boundaries.[15] Therefore, cultural feelings drove the desire to secede.

Secondly, the irredentist claims were linked to the political movements founded under pan-Somalia nationalism. The notion that the Somali people in Somalia, NFD, Ogaden and Djibouti share a common language, religion, culture and ethnicity, and as such constitute a nation unto themselves. This ideology was also based on the concept of Greater Somalia, the vision of reunifying all Somalis living in the different areas into a single Somali nation. The rise of pan-Somalism dated back to the rise of the Dervish movement, which was an armed

[10] Allen Buchanan, "How can We Construct a Political Theory of Secession?" Paper Presented to the International Studies Association, on 5 October 2006. 2.
[11] Allen Buchanan, How can We Construct a Political Theory of Secession? 2006. 2.
[12] Allen Buchanan, "Theories of Secession," *Philosophy and Public Affairs*, Vol. 26, No. 1. (1997), 31-61.
[13] "Kenya's first Secessionist War". *The Standard*. 4 August 2011, 14.
[14] Oral interview, Ali Mukhtar, Nairobi, Eastleigh, 9 September 2018.
[15] HL Deb 03 April 1963 Vol 248 cc600-36600.

resistance movement endeavour against institutionalization of colonialism in Somalia that existed from 1898 to 1920.[16] The leader of the Dervish movement was *Salihiyya Sufi* Muslim poet and militant leader called Mohammed Abdullah Hassan.[17]

The first Somali nationalist organization founded on Pan-Somalism was the Somali National Society (SNS). It was established in 1935 in the former British Somaliland. The SNS was reorganized into a political party in 1957 and renamed Somali National League (SNL).[18] Another movement championing similar ideology was the Somali Youth Club (SYC), founded in 1943 in Italian Somaliland. The SYC was renamed the Somali Youth League (SYL) in 1947.[19] The SYL opened branches in the Ogaden and NFD region in Ethiopia and Kenya respectively. The party operated in the NFD until June 1948, when its militant campaign for Somali unification led to armed clash with the British forces. As a result, the British administration proscribed SYL an illegal political party until 1960, when the ban was lifted. This explains why there was less political activities in the NFD in the 1950s.[20] The lifting of the ban in the 1960s however, led to re-emergence of new pan-Somalia nationalist movements.

According to Schraender, Somalia was an icon of African nationalism in the 1960s.[21] The resurgence of Somali nationalism was due to two major factors. First, the rise of a new generation of political leaders determined to emancipate Somalia from foreign control after independence.[22] Secondly, it was due to the rise of self-interest among post-independence political leaders, who, despite being divided along clans, used the rhetoric of nation-building

[16] Hellen Chapin Metz, Somalia: *A Country Study*, 4th ed. (Federal Research Division, Library of Congress, 1993), 28.
[17]"Dervish Movement (Somalia)," Wikipedia: The Free Encyclopaedia. Available on https://en.wikipedia.org/wiki/Dervish_movement_(Somali). Accessed January 30, 2019.
[18] Saadia Touval, Somali Nationalism, *The Journal of Modern African Studies,* Vol. 2, No. 1 (1964), 130-132.
[19] Mohamed Diriye Abdullahi. *Culture and Customs of Somalia* (Westport, Connecticut, Greenwood Publishing Group, Inc, 2001), 25.
[20] [20]Korwa Gombe Adar, The Significance of the Legal Principle of Territorial Integrity as the Modal Determinant of Relations: A Case Study of Kenya's Foreign Policy towards Somalia, 1963 -1983). PhD Thesis, South Carolina University 1986, p. 97.
[21] Peter, J. Schraender, "From Irredentism to Secession in After Independence: Making and Protecting the Nation" in *Post-Colonial and Post-Communist States*, (eds.) Lowel W. Barrington (The University of Michigan Press, 1998)
[22] Willian I. Zartman, (eds.) *Collapsed States: The Disintegration and Restoration of Legitimate Authority* (London and Boulder: Lynne Reiner, 1995), 69.

to promote their quest for power.[23] The political organization therefore advocated for unity under Greater Somalia.

The Pan-Somalia movements inside Somalia were an inspiration to the Somalis in NFD. Several Pan-Somali organizations were therefore formed in NFD when it became apparent in 1960 that Britain and Italian Somaliland were going to achieve independence and jointly form the Republic of Somalia. The NFD Somalis led by the Northern Province Peoples Progressive Party (NPPPP), made numerous petitions to the colonial administration seeking to secede from Kenya.[24] The petitions were popular in many parts of the NFD, but opposed by other regions in Kenya including sections of communities in NFD. The policy of the NPPPP stipulated that it:

> Stands for secession of the Northern Frontier District from Kenya before it attains independence, thereafter creation of a special regime for the Northern Frontier District under the British, during which period the people of the Northern Frontier District would develop their political institutions, and eventually union with the Somali Republic as an autonomous unit.[25]

The NPPPP leaders therefore, demanded secession on the basis of cultural history. They were also motivated by the political propaganda that the new flag of the Republic of Somalia had five stars. The first three stars represented Somaliland, Puntland and Jubaland. The other two, represented the NFD and the Ogaden in Kenya and Ethiopia respectively.[26] With this position, nothing including war, could stop Somalis in NDF from demanding to be incorporated into the Republic of Somalia.

The violence that later led to the *Shifta* war was also caused by rejection of the findings of the 1962 Commission on the NFD established by the Lancaster Conferences. The Lancaster House Conferences were three meetings (1960, 1962, and 1963) in which Kenya's constitutional framework and independence were negotiated.[27] During the Second Lancaster Conference, a meeting was held between representatives of the colonial administration and the delegation from the NFD. The delegation from NFD demanded that, before any constitutional changes affecting the country were made, autonomy was to be granted to the

[23] Schraender, "From Irredentism to Secession", 132.
[24] Muturi wa Njeri-Medium, Kenya That was Never Kenya, available at: https://medium.com/kenya-that-was-never-kenyan Accessed on 1 October 2019.
[25] "Kenya's Seventh Region", East African Standard (Nairobi) 11 March 1963, p. 1.
[26] HL Deb 03 April 1963 Vol 248 cc600-36600.
[27] Colin Mathew. (eds.) *Dictionary of National Biography* (Oxford: Oxford University Press, 2004), 35.

NFD as a territory wholly independent of Kenya. So that NFD joins with the republic of Somalia upon declaration of Kenya's independence.[28] By NFD, the delegation meant all the six sub-districts namely, Mandera, Wajir, Garissa, Moyale, Marsabit and Isiolo. The NFD delegation was unanimous on the issue of secession. However, Party leaders of Kenya African Democratic Union (KADU) and Kenya African National Union (KANU) at the Lancaster Conference were opposed to any negotiations which would lead to secession of any part of Kenya. KADU and KANU claimed that the NFD delegation at the Lancaster Conference was not a true representative of the Somali inhabitants of NFD.[29] In support of the secession claims presented at the Lancaster Conference, the NFD delegation argued that the creation of the new region would give its inhabitants greater freedom in the management of their own affairs. The move would also offer more effective means of safeguarding the interests of the people of NFD. The secession of NFD would also enable the people of the area to maintain nomadic pastoralism their way of life.

By the end of the Second Lancaster Conference in 1962, no agreement had been reached between the representatives of NFD and colonial administration regarding the opposing views on secession. Instead it was resolved that the views of the people in the region were to be sought through an impartial and independent body, the Northern Frontier District Commission (NFDC). This commission was led by Major-General Bogert, a Canadian, and Mr. Q.C Onyiuke from Nigerian. The Commission was "to ascertain, and report on, public opinion in the NFD regarding arrangements to be made for the future of the area in the light of the likely course of constitutional development in Kenya".[30] The Commission visited Kenya between 13 October and 28 November 1962 to seek the views of the people and to pen its findings.

In the report, the commissioners stated that there were divergent views about cessation. They found out that there were areas in the NFD supporting secession while others wanted to remain part of Kenya. There were also areas supporting Kenya's opinion of no secession. In addition, there were areas where the people were uncertain about secession debate. The areas in which the commission found the people supporting secession extend from the Kenya-Somali Frontier to the Adjuran-Galla line. They included Mandera, Wajir and Garissa. These

[28] HL Deb 03 April 1963 Vol 248 cc600-36600.
[29] HL Deb 03 April 1963 vol 248 cc600-36600.
[30] HL Deb 03 April 1963 vol 248 cc600-36600

areas were primarily inhabited by the Somali people. The areas opposed secession were inhabited by the Bantu, and the Oromo people. In general, the commission found out that almost all the people unanimously favoured NFD secession from Kenya. Further, the commission also reported that the people in the region had voted NFD to remain under British authority before it could join the republic of Somalia as a self-governing federal unit.[31]

Both Britain and the rest of Kenya rejected the findings of the NFD commission. Britain declared that there would be no altering of Kenya's frontier without the decision of the new government.[32] The Kenyan authorities were equally unhappy with the findings of the commission. The colonial administration representing the rest of Kenya therefore, undertook to conduct a referendum to ascertain the true sentiments of the people of NFD in late 1962. The referendum yielded views similar to the NFD commission findings. The referendum established that majority of the residents approximately 86 percent favoured secession. Realizing that the commissions' report and the referendum results had been ignored by Britain and the emerging Kenyan authorities, the secessionist movement resorted to a guerrilla war.

The first high profile victims of the rebel onslaught were the first African DC for Isiolo, Dabaso Wabera and the area paramount chief, Mr. Haji Galma Dido. Both were from the Borana community. The two were slayed by armed bandits while on their way from attending a public function in Sericho. The assassination was meant to urge locals not to back post-independence government anti-secessionists propaganda. The murder of the two leaders increased tension in Isiolo. In reaction to the assassination, the Kenyan security agencies swung into action and they arrested twenty top secessionist leaders of NPPPP and detained them at Manyani and Kajiado. The detainees included Wako Happi (Isiolo), Alex Kholkhole (Marsabit) and Dekho Istanbul (Garissa).[33] The detention of NPPPP leaders precipitated attacks by the secessionist movement, marking the beginning of the *Shifta* War.

Thinking of the *Shifta* war in isolation as irredentism obscures the role of colonial legacy of the arbitrary boundary and the subsequent (mis)treatment and marginalization of the people

[31] HL Deb 03 April 1963 Vol 248 cc600-36600.

[32]Kenya National Archives, NFD/Report/11/1963.

[33] "Kenya's First Secessionist War" *The Standard*, 24 August 2011, 14.

of NFD that finally caused feelings of exclusion among a section of residents of NFD and subsequently the Shifta war. During the partition of Africa, the Somali living in Kenya, largely pastoralist and speakers of Cushitic family of languages were lumped together with Bantu agricultural communities despite cultural differences. The ethnic differences between these groups were intensified under British colonial rule. The British colonial authorities treated the Somali as culturally and biologically distinct from the other Kenyan communities.[34] The civil liberties of inhabitants of NFD were violated through designation of the region as closed district and frequent garrisoning of the region.[35] A brief history of how the NFD was curved into present day Kenya will shed light on the issues surrounding the agitation of the people of NFD at that time.

According to Kiereini, the NFD, and entire Jubaland were part of the Ajuran Empire, This was a Somali sultanate that ruled over large parts of the Horn of Africa during the middle Ages.[36] The empire had a strong, centralised administration and aggressive military strategy, which enabled it to resist an Oromo invasion from the west and a Portuguese incursion from the east during the Gaal Madow and the Ajuran-Portuguese wars. The Ajuran Empire controlled trade along the Coast of the Horn. From about 1836, Kismayo and other parts of Jubaland were claimed by the Sultanate of Muscat (now in Oman). The region later fell under the Sultanate of Zanzibar in 1856 and given control to the East African territories.

On 7 November 1890, Zanzibar became a British Protectorate thus ceding all of its coastal possessions to Britain on 1 July 1895.[37] Subsequently, the entire Sultanate of Zanzibar and the region of Jubaland in the present day Somalia became part of the British East Africa Protectorate. On 30 June 1926, the territory of northern Jubaland and Kismayo were ceded to Italy by Britain supposedly as reward for their support during World War I. Britain retained control of the southern Jubaland which was later called NFD and North Eastern Province after Kenya's independence. It will be recalled that when the Kenyan nationalist Harry Thuku was arrested on 14 March 1922, he was detained in Kismayo as it was then part of British

[34] Bestman, Northern Frontier Province Annual Report, 1969. p. 3.
[35] Adar, The Significance of the Legal Principle of Territorial Integrity as the Modal Determinant of Relations, 1986, p.57.
[36] Douglas Kiereini "How Northern Frontier District Was Carved Out" *The Business Daily*, Thursday, 27 September, 2018 21:12. Available at *https://www.businesdailyafrica*.com Accessed on Monday 15 July 2019.
[37] Ibid, 12.

East Africa. When Kismayo was handed over to the Italians in 1926, Harry Thuku was transferred to Lamu.[38]

Arising from this explanation, it is clear that the history of Somali in Kenya dates back the incorporation of NFD region alongside Jubaland into the East African protectorate, which occurred at the same time when the British ceded Italian Somaliland to Italy in conformity with the 1915 Anglo-Italian Treaty of London. The Treaty of London stipulated, inter alia that if Italy participated in World War I against Germany, Britain would compensate Italy. The Treaty of London also stated that in the event of Great Britain increasing her colonial territory in Africa at the expense of Germany, Her Majesty's government would agree in principle that Italy might claim some equitable compensation.[39] There were several reasons that necessitated the British to incorporate these region into East Africa Protectorate, now Kenya. First, the British wished to provide a buffer zone between Italian Somaliland and Ethiopia on the one side, and the East African railway and the white settlers in the highlands on the other. Second, the British wanted to bar the Ethiopians from gaining control over the Boran and Gabbra communities in the event it extend her influence south-westwards towards Somalia. The control of NFD was also meant to stop Ethiopia cross-border plundering for livestock. [40]

The geographic expanse of the arid region and perennial banditry in the region led the British colonial administrators in Kenya to police the region. British colonial administrators considered the region as non-profitable to govern. It therefore exercised a "hands off" policy towards northern Kenya.[41] This policy did not last for as in 1909, the British administration, under newly appointed governor, Sir Perecy Girouard, took effective control of the region beyond the mere policing of "red line". The administration declared the hitherto nameless territory the Northern Frontier District of Kenya. The boundaries of NFD then extended from Lake Rudolf (Turkana) in the west, Abyssinia in the north, and Uaso Nyiro River and Meru

[38] Ibid, 12.
[39] Korwa Gombe Adar, The Significance of the Legal Principle of Territorial Integrity as the Modal Determinant of Relations: A Case Study of Kenya's Foreign Policy towards Somalia, 1963 -1983). PhD Thesis, South Carolina University 1986, p. 152.
[40] A. A. Castagno, "The Somali-Kenyan Controversy: Implications for the Future", The Journal of Modern African Studies, Vol. 2, No. 2 (964), 165-188.
[41] Peter Waweru, "Continuity and change in Samburu Pastoralism under Colonial Rule, 1909-1963. PhD Thesis, Egerton University, Kenya, 2006, 57.

District in the south.[42] This boundary delimitation is emphasized by Nene Mburu who argues that the region originally composed of all the parts stretching from Lake Turkana in the west to the Somali border in east.[43] Represented by the current Eastern and North Eastern provinces as shown in the map below.

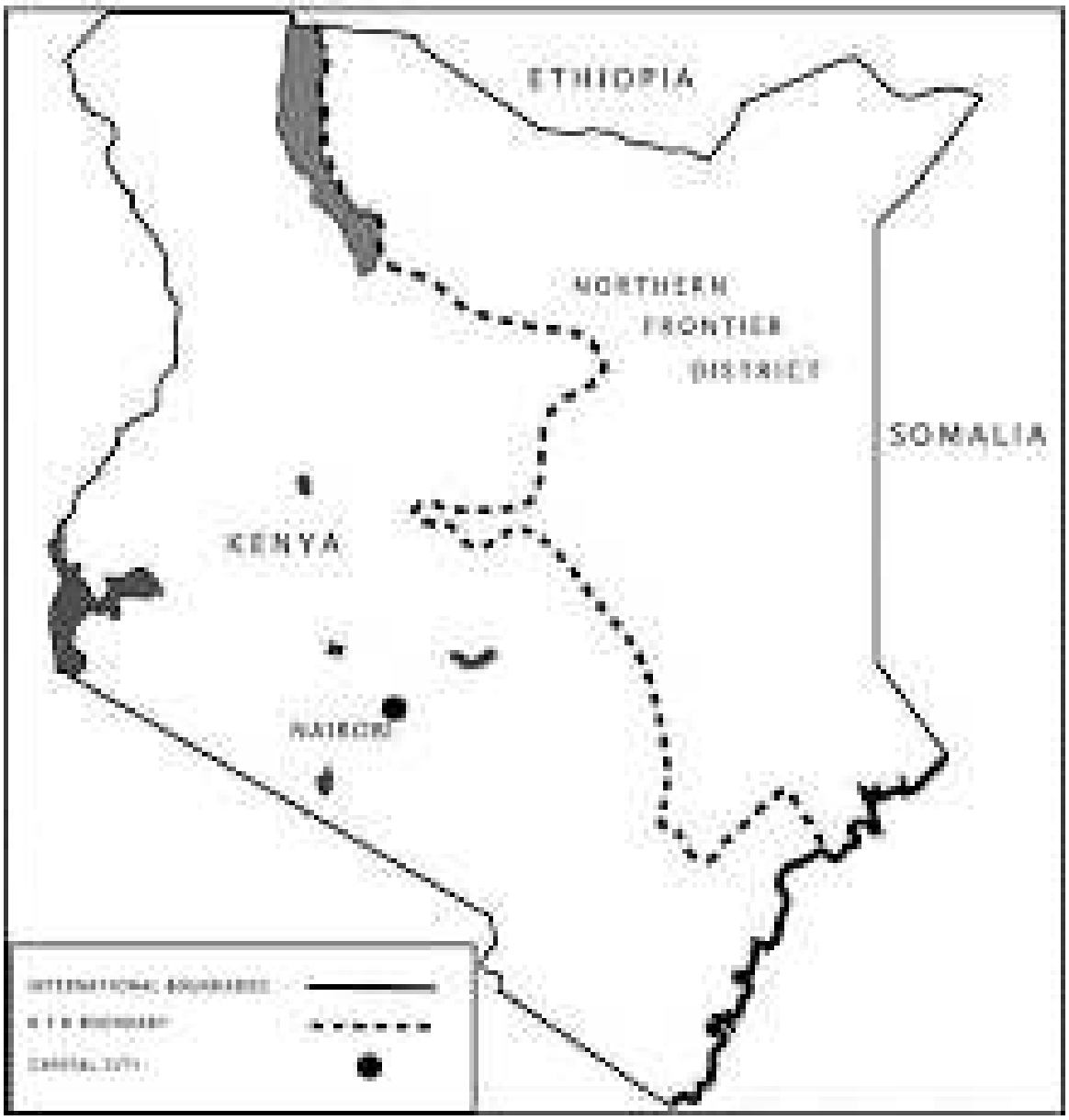

Figure 3: Map of Kenya, Northern Frontier District
Source: https://www.google.com/map+of+nfd Accessed 3 October 2019.

In 1926, the British colonial administration in Kenya placed NFD under civilian control and declared it a closed district by passing the Outlying Districts Ordinance. Under this proclamation all persons entering or leaving the NFD had to obtain prior permission from the

[42] KNA/PC/NFD7/1/1, 99.
[43] Nene Mburu, *Bandits on the Border: Somali Unity*, (Trenton: Red Sea Press), 45.

administering officer in the area, meaning that movement in and out of the region was restricted to all. Except for a few licensed traders and visitors with special passes. As a closed district the NFD did not have political representation. The colonial administration also marginalized the area by failing to establish adequate infrastructure. The marginalization of the region under colonial period led to perception that the new post-colonial government of Kenya will perpetuate the discrimination of the area and its residents. Therefore, the Somali living in this region were better off if they seceded to join their fellow kinsmen in Somalia.

To illustrate how the NFD was marginalized and isolated region, Guyo Jattani, a Skuyu Chief from Isiolo, who was part of the NFD delegation in the Lancaster Conference said:

> I have never before met African leaders. We are all the same colour but if we were brothers, we would have met long ago. We have always considered the NFD as an area in itself. There was trouble in Kenya a few years ago but not in NFD. We want to secede and join Somalia Republic.[44]

In this statement Jattani recognized the immediate brotherhood of NFD and Kenya but underscored the distance of the people of NFD from those of other parts of Kenya. This signified that the area was marginalized from other parts of the colony. Political marginalization of the district would then intensify the desire for the larger region to secede.

As a result of arbitrary colonial boundaries, Kenya's territorial integrity was threatened from as earlier as 1961. The Somali had cited NFD for historical and cultural reasons. This was a dangerous claim that could set a precedent if allowed. Uganda would have claimed the area west of Rift Valley from Mt. Elgon to Naivasha, while Tanganyika too would have claimed Maasailand since majority of the Maasai lived in Tanzania. In addition, Zanzibar would have claimed the ten-mile strip along the coast of Indian Ocean. Moreover, in the northeastwards at Lokichogio there was a dispute between Kenya and Sudan over the Elemi triangle.[45]

The British colonial administration was privy to this territorial contestation. The administration had prior to the independence of Kenya expressed fear over the arbitrary boundaries. According to a debate in the Lords House of the United Kingdom, lumping together the Somali and other Kenyan tribes amounted to a serious territorial absurdity. The

[44] Hannah A. Whittaker, "The Socioeconomic Dynamics of the *Shifta* Conflict in Kenya, C. 1963–8." *The Journal of African History* 53, No. 3 (2012): 391–408.
[45] Pontian G, Okoth, *Kenya and the Contemporary World Order*, (Kakamega: MMUST Press, 2010). 53.

Earl of Lytton, during the the House of the Lords debate on the Somalia secession claim in 1963 said:

> If the (British) government really agrees to put the Somalis under the Kenya administration we shall be leaving a terrible legacy to Kenya. There will be dragons' teeth that will rise up and produce warriors against the Kenya government. It will put that government of our former colony in an impossible position. They almost certainly will not be able to subdue this very proud, gallant people. If they did, it would lead to their slaughter on a gigantic scale.[46]

This opinion clearly expressed fear of a serious internal dispute between Somalia and Kenya if the boundary issue was not resolved by allowing NFD to secede. The former colonial master chose to remain neutral and allow the two states to resolve the boundary dispute. The matter was not resolved as it went against the Organization of African Unity resolution that no boundary should be altered in accordance with the principle of inviolability of state boundaries.

Although the *Shifta* irredentism was popular among the Somali residents of the NFD, it should be noted that there was a split between almost each community residing in this region and the region is not entirely dominated by the Somali clans. For instance, the Borana of Isiolo largely sided with the secessionist movement while those in Marsabit were divided between pro-government and secessionist camps as depicted in the results of the NFD commission and referendum conducted in the region to determine the political future of NFD in 1962. Moreover, leaders of NPP such as Wago Happi and some of the pro-government leaders assassinated by the insurgents such as Wabera and Hajj Galm Dido were Borana. Forced villagization were extensively carried in parts of Garba Tulla and Merti areas of Isiolo than areas inhabited by Somali clans.

3.3 Circumstances that Warranted Military Intervention in the Shifta War

Demands for secession do not always yield to armed military intervention by the state. [47] Sometimes governments negotiate with secessionists movements and accept political concessions. However, sovereign states in most cases respond to secession demands with force. Ahsan Butt, argues that states respond violently to secessionist movements if in the first place, the potential state poses a greater threat to the central state. Secondly, if the new-breakaway state is made of ethnic groups with deep identity divisions with the central state.

[46] HL Deb 03 April 1963 Vol 248 cc600-36600

[47] Ahsan I. Butt, *Security and Separatism in the Contemporary World* (Cornell University Press, 2017), 81.

Thirdly, war between the secessionist movement and government forces is also likely if the region experiences violent instability.[48] As in the case of the NFD, Somalia subversion was deemed a threat to Kenya's internal security. Further, the Somali seeking separation were culturally different from rest of the Kenyan communities. Furthermore, Somalia, Kenya's neighbour was also unstable. The Horn of Africa was also experiencing instability occasioned by perennial banditry.

The study therefore, investigated a number of security threats related to secession that led to the *Shifta* war. Arranged in an ascending order they include, threat of irredentism, general insecurity in NFD, dismembering of the country's territory and boycott election among others as shown in Figure 3.1 below.

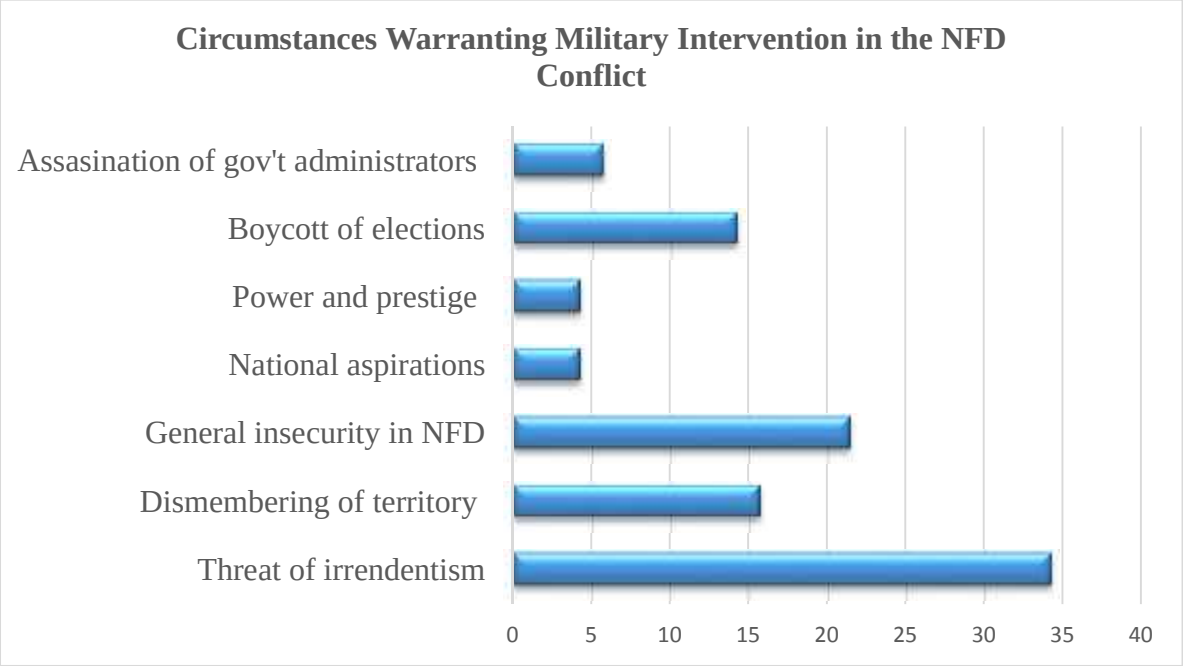

Figure 3.1: Circumstance Warranting Military Intervention in the *Shifta* War
Source: Researcher, 2019

As shown in the Figure 3.1, one stated reason why the military intervened in the *Shifta* war, was the perception by the new post-independence government that the irredentist claims as threat to national security. This accounted for approximately 34% of all the respondents. The study was informed that the bandits generally contravened the law and other government

[48] Ahsan I. Butt, ed. "Secession and Security: Explaining State Strategy against Separatist," in, *Cornell Studies in Security Affairs*. (Ithaca, NY: Cornell University Press, 2017), 11-15.

regulations. Article 238 (1) of the Constitution of Kenya 2010, defines national security as the protection against internal and external threats to territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.[49] There different elements of national security including: territorial integrity, economic, military, food, and health, physical, political and environmental security among others. The first and most crucial element of national security is territorial integrity. As nation, Kenya had to ensure permanent inviolability of her national territory through effective control by the state. This included the preservation of the country's geographic territory, economic endowment and protection from external and internal incursions. In traditional security, both internal and external threats ought to be suppressed violently.[50]

Further, the irredentism demands had wider implication not only for Kenya but also for Ethiopia, whose Ogaden region had a large population of the Somalis. The presence of common threat gave Ethiopia and Kenya a reason to sign a military pact.[51] The secession claims were also dangerous as it would set precedence for neighbouring states like Uganda and Tanzania to annexe Kenya's territory.[52] The irredentism also coincided with the continent-wide debate over legitimacy of colonial borders. African leaders from countries experiencing boundary disputes had come to a common agreement over the need to keep colonial boundaries intact. In affirming this decision, Julius Nyerere, the first president of Tanzania had once stated that the borders of African states were so absurd, that newly independent states in Africa had no choice but to consider them sacrosanct.[53] In line with this consideration, the African leaders condemned the irredentist claims in NFD and gave Kenya the mandated to implement the Organization of African Union (OAU) proclamation on the principle of inviolability of its territory.

Kenyan authorities and NFD leaders meet in Rome in 1963 in attempt to avert the border dispute diplomatically. Though the Rome meeting failed to resolve the dispute, Kenyan authorities first reiterated that the agreement would be sought by peaceful means, and all

[49] Article 238. (1) of the Kenyan 2010 Constitutions
[50] Jānis Teivāns-Treinovskis1 and Nikolajs Jefimovsm, "State National Security: Aspect of Recorded Crime" *Journal of Security and Sustainability Issues*, Vol. 2 No. 2, (2012), 41-48.
[51] "Kenya-Ethiopia Defence Pact Ratified to Curb on Somali Ambition" *The Times*, Saturday, December 28, 1963.
[52] Okoth,, *Kenya and the Contemporary World Order*, 53.
[53] David Laitin, *Identity in Formation: the Russian Speaking Population in New Abroad*. (New York: Cornel University Press, 1998), 336.

sides should work to reduce tension. Secondly, the matter would be determined by OAU if Somalia and Kenya failed to find a solution to it. Thirdly, Somalia was free to pursue the matter through the OAU in accordance with the spirit of the Addis Ababa declaration which called on all states to settle their disputes peacefully. Despite much optimism by President Kenyatta that the intra-African problem would be solved by the OAU, the military intervened as temporary measure because of the threats the irredentist movement posed to Kenya.[54]

The second factor that warranted the military intervention in NFD was the secession demands of a large part of the country leading to dismembering of the country's territory. The NFD measured about 102,000 square miles. This is more than one quarter of the total area of Kenya measuring approximately 224,960 square miles.[55] According to the Hansard of the Lords Debate, NFD was a half of Kenya land area and twice the size of England.[56] England measures approximately, 130,279 km^2 (50,301 square miles). Though the region was virtually a desert and inhabited by one-thirtieth of the population of Kenya, the new post-independence regime was reluctant to relinquish an inch of her land to any neighbouring country. This policy was fortified in the words of President Kenyatta shortly after independence when he said: "…we will covet no inch of our neighbour's territory. We will yield no inch of ours. We stand loyal to OAU and its solemn decision that all African states shall adhere to the boundaries inherited at independence."[57]

The third factor that warranted military intervention was general insecurity in the region. This represented 21% of the sample. The government defined the secessionist claims as criminal acts of banditry. Ordinarily, the term crime denotes an unlawful act punishable by a state. The most popular view is that crime is an act harmful not only to some individuals, but also to the community or the state. Criminal acts such as banditry and cattle rustling were forbidden. The role of central government in crime management cannot be underscored. Crime control is a difficult, complicated task, requiring deep commitment and day-to-day involvement by

[54] Oral Interview, Member of County Security Committee, Garissa, 20th October 2018.
[55] Korwa Gombe Adar, The Significance of the Legal Principle of Territorial Integrity as the Modal Determinant of Relations: A Case Study of Kenya's Foreign Policy towards Somalia, 1963 -1983). PhD Thesis, South Carolina University 1986, p. 67.
[56] HL Deb 03 April 1963 Volume 248 cc600-36600.
[57] Katete Orwa "Diplomacy and International Relations" in *Themes in Kenyan History*, ed. William R. Ochieng (Nairobi: East African Educational Publishers, 1990), 222.

government.[58] The primary reason for the importance of the state's involvement in fighting crime is its legal power. Each sovereign state is the central repository of all legal power and law enforcement agencies within its borders capable of crime control.

The military operation in NFD was also a result of successful securitization of the secession claims. The presidential proclamation on 25 December 1963 was highly successful and triggered military into action. In declaring the state of emergency and consequently the *Shifta* war, Mzee Jomo Kenyatta stated in the National Assembly that:

> My hopes and expectations of a peaceful settlement have been frustrated by a mounting wave of terrorism and banditry. Since November 13 December 1963, when the *shifta* gangsters commenced their activities, there have been 33 incidents involving the use of firearms. Figures in my possession show that about 2,000 *shifta* are based in Somalia and about 700 are operating within the North-eastern region. A prohibited area five miles wide along the Kenya-Somalia border has been marked out. The North-eastern region is part of our country, so that any problems arising there are internal and domestic. We cannot compromise on that.[59]

The Prime Minister's address to parliament was act of securitization that well served as declaration of war speech. After this proclamation, the word *shifta* was officially used to designate the war in NFD.

According to securitization theory, issues that become securitized represent issues where political elites successfully construct an issue into an existential problem.[60] Securitization theorists assert that successfully securitized subjects receive disproportionate amounts of attention and resources compared to unsuccessfully securitized subjects. According to the Copenhagen School, securitization as a process involves three components: first, a securitizing actor or agent: an entity that makes the securitizing move or statement or speech. Second, a referent object: an object or ideal that is being threatened and needs to be protected. Third, an audience: the target of the securitization act that needs to be persuaded and accept the issue as a security threat.[61] Power structures in securitization process play an important

[58] Eliot H. Lumbard, State and Local Government Crime Control, *Notre Dame Law Review*, Vol. 4, No 8. (1968), 889.

[59] Kenya, National Assembly, House of Representatives. Official Report, Vol. II, December 1963, Col. 9.

[60] Barry Buzan, Ole Wæver, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder: Lynne Rienner Publishers, 1998), 32.

[61] Michael C. Williams, "Words, Images, Enemies, Securitization and International Politics," *International Studies Quarterly* No. 47, (2003), 512.

role in determining its success. As head of government, Jomo Kenyatta's proclamation were unchallengeable lure for military action.

The military also intervened to enhance Kenya's aspirations to own and control a vast territory. Vast geographic territory is considered as powerful asset to any state. Since the region was economically valueless, the government sought to protect the expansive region for prestige reasons rather than for economic gain. According to Hansard of the Lords' debate in 1963, it was difficult to appreciate why Jomo Kenyatta, the leader of KANU and the other politicians in the Lancaster Conferences II and III were so keen to retain NFD. Compared to Katanga province that had earlier sought secession from Congo, NDF in Kenya was economically valueless.[62] The conception of "valueless NFD" only existed at that point in time prior to exploration of precious minerals and natural gas in the region that is the basis of current Kenya-Somalia territorial and maritime dispute. In opposing the Katanga secessionist claims, the Belgium authorities argued that if Katanga was permitted to secede, it would be difficult, if not impossible, for a Congolese government to manage its affairs since Katanga was the richest province of the Congo. Economic reasons being not part of the Kenya argument against secession, left prestige of a united nation among the several political objectives why Kenyan leaders were opposed to secession.[63]

Furthermore, the study found that the Kenyan leaders feared that secession of an inch of the country's territory meant loss of power and would diminish the country's prestige. Hans Morgenthau as quoted by Faris defines international politics as a struggle for power.[64] Political scientist principally use 'power' in terms of an actor's ability to exercise influence over other actors within the international system. This influence can be coercive, attractive, cooperative or competitive. Mechanisms to influence power include the threat or use of force, economic sanction, and diplomacy. According to Keohane and Nye, military force is an effective instrument of power available for state disposal.[65]As sovereign state, Kenya capitalized on this strategy over NFD.

[62]HL Deb 03 April 1963 Volume 248 cc600-36600
[63] HL Deb 03 April 1963 Volume 248 cc600-36600
[64] Rasheed, Mazen Faris. "The Concept of Power in International Relations." *Pakistan Horizon* 48, No. 1 (1995): 95-99. Available at: http://www.jstor.org/stable/41371577. Accessed on 30 Aug 2018.
[65] Rasheed, Mazen Faris. "The Concept of Power in International Relations." 23.

There are different types of power in international politics, namely, material, military, reputational and motivational power.[66] Material power is the first and most important type of power. In material power, economic power is the most vital followed by nation's territorial asset which includes its geography, size, location, climate and physical futures as well as its natural resources. Population is yet another factor that determines the material power of a nation. Therefore, loss of a substantial part of the territory meant loss of fundamental element of Kenya's material power.

The second type of power is military power. It refers to the size of the state armed forces. The quantity and quality of weaponry, the training, morale, organization and leadership of the military. It thus consists both of hardware and software. A state may have considerable material assets, but if it cannot successfully convert them into armed might, or any other instrument of foreign policy, then its ability to act in foreign affairs is limited.[67] Armed violence staged by secessionist movements was an assault to test military capability and preparedness of Kenya.[68] Military success in war was a good reputation for Kenya.

Motivational power refers to the willingness of a government to take an active part in global and regional politics. Especially, its determination to resolve conflicts in its favour. Reputational power refers to the country's track record in world affairs, its persevered ability to accomplish the goals it sets for itself. Reputation of power, is power because it draws with it the adherence of those who need protection. Reputational powers reassures citizens that the state able to provide protection. It also reassures neighbouring states. Inability to protect the country against claims of secession would have been detrimental to Kenya's reputation as a regional industrial and economic hub. Secession would mean Kenya's inability to exert strategic influence as regional power. A reputation of military success highly influences state power in international affairs. States can also gain reputation from peaceful efforts.

The fourth factor that warranted military action in the *Shifta* war was the subversive influence of the Republic of Somalia in the conflict. During the war, Somalia openly backed the *shifta*. Radio Mogadishu and Somali based newspapers carried stories and commentaries extolling the efforts of the *shifta* and calling on the rest of the Somali population in Kenya to rise

[66] Paul, Viotti R., and Mark, Kauppi V., International *Relations and World Politics*, 5th ed. (New York, New York. Pearson, 2013), 209.
[67] Viotti and Kauppi, International *Relations and World Politics*, 209.
[68] Oral Interview, Focused Group Discussion, Nairobi, 21 February 2019.

against their own government. Earlier in 1946, the SYL spread propaganda to the effect that the weak colonial administration was about to entrust the running of NFD unto it.[69] Somalia also allegedly printed and distributed flags and maps of 'Greater Somalia' illustrating NFD as part of its territory.[70] Somalia leaders also fronted the need to unify all the Somalis in the Horn of Africa. Dr. Abdirashid Ali Sharmarke, Somalia's Prime Minister, 1960-1964, was particularly unhappy that the Ogaden and NFD were in Ethiopia and Kenya respectively. He therefore aspired to reclaim these territories.[71]

It is important to clarify the territories symbolized by the five pointed star on Somalia flag. It is assumed that it is NFD (British and later ruled by Kenya), Ogaden (assumed to be under Ethiopia occupation and annexed during Ethio-Somali wars), Somaliland (colonized by British), Djibouti (under French rule) and Italian Somalia.[72] Currently though the flag still has the same star, the Federal Somalia Government does not make such claims explicit or part of their agenda.

To champion the ideology of the Greater Somalia, Somalia leaders initiated a campaign to gain control over NFD as soon as it attained independence in 1960. Dr. Abdirashid Ali Sharmarke remarked:

> Our misfortune is that our neighbouring countries, with whom we seek to promote constructive and harmonious relations are not our neighbours. But our brothers are our Somali kinsmen whose citizenship has been falsified by indiscriminate boundary arrangements. They now have to move across artificial frontiers to their pasture lands. They occupy the same terrain and pursue the same pastoral economy as ourselves. We speak the same language. We share the same God, the same culture, and the same traditions. How can we regard our brothers as foreigners?[73]

In this quote, Sharmarke referred to the residents of NFD as Somali kinsmen whose citizenship was falsified by artificial boundaries created by the colonialists. He argued that historically, the NFD region was exclusively inhabited by ethnic Garris, and other Borana-speaking people. Sharmarke administration also advocated for self- determination of the

[69] Korwa Gombe Adar, The Significance of the Legal Principle of Territorial Integrity as the Modal Determinant of Relations: A Case Study of Kenya's Foreign Policy towards Somalia, 1963 -1983). PhD Thesis, South Carolina University 1986, p. 152

[70] The Weekly Review, November 14, 1980, 11.

[71] Standard Group, "Kenya's First Secessionist War" Nairobi. *The Standard* 24 August 2011, 14.

[72] Oduogo Cyprine Onyango, "Kenya-Ethiopia Relations: A Study of the Significance of Economic and Political Factors Contributing to Co-Operation, 1963 – 1991" M.A Thesis, Department Of Government, University of Nairobi, 1995, 103.

[73] The Weekly Review, October 6, 1975

Somalis in the NFD, he therefore prodded the people of NFD to fight. He was further quoted to have said.

> Our dear brothers in Mandera, Marsabit, Moyale, the honourable people of the NFD. We thank you and you deserve a tremendous welcome. It you do not change your course today, you will achieve your purpose and be free. Then we shall be together in a freedom that is sweet.[74]

The speech by the Somali President Mr. Aden Abdullah Osman at the inaugural summit of the OAU in Addis Ababa in May 1963 was part of the campaign to lure the residents of NFD to pursue a secessionist cause. The speech also associated imperial boundaries with the political demise of the Somali nomads he said.

> History has shown that the most serious obstacle to African unity originates from the artificial political boundaries which were imposed on large areas of the African continent by colonialist powers. We have seen how traditionally integrated societies were torn apart and how their land is cruelly partitioned (by international borders which in the Somali case run) the entire length of the existing boundaries…cut across the traditional pastures of our own nomadic population.[75]

From this excerpt, it is clear that President Osman criticized the colonial boundaries and appealed to African leaders to reconsider restructuring them.

The call by Somalia's leaders inspired the resident of NFD to cultural reunification and they volunteered for conscription into the *Shifta* militia to champion this cause. According to Mohammed Guyo, the then regional representative for Isiolo South, thousands of males aged between eighteen and forty years voluntarily trooped to Bells Qoqane and Ras Kamboni for military training. They allegedly travelled aboard Republic of Somalia owned vehicles. [76] They also wanted to ensure that Kenya gave up the control of the NFD.[77] The first group of trainees graduated and returned back to Kenya in 1961 to wage a secession war. The timing of the military onslaught was also well calculated according to security insiders in Kenya. The schemers perfectly knew that anti-secessionist leaders were busy negotiating for Kenya's independence and thus would be taken unawares. With about 4, 000 youths trained and

[74]Adar, The Significance of the Legal Principle of Territorial Integrity" 155.
[75] Catherine Hoskyns, *The Ethiopian-Somali-Kenyan dispute 1960–67: Documents*. (Dar es Salaam: Oxford University Press 1969), 32.
[76]"Kenya's First Secessionist War" *The Standard*, 24 August 2011, 14.
[77] Ibid, 14.

commissioned in military tactics, it was clear by June 1963, that the Mogadishu regime had chosen the path of war to claim the NFD from Kenya.[78]

Ethnic mobilization to violence through incitement to boycott the 1963 general election accounted 14% of why the military intervened. As stipulated in the Lancaster Conferences, legislative elections were to be held in Kenya from 18 to 26 May, 1963. While the entire country geared towards the very first general election, the opinion of the Somali inhabitants of the NFD was divided as far as the election was concerned. Some leaders, especially pro-secessionists called for boycott of the elections while others were opposed to the boycott.[79] As the May 1963 elections approached, the pro-secession chiefs, elders and politicians increasingly opposed the forthcoming elections. The NPPP indicated its intention to boycott the election if their demands for secession were not granted. The national treasurer of the NPPP, Abdi Rashid Khalif, warned that if secession demands were ignored, the people of the NFD would "die in order to achieve their aims" [80] Other leaders in the region also publically expressed their solidarity with the party.

As an expression of the disenchantment with the Kenyan administration, thirty four Chiefs from the region resigned. In their letter of mass resignation handed to the District Commissioner, Mr. John Golds, they stated that:

> Since Her Majesty's Government has now finally decided against our desire to re-unite with our brethren in the Republic, we are left with no alternative but to tender resignations to you as a sign of protest against Her Majesty's Government decision. Our resignations can only be withdrawn on condition that Her Majesty's Government concedes to our legitimate demand for secession from Kenya and unification with the Somali Republic.[81]

Though the Provincial Commissioner (PC) in the NFD downplayed the resignation arguing that civil servants can't resign in mass but in individual letters written and signed by each one of them, the chiefs jointly vowed never to co-operate with the new government of Kenya in the general elections.[82] As result of the boycott, the NPPP, the dominant party in the region

[78] The Weekly Review, October 6, 1975.
[79] KNA, FC 141/7126, Notes of a meeting between the Governor of Kenya, Provincial Commissioner and all DCs at Isiolo, October 1962.
[80] Catherine L Besteman, *Unravelling Somalia: Race, Violence and the Legacy of Slavery*. (Philadelphia, P.A., University of Pennsylvania Press, 1969), 35.
[81] "We Resign, Say 34 NFD Chiefs," *East African Standard*, (Nairobi), March 25, 1963, p. 1.
[82] KNA, PC/GRSSA/2/21/4, Wajir District Monthly Report, March 1963.

did not field a single candidate in the May 1963 elections. In turn no elected leader was returned to either the national or regional assembly in the party. When the general election results were announced on 31 May 1963, KANU won 72 out of 112 seats in the House of Representatives. KANU also won an additional 11 seats filled by the Electoral College. KADU won 32 seats in the House of Representatives and one additional seat filled by the Electoral College.[83] With election results being in favour of KANU. Mzee Jomo Kenyatta assumed the Prime Minister's position. There no elected leader in NFD except in Mandera and Garissa where the families of Sayid Abdi Noor, and Yusuf Haji, respectively presented themselves for parliamentary election and were automatically elected.[84] The Governor of Kenya therefore, remained responsible for the administration of the region. [85]

Nonetheless, there is a contention that the boycott of the 1963 general election by the people of NFD wasn't purely an expression of unhappiness with the Kenya government's failure to grant secession. Holders of this view, interviewed by the study, opined that, the boycott of the election was prompted by a discriminatory constitutional clause criminalizing allegiance to another country.[86] Article 32 (3) of the 1963 Constitution of Kenya stated: "No person shall be qualified to be elected a member of the National Assembly if he is under any acknowledgement of allegiance to any foreign power or state."[87] Since NPPP leaders demanded outright secession and integration into Somalia, it was assumed they had automatically declared allegiance to that country. They were constitutionally barred from participating in the elections. The constitutions also required NPPP leaders to at least take an oath of loyalty to the government of Kenya before vying. This posed a challenge to the leaders. The lingering question was, how could the leaders who wished to secede from Kenya take an oath of allegiance to same state? It was perceived that the letter and spirit of the Lancaster Constitution barred the NPPP leaders from taking any part in the general elections, for if they took part, they would be perjurers. Similarly, approximately 200,000 residents of NFD would be traitors.[88] Since treason attracted death penalty in Kenya, participating in the general election spelt doom for the NPPP leaders.

[83] Clyde Sanger and John Nottingham. "The Kenya General Election of 1963", *The Journal of Modern African Studies*, Vol. 2 No. 1, (1964), 1-40.
[84] UNDP Dynamics and Trends of Conflict in Greater Mandera, *Amani Papers*, Vol. 1 No 2, (2010), p. 22.
[85] Douglas Howland and Louise White, "Introduction to Sovereignty and the Study of States" in *The State of Sovereignty, Territories, Laws, Population* ed. Howland, D Douglas and Louise White, (Bloomington: Indiana University Press, 2009), 1-18.
[86] Oral Interview, Mohammed Osman, Nairobi, 12 December, 2018.
[87] The Constitution of the Republic of Kenya 1963, Article 32 (3)
[88] HL Deb 03 April 1963 Vol 248 cc600-36600

After the elections, it appeared that the region lacked political representation in the new dispensation. A group of politicians perceived as moderates and pushing for autonomy rather than integration began to demand for political representation in the newly formed government. The moderates led by NPPP treasurer, Abdi Rashid Khalif, formed a political party called Frontier Independent Party (FIP) in response to the hard-line and militant position taken by the NPPP. The later had advocated for immediate secession and integration into Somalia. To the contrary, FIP advocated for regionalism and urged for fomentation of new relations between the residents of NFD and new government.[89]

Though the boycott of elections was not a crime, it was yet another political reason that prompted military intervention in NFD as the call for election boycott triggered violent criminal activities. It was argued that the general state of insecurity and violence witnessed immediately after the boycott of elections was sufficient to warrant military intervention. Majorly because the hardliners were unwilling to compromise and they engaged in riots and violent demonstrations in Wajir and Garissa, which spread fear among citizens. The riots intensified on the eve to the election and on the polling day, approximately one thousand Somali youths wielding knives, machetes, and spears, rocks and slings allegedly raided a polling station. They also ordered people on the queues waiting to vote to leave the polling stations. Election-related violence intensified after elections, culminating in the assassination of DC Wabera and Senior Chief Haji Galm Deda.[90]

The assassination of the first native NFD District Commissioner was another factor linked to events that led to the *Shifta* war. After 70 years of colonial domination, Kenya attained independence under Mzee Jomo Kenyatta in 1963. The mood of the country was euphoric. While majority of Kenyans eagerly waited for the new crop of Africans to steer the leadership of the country, residents of NFD were nervous, unsure of what the new state would have for them. A few months prior to independence NFD resident's desire to break away from Kenya and join Somalia had been defeated in a referendum. The British colonial office had also declined to assent to their demands. The new political leadership in Kenya would hear none of their wishes. The Kenyan authorities were also determined not to yield

[89]Oral Interview, Mohamed Muktar, Garissa, 26 September, 2019
[90] Hannah Whittaker, Insurgency and Counter Insurgency in Kenya: Social History of the Shifta War, 43.

even an inch of Kenyan soil to their more aggressive neighbours.[91] Despite all these, many residents of NFD were still determined to secede.

To deal with the resentment among the pro-secessionists after elections, Jomo Kenyatta, then the designated Prime Minister, authorized the posting of Daudi Dabasso Wabera, a native of NFD, as the District Commissioner of Isiolo in January 1963. It was hoped that the appointment of a local as the DC would foster peace and harmony by winning the hearts of the sceptics. As the new DC, Wabera was tasked to hold a series of meetings to convince Kenyan that all would be well in the new independent Kenya. He was also to assure the residents that they would not be victimised if they chose to remain in Kenya. However, the government's efforts did not go well with NFD residents. Disgruntled conspirators began to hutch plans to assassinate the DC. A few days after Kenya marked its first Madaraka Day, Wabera visited Sericho for a meeting in company of the area Chief, Galma Dido. As the government agents wound up their speeches, three assassins patiently lay waiting. When the DC's entourage left, the three gun men, believed to have been on the orders of the then Somali Prime Minister Abdirahid Ali Sharmarke, singled out the two administrators and shot them. The security aide attached to the slain DC escaped unhurt. The assassins then drove towards the Kenya-Somalia border. The news of Wabera and Chief Dido's assassination reached Isiolo the following day. The killing of the two civil servants caused panic and a chain reaction from the government. The police initiated a massive security operations to bring to book the assassins. The security situation worsened, forcing the government to declare a state of emergency.

The general state of perennial banditry and sporadic conflict in NFD was another reason why the military intervened. The *New English Dictionary* (NED) defines a bandit as "one who is proscribed or outlawed; hence, a lawless desperate marauder, a brigand: usually applied to members of organized gangs." [92] Banditry is a criminal activity carried out by proscribed organized gangs in the form of cattle rustling, feuding and social protest. The Horn of Africa has a long history of banditry and cattle rustling.[93] According to Watts, banditry, rebellion and social protest in Africa is the root cause of popular violence. Watts further points out that

[91] Amos Kareithi, "DC who paid the Ultimate Price for Kenya's Unity" *The Standard*, October 20, 2014.
[92] The New English Dictionary
[93] Michael Watts, "Banditry, Rebellion, and Social Protest in Africa: A Review." *African Economic History*, No. 16 (1987), 123-29.

"banditry is simply a form of criminality (protest) common to agrarian societies"[94] According to Mburu, banditry has had pervasive and devastating effects to an already politically fragile Horn of Africa.[95]

Since the precolonial period, political instability in the Horn of Africa has created the opportunity for heavily armed Ethiopian and Kenyan border communities to continue engaging in organized cross-border plundering for livestock. The change in administration associated with colonialism and independence created conditions for escalation banditry in NFD. Colonialism, and later the independent Kenya government, destroyed a vital mechanism of control that existed through several dynasties when the charismatic Somali sultans were replaced with chiefs in the provincial administration set up. According to Mburu, the chiefs were rated as low ranking civil servants and incomparable to the sultanate.[96]

Banditry also increased on the eve of the *Shifta* war because some disgraced former Somali guerrillas from Kenya who had fought in the Somalia liberation war returned to Kenya and continued with the traditional inter-clan feuds and rustling. This time, however, banditry had transmuted from an innocuous tribal sport into terrorism unleashed by hardened former guerrillas who were used to killing and having little respect for elders, or any symbol of authority. Furthermore, the destruction of the traditional economy, the only worthwhile economic activity for young men in the region was banditry.[97] The bandits gradually evolved into a militia which engaged in all manner of criminal activities. They also demonstrated sophistication in their military capability. The military prowess exhibited in the previous attacks such as those that culminated into the *Shifta* war were ultimate challenges to the authority of the state. As Creveld argues, bandits can attain a level of violence that is not easily stoppable by governments.[98] This violence may at times overwhelm the civil police. Under these circumstance the only available option for maintaining national security is the military.

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[94] Michael Watts, "Banditry, Rebellion, and Social Protest in Africa: A Review." *African Economic History*, No. 16 (1987): 123-29.

[95] Nene Mburu, "Contemporary Banditry in the Horn of Africa: Causes, History and Political Implications" *Nordic Journal of African Studies* Vol. 8, No, 2, (1999), 89-107.

[96] Mburu, "Contemporary Banditry in the Horn of Africa", 98.

[97] Mburu, "Contemporary Banditry in the Horn of Africa," 99.

[98] Martin Van Creveld, *The Transformation of War* (New York: Free Press 1991), 18.

3.4 The *Shifta* Campaigns

Active *Shifta* military campaigns commenced soon after the declaration of Kenya's independence from the British on 12 December 1963 and lasted for four years. Throughout the period between 1964 and 1967, there were serious battles interspaced with skirmishes between the supporters of the irredentist movement and the Kenya army. The attacks translated into massive loss of life on both sides. The forward operational bases of the irredentist movement were located in Dolo, Lugh Gonana, Baydhabo, and Baidoa, whereas, the Kenya army battalions established operation bases in the major towns in the region.[99] These areas became the battlefields of the *Shifta* campaign. The *shifta* strategically operated in small groups of 20 to 100 individuals, and were also divided into pockets and raiding squads of 15 to 45 armed militia.[100] These were equivalent the fighting platoons of the Kenya army regiments. The militia engaged in ambushes and in the laying of mines. Key roads like the Isiolo-Modogashe-Wajir section were heavily mined. The *shifta* also attacked regular and administration police posts in the region. They also raided homes and shops for logistics and stores. They also destroyed infrastructure, including bridges using bazookas to deny the mechanized army entry in strategic areas.

In the initial stages of the campaign, Kenya's young army did not have the necessary infrastructure and manpower to suppress the insurgency. The military, therefore, suffered serious setbacks in the early phases of the operation. The military impediments were occasioned by a host of factors. First and foremost, the army lacked local support and adequate intelligence network. Secondly, the army was not tactically prepared for conflict. Third, the army encountered a challenge of staging a two-pronged attack by the Somalis in Ogaden, Ethiopia, and those from Somalia who had formed a strong irredentist force to fight Kenya.[101]

Another drawback for the army was the harsh weather and terrain. The temperatures during the day were sometimes unbearable and made operations almost impossible. During the rainy season, road became impassable and brought motor transport to a standstill. There was also a challenge of lack of adequate geographical knowledge about the region. The military had either updated maps nor the capacity to read and to interpret them. Further, the command

[99] H.K. Biwot, "Post-Independence Low Intensity Conflict in Kenya," Global Security Watch, available at: https://www.globalsecurity.org/military/library/report/1992/BHK.htm Accessed on March 7, 2019.
[100] Ibid, 12.
[101] Kenya Army, The Shifta Campaigns 1967-1984.

structure, and particularly the top military cadre, was composed of remnants of the British officer corps with questionable levels of patriotism and commitment to resolve the conflict. The immediate replacement of some of the top command elements improved the situation significantly. The elderly and experienced platoon commanders who had been elevated from warrant officer and platoon commander to fully-fledged officers led men into triumphant battles against the scattered secessionist forces.[102]

While the Kenya military suffered operational challenges in early phase of the counter-insurgency, the Somalis irredentists were shrewder in their tactics throughout this period. They also had the support of the local population and were adopted to the environment. They not only had sufficient geographical knowledge of the region but also had no problems with climatic conditions. The *shifta* also benefited from the support they received from the government of Somalia, the Soviet Union as well as from some former colonialists and Arab sympathizers.[103] The *shifta* also received the Somalis disserting the Kenya Armed Forces in support of the secession.[104]

The *shifta* fighting units were well organized and demonstrated advanced training and coordination. The convoys were transported using camels and moved in tactical waves. The first wave would be composed of spies, followed by the deception party of a well-armed squad, then a small element as an early warning squad in column formations. Finally, came the main fighting body with armed guards on the flanks. The fighting units were accompanied by convoys of logistics and families.[105]

Any attack against the *shifta* convoys would be met fiercely with the beating of tins by the families. This alerted the main fighting elements who would then either engage from the rear or envelope the government security forces. All these activities were concurrent and were intended to confuse the government forces. The drumming was also a strategic deceptive move intended to draw the government forces into action. The cries accompanying the drumming would sometimes create confusion and throw the armed forces into total disarray. This provided time for the main irredentist movement force to move as fast as possible away

[102] H.K. Biwot, Post-Independence Low Intensity Conflict in Kenya, 4.
[103]Ibid, 5.
[104] Oral Interview, WOI (Rtd) Imwene, Nairobi, March 7, 2019.
[105] Biwot, Post-Independence Low Intensity Conflict in Kenya, 5.

from the scene of attack. During extremely difficult situations, the insurgents would use the rear guard to engage government forces while their main fighting unit disengaged from the main battle ground. The *shifta* never engaged in pitched battles, preferring to hit hard, inflict heavy casualties, and retreat into thick bushes. Their main focus was the capture of heavy weapons and the destruction of trucks and armoured vehicles used by government troops.[106]

The movement of logistics and families was confined to evenings, moonlit nights, and pre-dawn hours. Based on their intelligence, they had learned the habits of the government forces which confined operational activities to daytime. Night operations were limited to conducting ambush along reported irredentist's routes. In most cases, the ambushes were laid near bore holes where they would bring their camels to drink water at night. This created enormous problems for the government troops because there was no distinct difference between the *Shifta* and the civilians watering the animals in the region. However, these problems were eventually overcome through liaison and coordination with loyal administrative personnel employed by the government.[107]

Oral interviews and Focussed Group discussion with retired Kenya army soldiers who participated in the war revealed that the bandits used military tactics that resonated well with the region. The use of camels as troop carriers was sophisticated. The *shifta* tactically strapped marksmen on camels from where they engaged government forces. The camels not only shielded the bandits from gunfire but were also a perfect camouflage.[108] Intelligence on these weird tactics was discovered later when the government employed locals as home guards to fight alongside the Kenya army.

The main weapons used by the secessionist forces were the AK 47 rifles, the G3 rifle, Heckler and Koch, as well as bazookas.[109] Other weapons were old Second World War rifles such as the Mark 3 and Mark 4. The bazookas were mainly used to immobilize the military trucks while the machine guns were used for fire suppression. At later stages in the campaign, the bandits began using three-fused, high explosive anti-tank mines made in Italy. There were two different types of mines used by the *shifta*. One with three fuses, and the other with four fuses. These mines were mainly obtained from sympathizers of secessionist

[106] Ibid, 5.
[107] Ibid, 5.
[108] Oral Interview, Focused Group Discussion, Nairobi, March 7, 2019
[109] H.K. Biwot, Post-Independence Low Intensity Conflict in Kenya, 5.

movement from Italy and the Arab world. The Somali irredentist fighters also obtained assault weapons from Eastern European countries (such as Hungary and Bulgaria), and the Soviet Union.[110]

The mines devastated the Kenya army transport assets forcing it to change the mode of operation from mounted troops to cross-country foot operations. This had a tremendous drawback on the army overall fighting effectiveness and general morale. The shortage of vehicles and breakdowns, exacerbated by bad weather conditions, together with the anti-tank mines made it almost impossible for operations to be conducted deep into enemy areas.

The Somali irredentists would never attack without adequate intelligence. Initial effort were geared to the gathering of sufficient intelligence from sympathetic locals at least one week before an operation. The same locals were also used to carry out a disinformation campaign aimed at misleading the government forces regarding the intentions and disposition of bandits. Sometimes they would use their agents to lead government forces into ambushes.

Occasionally, the bandits planned raids on homes and shopping centres to try and obtain food for their troops. The secessionist fighters would never steal from shops of fellow Somalis but attacked those belonging to the Borana and the Gurreh. These two communities were not considered as Somalis though the Gurrehs speak both Borana and Somali languages. This practice caused serious animosity between the secessionist fighters and the local people who did not support them. Consequently, support slowly shifted from secessionists to loyalty to the government of Kenya.[111]

After four years of vigorous joint effort by the Kenyan military, the para-military police and the regular police, the Somali irredentist fighters were defeated. Kenya had three infantry and one support regiment at that time. In addition, there were three companies of para-military forces. The Kenya military deployed troops in posts established in the towns of Mandera, Garissa, and Wajir. Outposts were had been set up at Buna, Gurar, Moyale, and Malka-Mari. The *shifta's* inherent problems, which contributed to Kenya's success, was their long lines of communication aggravated by their inability to resupply their fighting forces with ammunition and arms. They were forced to withdraw back to Somalia in order to

[110] Ibid. 5.
[111] H.K. Biwot, "Post-Independence Low Intensity Conflict In Kenya, 6.

reorganize, replenish, and regroup with a view to striking again. The bandits further suffered from withdrawal of external support after successful diplomacy from the government side. While the reduction of support by Somalia also helped, a coordinated military, political, psychological and diplomatic campaign was necessary to counter the insurgency. The secessionist movement finally conceded defeat in 1967. Since there were no surety of total peace in the region, government forces remained in these region until 1980s when the possibility of re-launch of irredentist activities disappeared.

3.5 Justification for the Kenya Military intervention in the *Shifta* War

There have been limited discussions for the justification of the use of the military in resolve the secession demands in the NFD between 1963 and 1967. The Kenya military has equally been silent on the rationale of its action, despite the vivid memories of the atrocities allegedly committed during the intervention. When asked what they perceived as the justification of the military intervention in the *Shifta* war, the informants of the study gave the following responses.

Table 3.1: Justification for the Kenya Military intervention in the *Shifta* War

Category of informants	Yes	No	Undecided	Total
Military officers/personnel	7	1	2	10
County security committee	2	1	0	3
Politicians	2	2	0	4
Civil society organizations	3	2	0	5
Researchers and experts	5	5	0	10
Victims/witness (Male)	6	12	2	20
Victims/witness (Female)	13	5	2	20
Total	38	28	6	70

Sources: Field data, 2019

From table 3.1 above 54% (represented by 38 informants) and 40% (represented by 28 informants) opined that the military intervention in the *Shifta* was justified and unjustified respectively. Approximately 6% of the informants were undecided over the justification of the military intervention.

According to the state authorities, the intervention seemed justified under numerous grounds. To begin with, crime and insecurity in the region was regarded as a major threat to national security. By branding the conflict banditry, the state had successfully framed the prevailing situation offer the military a moral authority to intervene. What remains unclear is whether Kenyan military had legal mandate to intervene against secessionists in relation to international and domestic law? Anne Noronha Dos Santos examines how, when, and whether secessionist endeavours deserve military intervention.[112] What emerged from her discussion was that, from Chechnya in Russia to Kashmir in India and the Basque region in Spain, secessionist movements remain a serious threat to national security. Dos Santos identifies the conditions that make national military to intervene in a secessionist war more likely. She argues that a shift in the balance of power between a secessionist group and the national government will automatically lead to a preventive war. A preventive war of this nature may lead to an alliance between the secessionist group and an external power. The stronger the alliance, the greater the chances external military intervention.[113]Do Santos argument explains Kenya's rush to foment a military alliance with Ethiopia to counter the *Shifta* threat. It also offers insights on contextualising the role of the Republic of Somalia, the Arab nations and the Soviet Union in the NFD saga.

Kenya's resistance to recognize the NFD irredentist efforts also seem plausible in terms of self-defence of and safeguard of democracy. Allen Buchanan argues that wars against secession are permissible under limited circumstances.[114] One of the ground for such was 'protection of legitimate expectations' of those who now occupy territory claimed by secessionists, even in cases where that land was stolen. Secondly a state was justified to wage war for 'self-defence' if losing part of the state would make it difficult to defend the rest of it. By allowing secession the state was setting a precedence of the threat of anarchy in the country, because smaller and smaller entities may choose to secede. Buchanan further argues that war against secession is justified for protecting majority rule as democracy dictates that minorities must abide by decisions of the majority. The NDF population was minority in Kenya. Though the results of the referendum conducted in the region showed that majority of the inhabitants of the region supported secession, their numbers remained insignificant

112 Anne N. Dos Santos, *Military Intervention and Secession in South Asia: The Cases of Bangladesh, Sri Lanka, Kashmir, and Punjab*, (Prager, 2007), 16.

113 Dos Santos, *Military Intervention and Secession in South Asia*, 16

114 Allen Buchanan, ed. *Secession: The Morality of Political Divorce From Fort Sumter to Lithuania and Quebec*, (Boulder: Westview Press1998), 123

compared to the rest of Kenya opposed to it. As sovereign state, Kenya was preventing illegal takeover of the NFD region by Somalia. Although boundaries were arbitrary, the NFD region was by default part of Kenyan as territory from 1920s when Kenya-Somalia border was drawn.

Going by the history of secessionist efforts in the rest of Africa, no government has risked the dismembering of its country by allowing the inhabitants of part of its territory to secede. Kenya like Nigeria in Biafran war, was justified in resisting any attempts at secession. Many have justified the KDF intervention based on the belief that the Federal Government of Nigerian acted rightly in preventing the splintering of its territory.[115]

The British colonial administration decision to allow Kenya to resolve the conflict on its own behalf gave the government autonomy on the strategies to stop the *Shifta*. The British government understood the arguments used by African political leaders in Kenya to justify their opposition to secession of any part of the country. They pointed out that Kenyan boundaries like those of many other African countries were purely artificial, and that it was not only on the Kenya-Somalia border that people of the same stock were divided by international boundaries. African leaders felt that it was wrong for colonial powers to attempt to re-adjust the boundaries in the final phase of colonialism, the boundaries that they themselves had created.

It is worth noting that the *Shifta* war was also justified under the just war tradition. The military acted to stop the secessionist movements from perpetuating crimes. Military intervention was also a last resort after diplomatic and peaceful had not born fruits. The Lancaster conferences as well as the referendum failed to resolve the issue peacefully. The government of Kenya had also extended an amnesty to the *shifta*.

3.6 Kenya's Military and Diplomatic Strategy in the anti-*Shifta* Campaigns

The evolving dynamics of the Somalia-Kenya boundary disputes and the ensuing anti-secessionist war presented Kenya with a dilemma. On one hand, the *Shifta* campaign was a full blown war requiring the Kenya army's tactical approach to halt the sporadic attacks. On

[115] Julius Adeoye and Rantimi Jays, "The Nigeria –Biafra War, Popular Culture and Agitation for Sovereignty of Biafra Nation" in the *ASCL Working Paper series*., 2017. Available at https://www.ascleiden.nl/content/webdossiers/nigerian-biafran-war, Accessed on 30 August 2018.

the other hand, the dispute needed economic handling of the NFD to win the hearts and minds of the people in the region. Furthermore, the conflict needed diplomatic overture of the OAU as well as support from Arab nations and the good will from international community. At first, Kenya was convinced that the disputes would be resolved through peaceful means. However, diplomacy never functions in isolation from the other instruments of power such as military action when situations warrant. To this, Mzee Jomo Kenyatta declared a two-fold anti-*Shifta* campaign. First, the government reacted by declaring a state of emergency in NFD on 25 December 1963. The declaration of the state of emergency was followed by a military operation undertaken amid intense shuttle diplomacy, negotiation and appeal for support from regional body and international community.

The government of Kenya undertook several military operations including *Operation Maliza Shifta* (destroy bandits), *Operation Fagia Shifta* (clear the bandits) and Operation *Shambulia Sana* (reinforce the effort). The military operation adopted the strategy of search and destroy, where troops specifically hunted down the *shifta* and their sympathizers. The security forces were also authorized to detain people up to 56 days without trial, and to confiscate property. They were also authorized to kill any unauthorized person in possession of firearms. The routine use of automatic rifles in 1963 was often replaced by explosives like mortars, grenades and landmines between 1964 and 1967.[116] A prohibited zone to restrict movements were created along the Somali border. The government also adopted a policy of compulsory villagization in which the population was forcefully moved into *Manyattas*, or concentration camps.[117] Consequently, villages were established at Mandera Town, Wajir Town, Garissa Town, and at El Wak. More villages were in the towns of Rhamu, Takabba, Bura, Balambala, Madogashe, Masalani, Ijara, Buna Gurar, Giriftu and Habaswein.[118]

Britain also undertook a military exercise in Archer's Post. The exercise was dubbed *Operation Sharp Panga* (machete) and was designated to warn Somalis to remain peaceful.[119] This was one of the biggest military exercises ever carried by the British army in East Africa. It involved more than 4,200 troops drawn from the Royal Air Force and British troops flown

[116] "Kenya's First Secessionist War" *The Standard* August 24, 2011.
[117] Mburu, "Contemporary Bandits in the Horn of Africa: Causes, History and Political Implication", 199, 89.
[118] Hannah, Whittaker, "Legacies of Empire: State Violence and Collective Punishment in Kenya's Northern Eastern Province, 1963-Preent," *The Journal of Imperial and Commonwealth History*, 43 (4). 641 - 657.
[119] Clyde Sanger, *Malcolm MacDonald: Bringing an End to Empire* (London: McGill University Press, 1996), p. 400.

from Cyprus and Gulf of Aden.[120] Though, the stated objective of the exercise was to acclimatize the British troops to the intense heat and the semi-desert conditions and to give the troops experience with operations in a non-nuclear limited war setting, the operation was implicitly meant to assist Kenyan troops to pacify NFD and to secure British interests in post-independent Kenya.[121]

The anti-*Shifta* military campaigns was the biggest military operation in early post-independence Kenya.[122] It was an all-out war which was not easy for the young military. It was particularly dangerous because the army was dealing with armed guerrilla who were familiar with the territory and who also enjoyed the support of a neighbouring country. The operation was very demanding on the Kenyan state because, Somalia, which received military support from the Soviet Union and Communist China at that time supported the *Shifta* militia with arms and logistics. The Kenyan military therefore, had an uphill task to defeat the secessionist movements.

The actual human cost of the *Shifta* war remains a puzzle. The study established that there was massive propaganda in the documentation of casualties. This prevented objective reporting on casualty rates on both sides. Both Somalia and Kenya distorted facts about the impact of the war. Excerpts from the Kessing's Contemporary Archives indicate that each side exaggerated the damage it inflicted while denying casualties on its side. For instance, on 7 March 1967, the Somali authorities claimed that 24 government soldiers had been killed by the *shiftas* and 19 others wounded in two separate engagements. In the secessionist side, 3 Somali nationalists and 4 Somali soldiers had died. Kenyan authorities denied the reports arguing that 27 members of the National Liberation Front (NLF) had been killed. On 8 May 1967, the Kenyan Ministry of Defence announced that 19 *shiftas* had been killed and several of their leaders had surrendered. On 14 May 1967, Kenyan authorities further reported death of 32 *shiftas* and many others wounded. On 24 May 1967 Kenyan government refuted a statement by the Somali Minister of Defence that 18 Somali citizens had been murdered by Kenyan forces inside Somalia. On 18 August 1967 the Kenyan Ministry of Defence announced the death of 43 *shiftas* and 3 soldiers in a clash with more than 800 *shiftas* at

[120] Korwa Gombe Adar, The Significance of the Legal Principle of Territorial Integrity as the Modal Determinant of Relations: A Case Study of Kenya's Foreign Policy towards Somalia, 1963 -1983). PhD Thesis, South Carolina University 1986, p. 152.
[121] The Weekly Review, 14 October 1980, 12
[122] The Weekly Review, 14 November, 1977, 18.

Rhamu. Dr. Njoroge Mungai, the Kenya's Minister of Defence, said that Kenya government could account for 3,000 *shiftas,* of whom 1,200 had been killed in a period of four years. [123] This figures differed from those given in other sources such as the parliamentary proceedings of the House of Representatives in April 1966 which showed that over 1,651 *shiftas* had been killed in period of three years[124] as shown in the table below.

Table 3.2: *Shifta* War Casualties in Kenya, 1963 – 1966

Year	Civil Servants	Kenya Police	*Shifta*
1963 - 1964	11	17	198
1964 - 1965	4	7	721
1965 - 1966	2	7	732
Total	17	31	1,651

Source: Kenya National Assembly, House of Representatives, Official Report, Vol 10, April 1966, Col 1447.

The actual statistics of casualty rate among the Kenya armed forces and the civilians remains undisclosed. Government records put the death toll in the thousands but NGO's estimated that more than 10,000 lives were lost between 1963 and 1984. Despite lack of official report on military casualties, sources indicated that the casualties among the Kenyan security forces were many. Most of the deaths in the government side caused by the landmines laid by the *shifta* along the major transport routes rather than in actual combat against the insurgents.[125]

The second counter-insurgency approach adopted by Kenyan state was non-military. It had to do with winning the hearts and minds of the people in and outside Kenya.[126] Inside Kenya, the government was after mollifying the people of northern Kenya. The first strategy for Kenya was to counter media propaganda by Radio Mogadishu. The Somalia national radio station led media campaign aimed at fomenting disaffection among the Somali in NFD. Secondly, the Kenya government acknowledged from the beginning that the people of NFD later renamed North Eastern Province had been marginalised during colonialism. As the

[123] Keesing's Record of World Events (formerly Keesing's Contemporary Archives), Vol. 13, November, 1967 22.
[124] Ibid, 22.
[125] The Weekly Review, 14 October 1980, 14.
[126] Ibid, 15

leader of KANU, Jomo Kenyatta visited Mogadishu in July 1962 to brief the Somalia Government on the views of Kenyan leaders in regard to the people of NFD upon independence. While stressing that there would be no secession, Jomo Kenyatta made it clear that Kenyan authorities would promote socio-economic development in NFD. Jomo Kenyatta's sentiments were also echoed in March 1965 by the then Minister of Defence, Dr. Njoroge Mungai, who told parliament that:

> The solution of the problem in the North Eastern Province does not lie in fighting. Kenya believed in peace and the government was going to emphasize development in the area. The troops and armament was a temporary measure.[127]

The speech of Dr. Mungai, a close ally to the President Jomo Kenyatta was regarded as Kenya official position on the *Shifta* war. Though speaking to Parliament the intended audience of the speech was beyond Kenya. Subsequent contribution by Members of Parliament (MP) on the matter, clarified the government good intention on the conflict and the people of NFD.

To win the hearts and minds of the inhabitants of NFD, the government rolled out various development programmes in the region, especially the development of water resources in the arid and semi-arid region. Kenyatta regime also appointed NFD Somalis into senior government positions. The also government, albeit reluctantly also recruited locals as home guards to assist the security forces track the bandits. The development projects and the incorporation of NFD Somalis in the security forces were meant to counter the secessionist propaganda spread by the Somalia-based radio stations. In due course, the Kenyan government strategies paid off.

There were also hearts and souls to be won outside Kenya. In the international diplomatic front, Kenyatta reached out to the US with the view of countering the Soviet influence and support for Somalia. The US policy of containment of communism also worked well for Kenya, which also reached out to Britain (her former colonial master). Kenya also extended a hand to France who administered Puntland. Kenya also reached out to the Arab nations through Egypt under Colonel Gamal Abdul Nasser, by sending a ministerial delegation, headed by Daniel Arap Moi the then Vice-president of Kenya to brief Nasser of the *Shifta*

[127] The Weekly Review, 24 October 1977, 4-5.

war. The diplomatic endeavours paid off as Egypt and other Arab countries withdrew their support for Somalia. Meanwhile, Kenya was able to build up her military strength to deter Somalia.

Kenya also needed the support of African heads of states. During the Second Lancaster conference, Jomo Kenyatta of Kenya, had hinted that Kenya would subject the matter to the regional body for adjudication if Somalia and Kenya failed resolve the conflict peacefully. Immediately after independence, Kenya referred the matter to the newly founded OAU, whose heads of state meeting held in Cairo in 1964, reiterated the principles of inviolability of territorial boundaries in Africa. This vindicated Kenya's position on this issue. The OAU also termed Somalia's action as violation of Kenya's territorial integrity. On 2 May 1967, Dr. Njoroge Mungai, also promised that Kenya would re-establish normal bilateral relations with Somalia as soon as Somalia renounced all claims on NFD. Three months later, President Kenyatta and Mohammed Ibrahim Egal, the Prime Minister of Somalia met during the OAU summit in Kinshasa with President Kenneth Kaunda of Zambia acting as mediator. In the meeting, the two leaders committed to ending their countries difference leading to the signing of a ceasefire by the two leaders, in Arusha on 28 October 1967.[128] The Arusha memorandum was part of the implementation of the agreement reached between the governments of Kenya and Somalia at the 5th Assembly of Heads of State and Government of the OAU held in Kinshasa.

The signing of the Arusha memorandum had two diplomatic implications. On one hand, it was victory for Kenya and loss for Somalia. Mogadishu reacted to the new found relationship between the two states with protests.[129] The reaction to Somalia's signing of the Arusha memorandum provoked suspicion that the Somalia administration had been compelled to do Kenya's bidding. Consequently, Prime Minister Egal's return to Mogadishu from Arusha was marked by hostile demonstrations. On 14 November 1967, the former Prime Minister of Somalia Abdirizak Hadji Hussein, speaking in his capacity as the secretary-general of the ruling Somali Youth League, vigorously attacked the Arusha agreement causing the government of Somalia to close down the Mogadishu branch of the Youth League, and threatened to expel Egal from the party. After ten days of debate, the Parliament of Somali endorsed the Arusha memorandum on 23 November 1967.

[128] The Weekly Review, 24 October 1977, 4-5.
[129] The Weekly Review, 24 October 1977, 4-5.

Though Somalis lost the bid to annex the NFD, the study viewed its overture in signing of the Arusha memorandum as diplomatic move to redeem reputation in a number of ways. First, it affirmed Somalia's intention to resolve disputes with her neighbours peacefully. Secondly, the agreement was a sign that Somalia was not professing a policy of territorial expansion. Third, the government of Somalia gave its pledge to cooperate fully with the Government of Kenya in bringing about peace and order in the NFD thus ending the border dispute. Fourth, by signing the memorandum, the government of Kenya, on its part recognised the interest of the Republic Somalia to promote peaceful coexistence. The Government of Somalia also extend the good gesture to Ethiopia. Indeed, Addis Ababa and Mogadishu had on 22 September 1967 released a common communiqué that the two countries had resolved to eliminate all forms of tension between them. Although Somalia appeared to have softened her position on the NFD issue during the Arusha meeting, the diplomatic goodwill taken by Somalia safeguarded the country against international ridicule. It also protected Somalia from condemnation as anti-African by the OAU Assembly of Heads of State and Government.[130]

It was both military and diplomatic, pressure which finally earned Kenya victory in the *Shifta* war. In mid-1967 after four gruelling years, the Kenya Armed Forces brought the situation in NFD under control. Many of the bandits had been killed while others either surrendered or had fled to Somalia. The Kenya army was then left to clear hundreds of land mines planted by the bandits. By this time, Somalia had also realised that her military could not acquire the coveted territory by force. The conflict was therefore ripe for resolution. Diplomatic efforts favoured Kenya to push the Republic of Somalia to denounce her territorial aspiration. Somalian authorities disbanded the High Command of the Northern Frontier District Liberation Movement (NFDLM) which operated from Somalia. Somalia also closed the *Shifta* training camps in her territory. Kenya reciprocated by not only rekindling bilateral relations with Somalia but also by allowing Somalia to sell cattle to the Kenya Meat Commission.

Despite the hardships Kenya security officers serving in the arid areas of NFD underwent during the *Shifta* war, the experience was considered beneficial to them. The military not only became the cornerstone of Kenya's stability but also professional. Indeed the operation gave the young military combat experience while earning it the much needed reputation. Kenya's

[130] The Weekly Review, 31 March 1975, 8.

military also made positive gains in the context of international politics. It not only managed to protect the country's national interests but also influenced potential competitors in the region. Henceforth, Kenya was able to capitalize on the political purpose of the military. According to Carl von Clausewitz, 'war (the application of military power) should never be thought of as something autonomous but always as an instrument of policy. War is simply a continuation of political intercourse, with the addition of other means.'[131] The Kenya Army as tool of statecraft had fulfilled not one but several political objectives of the military. These objectives are to defeat, deter, compel, and defend.[132] Other political objectives of the military are to assure, reassure and dissuade - as illustrated in Figure 3.1 below.

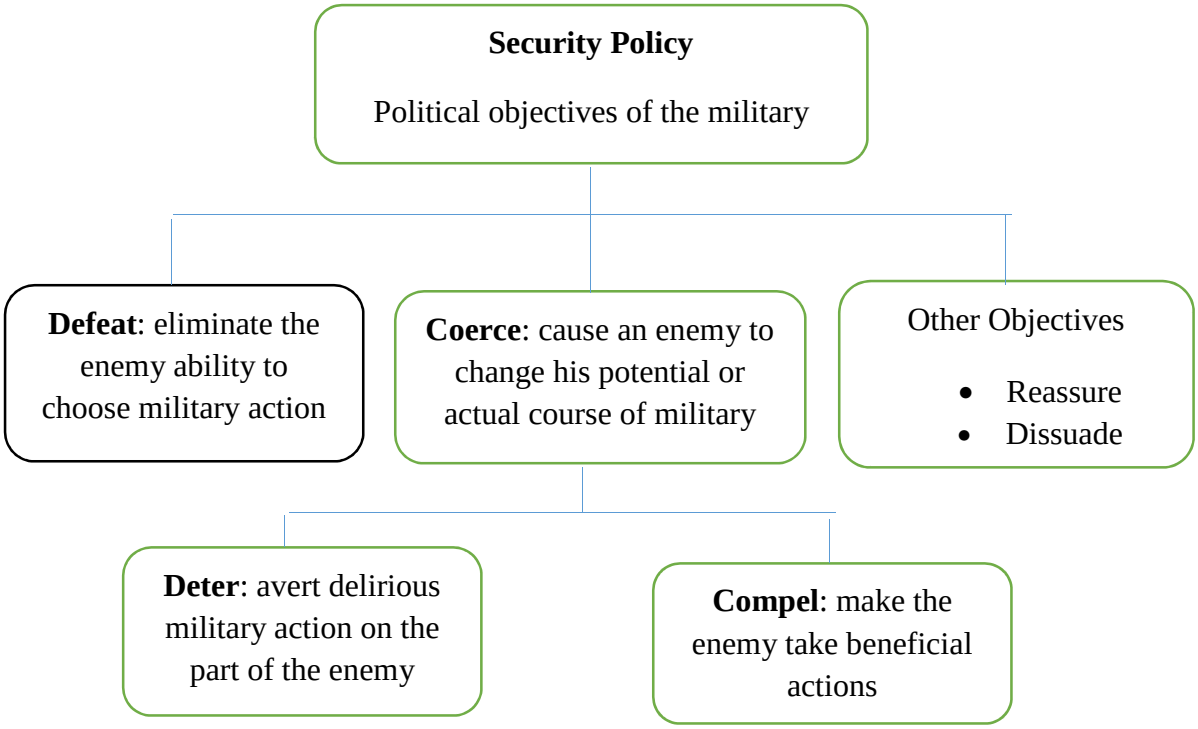

Figure 3.2: Military Political Objectives
Source: Adopted from John F. Troxell, "Military Power and the Use of Force", *US Army War College Guide to National Security Policy and Strategy*, eds. J. Boone Bartholomeus (US Army College, 2006), 218

From Figure 3.2 above, the military can be mobilised to attain several political security objectives for state. Military power can be used in its purest form to physically defeat the

[131] John Baylis and James J. Wirtz. "Introduction", in John Baylis, James Wirtz, Eliot Cohen and Colin Gray, eds. *Strategy in the Contemporary World: An Introduction to Strategic Studies (*Oxford: Oxford University Press, 2002), 12.
[132] Robert J. Art. "To What Ends Military Power?" *International Security*, Vol. 4, No. 4 (Spring 1980), 3-35.

enemy which is its fundamental purpose. According to Clausewitz, the aim of all action in war, is to disarm the enemy. He further adds that if the enemy is to be defeated, it must be placed in an oppressive situation so as to sacrifice its demands.[133] Fighting and winning the *Shifta* war was an acid test for Kenya as a newly independent state. Kenya's decisive victory in the war translated into military and reputational power. As such, the success earned the Kenya Army many accolades. Although Kenya's armed forces remained confined to the barracks after the war, earning the moniker ceremonial army, they were feared and recognised as a professional outfit.[134]

Secondly, the military can be used to coerce the enemy to change its position. This can be done through deterrence or compulsion. The term deterrence, in its broadest sense, means persuading an opponent desist from a specific action because of the potential costs and risks. Deterrence is usually in the form of a threat to destroy an aggressor. For instance, in 1967, Kenyan created a special government committee to prepare for a full-scale war with Somalia. This was aimed at deterring Somalia from aiding the secessionist movements.[135]

The third political objective of the military is to compel. Compulsion refers to the use of military power to force an adversary to change the behaviour. Compulsion and deterrence are slightly different. According to Robert Art, deterrence involves the use of passive force while compulsion involves active force.[136] Thus, deterrence is a threat measured by not having used force, but the capacity to do so. The success of a compulsion is measured by how use of force is closely linked with change in enemy behaviour. The enemy is compelled when military action changes its behaviour. Military atrocities incurred by Somalia during the *Shifta* war compelled the country to withdraw support of the secessionist movement.

The final political objective of military action is to assure and reassure. These two closely associated terms refer to the extent to which the military guarantees security to citizens and allies. The political objective of assurance and reassurance is achieved through success in security operations and alliances.[137] The 1964, Kenya-Ethiopia Mutual Defence Treaty

[133] Carl von Clausewitz. *On War*, translated by Michael Howard (New Jersey: Princeton University, 1989), 86.
[134] Oral Interview, Gen (Rtd) Mohamud Mohamed, Nairobi, December 14, 2018
[135] The Weekly Review, 14 October 1980, 18
[136] Art. "To What Ends Military Power?" 33.
[137] John F. Troxell, Military Power and the Use of Force, 219

assured and reassured both countries. By building an alliance as response to the *Shifta* insurgency, Kenya and Ethiopia benefited immensely.

Contrary to the military and diplomatic achievement discussed above, there is an argument that the military achieved very minimal success in the *Shifta* war. Proponents of this view posit that, though the bandits had been minimized by 1967, peace and stability had not been restored in region. Pockets of bandits continued with sporadic stealing and killing. They stole cattle and killed government officials. The killing of Dadaab District Officer, Johnson Welimo and four other civil servants in 1967 is a case in point. Government security measures such as imposition of dusk to dawn curfew over the region and sealing of the Kenya-Somalia and Kenya-Ethiopia border did not end the insurgency. The Kenya government also mobilized troops to the region on several occasion without much impact. Out of the frustrations caused by the menace, the Kenya state threatened to herd about 700,000 Kenyan Somalis in the region into security villages several times.[138] The strategy of villagization was widely criticized just like violent clampdown of citizens which caused large-scale disruption to the way of life. The operation resulted in a shift from nomadic pastoralism to sedentary lifestyles at the expense of the region's economy. The intervention also failed in terms of justice after war *(jus post bellum).*[139] Over fifty years after the war, the people of the former NFD are yet to come to terms with the atrocities of the *Shifta* war. Though Kenyan authorities have acknowledged that human rights violations took place in the *Shifta* war, reparations have not been made.[140]

3.7 Summary

The chapter has shown that the *Shifta* war was an internal dispute pitting state actors against non-state actors in a newly independent state of Kenya. From the foregoing description, the *Shifta* war connotes two different meanings. On one hand, the *Shifta* war presupposes a secessionist conflict in which ethnic Somalis in NFD attempted to secede and join a greater Somalia. On the other hand, the *Shifta* war, were acts of criminality incoperation the sporadic violence and banditry. Because of the diverge perception, the justification and success of the military intervention (in the *Shifta* war) remains difficulty to evaluate. Moreover, the military has kept mum about this operation while the civil society and the victims demand

[138] The Weekly Review, 14 November 1977, 18

[139] Thom Brooks, Studies in Moral philosophy: Just War Theory. (Brill, 2012), 187.

[140] Kituo cha Sheria, Summary of the Truth, Justice, and Reconciliation Commission (TJRC) Report, Kituo Cha Sheria, 2013. 16.

compensation. The position taken by the study is that even though atrocities were committed, accountability for the same remains elusive since majority of the perpetrators and the witnesses have since died. Though seeking justice will end impunity, it may not bring a closure on the issues in contestation as posthumous trial would serve no justice for the victims. Reparation too without restorative justice would not yield positive reconciliation. For this reason, the best way forward is for the people of the NFD accept and move on and the military to own up and apologize in the spirit of truth, justice and reconciliation.

CHAPTER FOUR

MILITARY INTERVENTION IN INTRA-ETHNIC CONFLICT IN MOUNT ELGON SUB-COUNTY, BUNGOMA COUNTY, KENYA

4.1 Overview

Chapter three analysed the military intervention during the *Shifta* war. This was the very first internal military intervention by the KDF. In this fourth chapter, the study interrogates the military intervention in the Mount Elgon conflict. This was yet another internal dispute that warranted military intervention in Kenya. The military operation in Mt. Elgon commenced on 10 March 2008, approximately 40 years after the *Shifta* war. Nonetheless, this does not suggest that there was no military intervention from 1968 to 2008. Indeed, the KDF intervened in 1971 and 1982 during military mutiny and attempted coup respectively. These interventions were not overlooked but fell outside the scope of the study because the attempted coup pitted two services of the military, the Kenya army versus the disgruntled mutineers from Kenya Air Force, whereas the study was interested on military intervention against non-state actors. The military also intervened in 1984 in *Operation Nyundo* against cattle rustling in West Pokot, but this operation was not analysed as the primary cause of the intervention had a component of banditry widely examined in the *Shifta* war.

The Mount Elgon conflict was initially an intra-ethnic disputes pitting two Sabaot clans of Mount Elgon Sub-County, in Bungoma County of Western Kenya. The region was formally called Mount Elgon District. The Sub-county is located on the south eastern slopes of Mt. Elgon. It has a population of approximately 172,379 people.[1] The Sub-county occupies an area of 944 km^2. Even though Kapsokwony is the sub-County headquarters, Cheptais town is the economic heart of the Sub-county. It is also the gateway of the sub-County to Chwele, the largest open air market in Bungoma County. The area is predominantly occupied by the four Sabaot clans: the Bok, Someek, Koony and the Mosopisyeek (also called the Ndorobo). The Bok, Someek and Koony settled on the lower slopes and are cumulatively called Soy. They are mainly agro-pastoralists and make up 80 percent of the Saboat, while the Ndorobo, who are mainly hunters and gatherers, account for the remaining 20 percent.[2] Other communities living in Mt' Elgon Sub-county are the Bukusu and the Iteso. Due to the rich and fertile

[1] Kenya Bureau of Statistics, "Kenya Population and Housing Census" 2013, 16.
[2] Beatrice D. K. Imbuye, "Intra-Ethnic Relations among the Sabaot of Mount Elgon, Kenya, 1945-2010," MA Thesis Kenyatta University, 2016, 16.

agricultural soils, members of many other ethnic communities have moved in, making Mount Elgon Sub-county a melting pot of Kenyan cultures.

The conflict in Mount Elgon Sub-county was primarily caused by historical land injustices in the form of when and where failure to settle people displaced during the colonial period in Kenya culminated in ethnic antagonism and bloodletting. The conflict of 2008 was perpetuated by the Sabot Land Defence Force (SLDF), an armed militia group that resisted government attempt to evict squatters from the Chepyuk Settlement Scheme.[3]

Drawing from the historical background, this chapter argues that the colonial government land policy of modernizing land ownership systems led to conflict in Mount Elgon. It also argues that failure by subsequent post-independence regimes to resolve lingering disputes emerging from the interplay of such factors as socio-economic and political issues related to land allocation, ethnic consciousness and inter-clan rivalry, triggered violence in Mt. Elgon Sub-county. The violence not only resulted in death of civilians, massive displacement and wanton destruction of property but also warranted military intervention in the region. The chapter concludes by examining the justification of the intervention and the debate over its success.

4.2 Historical Context of the Mount Elgon Conflict

An analysis of the Mount Elgon conflicts shows that the conflict under examination was a result of historical processes and colonial legacies on land. Of paramount significance is the history of control of forests by the colonial government for conservation purposes. When the British colonial administration introduced this policy in Kenya, it emphasized that the public good was best served through the protection of forests and water resources, even if this meant the displacement of the local communities.[4] Henceforth, the protection of forests became the norm. By 1932 a total of 43 forests covering an area of 609 km^2 were designated as government forests in Mt Elgon. The gazetted forests were to be protected against exploitation by the people living adjacent to them.[5] The government therefore implemented

[3] Caleb Maikuma Wafula, Protracted Conflict In Mt. Elgon Region (1963-2008): Towards A Multi-Causal Analysis, MA Peace and Conflict Studies Thesis, Kenyatta University, 2019, 23.
[4] Jones R. Kamugisha, Zadok A. Ogutu and Michael Stahl, *Parks and People-Conservation and Livelihoods at the Crossroads* (Nairobi: Regional Soil Conservation Unit 1997), 11.
[5] Paul Ongugo, Jane Njuguna, Emily Obonyo and Gordon Sigu. *Livelihoods, Natural Resource Entitlements and Protected Areas: The Case of Mt. Elgon Forest in Kenya* (Nairobi: IFRI Collaborative Research Centre, 2008), 1.

strict rules to prevent 'illegal' activities in these forest areas against the wishes of the affected communities. Due to the conflict between the colonial policies and local community interests, the Sabaot community and the other communities living adjacent to Mt. Elgon developed hostile attitudes towards the government's conservation program in the region.

The gazettement of Mt. Elgon Forest first as forest reserve and then as a national park in 1932 and 1968 respectively also intensified opposition to government conservation program.[6] After the gazettement, the forest that previously belonged to the local community became a government asset. This institutionalization of the forest was never welcome by the locals. To the residents of Mt. Elgon District, the Mt. Elgon ecosystem was 'theirs' by right and government's by might.[7] Residents of Mt. Elgon District contend that the land under controversy was their God-given heritage that could not be taken away from them. According to the members of the Sabaot community interviewed by this study, the protected areas were once their pasture land, water sources, and fertile farmland besides other uses. The land therefore offered a perfect ecosystem for the community's mode of production and indigenous knowledge. For these reasons, there was a continuous encroachment and exploitation of the forest by the community. The community also faulted the government's move to gazette the forest as neglecting their traditional and long-term *de facto* rights to exploit the forest resources.[8]

The conflict in Mount Elgon Sub-county was also as a result of the colonial land policy on white highlands introduced in Kenya to serve settler demands.[9] This policy ensured the alienation of African land to create white settler farms. The 'White Highlands' encompasses such areas as Uasin Gishu, Laikipia, Nakuru, Mount Elgon, Trans-Nzoia and Kericho. In the event, the Sabaot ancestral land on the extensive plains of what is now Trans-Nzoia County was taken away from the community without compensation. The community was displaced to Chepkitale forest as squatters.[10] Not only did this displacement alienate the Sabaot community from its means of livelihood, but the dispersion and displacement also heralded a

[6] Claire Medard, "Indigenous Land Claims in Kenya: A study of Chepyuk, Mt. Elgon District" in *The Struggle over Land in Africa: Conflicts, Policy and Change* Ed. Ward, Ansceuw and Chris Alden, (London: Human Science Research Council, 2009), 19.
[7] KHRC, *Ours by Right, Theirs by Might: A study of Land Clashes in Kenya* (New York: KHRC, 1996), 15.
[8] Robert R. Simiyu, "Militarization of Resource Conflicts the case of Land-based Conflict in the Mount Elgon Region of Western Kenya, Moi University, Monograph 152, (2008), 11.
[9] Simiyu, "Militarization of Resource Conflicts, 12.
[10] Wilberforce Kisiero, Oral submission of Sabaot People to Memorandum of Understanding submitted to TJRC on 26th May 2011.

process of intra-community differentiation and rivalry between the Soy and the Mosop clans, over which clan had legitimate rights of the Settlement Scheme, that fuelled the conflict in 2008.

As result of intra-community differentiation a section of the Sabaot community, the Mosop or Ndorobo clans, settled on Chepkitale trust land in the moorlands on the slopes of the mountain as pastoralists, hunters and gatherers while another group (Soy clan) settled down the slopes in Chepyuk and Cheptais, becoming agriculturalist. The economic activities adopted by these groups explain why the Mosop have always sold their plots when allocated by the government and returned to the forests while the Soy, who practice agriculture developed a high affinity for fertile agricultural land in the schemes.

After independence in 1963, the new post-independence government bought the former white highlands from the settlers. The government hatched a plan to resettle the Mosop to protect them from recurring attacks from communities living in Uganda.[11] This resettlement plan was also an olive branch to a community that for decades had been at the periphery of state inclusion. By 1967, the government had concluded the plan to resettle the Mosop from the Chepkitale trust land together with the Sabaot squatters in the diaspora who had been displaced in the 1930s by the colonial government. The government created the Chepyuk Settlement Scheme through Legal Notice No. 35 of 1968.[12] In 1971, the Mosop were evicted from the forest in the expansive Chepkitale and were relocated southwards to a settlement scheme in Chepyuk Phase I despite resistance from the community. Close to 109 Mosop families were forcibly resettled in the scheme even before it was de-gazetted out of forest land as required by law[13]. In the same year, the proposed allotment of title deeds to the de-gazetted scheme was nullified because the initial number of families' allocated land had increased to over two thousand as a result new people buying the plots from the Mosop pastoralist moving back to the moorland. Subsequent attempts to issue title deeds were made in the 1970s and 1980s to no avail.

In 1989, the government through a former Provincial Commissioner, Francis Lekoolo tried to complete the resettlement process, but the process was marred by political interference,

[11] Simiyu. "Militianisation of Resource Conflicts, 12.
[12] Ibid, 12.
[13] Kenya National Commission on Human Rights, "The Mount of Terror", KNCHR Report on Mt. Elgon, (Nairobi: National Commission on Human Rights 2008), 9.

nepotism and corruption.[14] This led to the nullification of the process once again. Meanwhile members of the Mosop sub-clan who had been allocated land in Chepyuk Phases I and II had already sold their plots (to buyers, mostly the Buskusu) and returned to the moorland that was an ideal grazing land for their animals. The availability of fertile land in the schemes attracted more and more 'foreigners' into the heart of Mount Elgon Chepyuk settlement schemes. The new owners of plots and the original list of beneficiaries did not tally. For this reason, validation of land ownership through issuance of title deeds became problematic. Once again the formalization of the land allocation in 1989 was put on hold.[15]

Another attempt to resettle the squatters begun in 1990, but was abandoned due to the 1992 ethnic clashes pitting the Sabaot against the Bukusu and Iteso that hit the region. There was another attempt at resettlement in 1997.[16] This was also abandoned due to a lack of political will and the pre-election violence witnessed in the region. The most recent attempt at resettlement in Chepyuk started in 2000. This time, the resettlement in the first two phases of the scheme was completed. However, phase III sparked controversy as both Soy and Mosop clans laid claims to the land. The two clans had separately led delegations to the two former Heads of State to get their confirmation to the ownership of the land in contention. The Mosop were the first to petition the first Kenyan president Mzee Jomo Kenyatta to give them the land as compensation to the loss of 'their' expansive Chepkitale.[17] The Mosop believed that this justified their claim of Chepyuk phase III.

The Soy clan also petitioned for allocation of this piece of land. The Soy clan sent a delegation to the then president Daniel Arap Moi demanding allocation of phase III in its entirety. They claimed that the Mosop had already had their share in Phase I and II. Unfortunately, neither of the two clans had any documentation to show as evidence to presidential decree issued in regard to the land ownership. By 2002, allocation of land and issuance of title deeds had not yet been completed. In efforts to entice the electorate to vote for them, politicians vying for Mt. Elgon parliamentary seat used issuance of land title deeds as a campaign promise. They advocated settling squatters on the very plot they occupied commonly known as *nyumba kwa nyumba* (Kiswahili phrase for household basis).[18] This

[14] Focused Group Discussion, Cheptais 8, October 2018.
[15] Kenya National Commission on Human Rights, "The Mount of Terror", 10.
[16] Ibid, 9.
[17] Ibid, 9.
[18] Ibid, 11.

political rhetoric during election campaigns on finalization of the resettlement program in Chepyuk settlement scheme once again foiled the planned issuance of title deeds to the 'genuine beneficiaries' of the plots.

In 2005 the land issue resurfaced during the national constitutional referendum campaigns. This continued until 2006 when another attempt at resettlement in Phase III was made. The aim was to settle the ever increasing list of beneficiaries. To cater for the ballooning list of squatters, the government in 2006 reduced the size of plots from two acres to one acre. The government also proposed to include the members of the Mosop clan initially left out of the phase III resettlement program. The inclusion of the Mosop however, did not augur well with the Soy who protested. The government went forward with the resettlement process amid protest from the political leaders from the Soy clan. Seven thousand applications for land allocation were received. The majority of the applicants were allocated land. However, 1,500 families, mostly of the Soy clan, who had already settled, missed out. They were thus evicted by the government from their farms, sparking protests.[19]

The finalization of settlement in Chepyuk Phase III located at Chepkurkur became a problem to the government. It had several obstacles. First, the Soy clan, the majority and the more populous of the two clans of the Sabaot community felt dissatisfied with the government mode of land allocations in Phases I, II and III comprising of 11,384.127 acres of land hived from Mount Elgon National Forest.[20] The Soy only got 40% of the total land allocations. Secondly, no applicant from the non-Sabaot communities living in the region was allocated land yet they formed a significant percentage of the entire population of Mt. Elgon Sub-county. Thirdly, the people who had purchased the land on willing-buyer-willing-seller basis before nullification of the allocation process in 2005 were still claiming ownership of the land. The majority of these buyers were mostly of non-Sabaot of origin. To resolve these conflicts, the elders of the two clans, officials from the defunct provincial administration as well as political leaders in the region held a consultative meetings intended to culminate in a land-sharing agreement. During the meetings, it was resolved that subsequent allocation of land was to be on a ratio of 50:50 between the Soy and the Mosop.[21]

[19] Kenya Land Alliance, "The Mount Elgon Conflict: Results of a Failed Resettlement Programme", *A newsletter of Kenya Land Alliance*, Vol. 6, No. 1, (2007), 24.
[20] Kenya Land Alliance, The Mount Elgon conflict: Results of a failed Resettlement Programme, A newsletter of Kenya Land Alliance, Vol. 6, No. 1, 920070, 12
[21] Kenya National Commission on Human Rights, "The Mount of Terror", 25.

After the agreement was signed, a second round of applications for allocation of land in the Chepyuk Phase III Settlement Scheme was announced. Members from both clans submitted their application. The vetting process began in March 2006 after submission of the applications. The vetting was done by a group of elders from both clans as opposed to chiefs. This was a measure against corruption and nepotism. Elders elected by the representatives of the two clans sat in the vetting council. The members of the vetting board were to serve on temporal basis. They had to be re-elected each time the committee sat to avoid lobbying. Applications were also filed separately for each clan. For one to be considered, one had to be a Kenyan citizen living in the scheme and had to appear in person before the vetting committee.[22] During the consultative meetings, the methodology of settlement of squatters on household basis was found unviable because a number of residents were not genuine applicants. Some applicants owned land elsewhere and could therefore not meet the new vetting criteria of deserving squatters.

After completion of the vetting process, a number of individuals from both clans particularly those who were not allocated land, got disappointed. Some political leaders from the Soy clan were also dissatisfied because the new agreed mode of sharing land on a 50:50 basis between the Soy and Mosop went against their expectations. They anticipated to have most of the land allocated to the populous Soy clan. The dissatisfied parties began calling for a total overhaul of the process. They began collecting money to enable them take legal redress.[23] They moved to court to file a case only to realize that the land in contention had not yet been de-gazetted and therefore they lacked *locus standi* in the case.[24]

Their hopes having been dashed by the failed legal suit, the Soy clan elders allegedly sought to use the money raised for legal action to buy firearms for purposes of stopping the land allocation.[25] Members of the Soy clan believed to be followers of then aspiring Member of Parliament, Fred Kapondi allegedly mobilized the youth to take up arms to defend their land.[26] This became the genesis of the Sabaot Land Defense Force (SLDF). The SLDF was a group mainly opposed to the 50:50 sharing agreement between the Soy and the Mosop clans.

[22] Kenya National Commission on Human Rights, "Mountain of Terror", 8.
[23] Ibid, 10.
[24] Ibid, 10.
[25] Ibid, 10.
[26] Oral Interview, Matasero Chebus, 28 April 2019.

They were also those who did not apply for land allocation, citing corruption in the process. The dispute degenerated into inter-clan warfare between the Soy and Mosop with the Soy calling the Mosop 'foreigners' and the Mosop threatening to take up arms should land allocation be nullified.[27] A number of 'dissatisfied' politicians also instigated the violence. The KNHRC report states:

> Councilor Nixon Manyu (Soy) is one such leader who agreed with the entire process up until when the elders refused to acquiesce to his demands of being allocated land. It is alleged that he incited a number of people not to go for the vetting process hence making them ineligible for land allocation. Two prominent families the Songoiwo and Komon owning close to 400 acres of land in the disputed scheme refused to go for the vetting process.[28]

The discontent among the two clans marked the beginning of the violence mainly attributed to the SLDF which mostly comprised of combatants from the Soy clan, attacking members of the Mosop clan. According to Imbuye, the SLDF was allegedly designed to exterminate the Chepkitale Ogiek from the face of the earth.[29] The composition of the militia clearly indicated that it was largely a creation of the Soy politicians purposively meant to evict *madoadoa*. 'Madoadoa' is a Kiswahili term meaning spots and was used by SLDF to label non-Sabaot people living in Chepyuk Phase III during the early phase of the conflict. The eviction of non-Sabaot from the region was a political strategy to guarantee Soy aspiring candidates a win in the general elections. As violence escalated the security situation in the area deteriorated as residents fled in fear of the SDLF. Within one year, SLDF killed more than 600 people. The SLDF also terrorized the local population through the levying of taxes, torture, rape, displacement, and destruction of property.[30] The motive behind this lawlessness was to evict the said 'foreigners' poised to be beneficiary of the intended land allocation.

At the peak of the violence between August 2006 and March 2008, the indiscriminate murders occasioned by the militia included that of a chief, an assistant chief together with his daughter and two guards in Kopsiro Division. Earlier in January 2007 a local councillor had also been killed, prompting the government to deploy 600 police officers to Mount Elgon

[27] Ibid, 4.
[28] Kenya National Commission on Human Rights, "The Mount of Terror", 6.
[29] Beatrice D. K. Imbuye, "Intra-Ethnic Relations among the Sabaot of Mount Elgon, Kenya, 1945-2010," MA Thesis Kenyatta University, 2016, 116.
[30] Human Rights Watch report, "All men have gone" War crimes in Kenya's Mt. Elgon conflict, Human Rights Watch, 2008, 15.

Distict.[31] Immediately the police moved in, forty two people were arrested in connection with the clashes and three were killed by the police.[32] In February 2007 the self-proclaimed Commander of the SLDF Wycliffe Matakwei, granted a television interview in which he made various demands as a condition for laying down arms. In the interview, he claimed to have 35,000 militia.[33] More realistic estimates, however, put the group at between 3,000 and 4,000 men[34]

In March 2007, the police circulated pictures of three people they considered to be ringleaders of the militia. They included a local politician, Fred Kapondi, the SLDF deputy leader and military commander, Wycliffe Matakwei, and a Councillor, Nathan Wargame.[35] Fred Kapondi who was then contesting the Mt. Elgon parliamentary seat was arrested and arraigned in court for promoting war-like activities. He denied the charges but was remanded in police custody. He was later released and subsequently elected Member of Parliament for Mount Elgon Constituency. His election in the December 2007 general election fuelled SLDF activities at a time most parts of the country were witnessing election-related violence.[36]

Earlier on in 2007, a series of peace meetings were held between the provincial administration and leaders from both the Soy and Mosop clans. A ceasefire agreement was reached at in September 2007. But this did not deter the militia from committing atrocities as general violence associated with the 2007 elections engulfed the country. While the negotiations were in progress, the militia raided Kapsokwony and killed 6 people. SLDF then moved to Kitale in May 2007 and killed 11 people. In June 2007 the brother of the then area MP John Serut was killed. In January 2008, 12 people were killed by SLDF fighters in Chesikaki village prompting a military intervention in March 2008.[37] The two-month long military Operation *Linda Maisha* against the SLDF managed to quell the violence in the region.

[31] Ibid, 15.
[32] Kenya National Commission on Human Rights, "Mountain of Terror", 13.
[33] Ibid, 12.
[34] Simiyu, "Militianisation of Resource Conflicts, 14.
[35] The Kenya National Commission on Human Rights, "Mountain of Terror", 7.
[36] Ibid, 13
[37] Ibid, p.13

4.3 Causes of the Mount Elgon Conflicts

A number of writers have analysed the causes of the conflict in Mt. Elgon Sub-County and drawn various conclusions. The Kenya Land Alliance (KLA), a non-profit and non-partisan umbrella network of civil society organizations and individuals committed to advocacy on land laws and land reforms summed the conflict as the "result of a failed resettlement programme."[38] The Kenya Human Rights Commission (KHRC), viewed the violence in terms of issues revolving around rights of tenure. KHRC's view can be summed by describing the land as "ours (Sabaot) by right and theirs (government) by might".[39] Mwangi Kimenyi concluded that the conflict in Mt. Elgon Sub-County was part of the "sporadic ethnic violence in Kenya."[40] Another scholar, Robert Simiyu, asserted that the conflict was a result of "militianisation" of land based conflict."[41] Primary and secondary data gathered by this study highlited the following as the causes of the Mt. Elgon conflict. The views of the informants the causes of the Mt. Elgon conflict are summarised as shown in table 4.1 below.

Table 4.1: Causes of Mt. Elgon Conflict

Causes of Mt. Elgon Conflict	No. of Informants	Percentage
Historical land injustices	22	31.4%
Inequitable distribution of land	12	17.1%
State monopoly in land allocation	16	22.8%
Insecurity of land tenure	4	5.7%
Politicization of landlessness	5	7.1%
Culture of warfare in the community	1	1.4%
Proliferation of SALW	1	1.4 %
Perceptions of marginalization	3	4.2%
Political rivalry	2	2.8%
Inter-clan rivalry	4	5.7%
Total	70	100%

Sources: Field data, 2019

[38] KLA, The Mount Elgon conflict: Results of a failed Resettlement programme, A Newsletter of Kenya Land Alliance, Vol. 6, No. 1, 920070, 12.
[39] KHRC, *Ours by Right, Theirs by Might, a study of land clashes* (Nairobi, KHRC, 1996), 6.
[40] Mwangi, S. Kimenyi and Njuguna S. Ndungu, "Sporadic Ethnic Violence: Why Has Kenya Not Experienced a Full-Blown Civil War?" in *Understanding Civil War*, ed. Paul Collier and Nicholas Sambians, (Washington D.C: World Bank 2005), 123-156.
[41] Simiyu, "Militianisation of Resource Conflicts, 1.

From table 4.1 above, it is apparent that the genesis of the conflict in Mount Elgon Sub-county is a culmination of a long history of the Sabaot community's struggle against historical injustice in the form of colonial disinheritance of land without compensation.[42] This accounted for 31% of the informants. The study noted that the colonial government's policy to create the 'white highland' for settler demands alienated land displaced the Soabaot into Chepkitale trust land and neighbouring areas during the 1920s. This twined the displaced communities into squatters. The colonial legacy of land disinheritance persisted even after independence and was intensified by the failure of successive post-colonial regimes to satisfactorily settle the squatters.

The first post-colonial government of President Jomo Kenyatta, for instance used the land formerly held by white settlers for patronage in order to solidify political support. The trend continued and intensified in the successive regime of Daniel Moi between 1978 and 2002. As this tendency flourished, the government adopted the policy of allocating squatters land only after several petitions and lobbying by their leaders. This personalized approach dependent on the President's good will created an 'artificial' land scarcity and made political patronage the surest way to access communal land.[43] Majority of the residents of Chesikaki Location in Mt. Elgon Sub-county argued that it was the skewed land allocation and not political meddling that caused the conflict.[44] Matasero, one of the key informants for this study, summed up the cause of the conflict between the Soy and the Mosop as not a result of clan rivalry or politics of representation but rather a conflict stemming from years of skewed government land allocation.[45] He further argued that had the squatters been allocated land without favouritism and corruption, there would have been no conflict. The two clans turned against each other because the government was biased in its allocation of land.

Another cause of conflict was the inequitable distribution of land between the Soy and Mosop clans by the government which accounted for 17% of the sample. The inequitable distribution of land brought about inter-clan competition and rivalry. Conflict thus arose over which clan gets what and which ratio will be used while allocating land in the newly created land settlement schemes. This was because both Soy and Mosop clans laid claims to Phase III of

[42] KLA (Kenya Land Alliance). "The National Land Policy in Kenya: Addressing Historical Injustices", Vol 6, No.2, (2004), 10
[43] KNCHR, "Mountain of Terror", 8.
[44] Oral Interview, Focused Group Discussion. Cheskaki Chiefs Office, January 18, 2019.
[45] Oral Interview, Wycliffe Matasero, Cheskaki 23rd October, 2018.

the Settlement Scheme and they on different occasions organised delegations to meet former Presidents over land ownership. During the distribution of approximately 4, 450 and 1,410 hectares respectively in Phase I and II of the Setlement Scheme, the two clans shared the land in the proportion of 60:40 between the Mosop and Soy. Largely because the Chepyuk settlement scheme was a compensation to members of the Mosop clan evicted in the Chepkitale trust land. The populous Soy clan felt marginalized by this decision. The Soy clan demanded 100% of the allocation in phase III, arguing that the Mosop had received the lion's share in the phases I and II.[46]This competition eventually culminated into the conflict.

Approximately 22% of the informants indicated that state monopoly of land allocation in the District was yet another cause of the conflict. Land allocation by the government created what Robert Simiyu terms as 'supply-induced scarcity' of land.[47] For instance, Simiyu observes that in the late 1960s the government restricted the Mosop pastoralists' access to forest resources in the extensive Chepkitale which eventually culminated in their down-slope relocation to Chepyuk in 1969. In due course THIS resulted in tensions between the Mosop and the Soy who lived down the slope. As pastoralist, the expansive grassing land up the mountain was ideal for the Mosop.

Besides inequitable distribution of land, there was also 'demand-induced' land scarcity that arose from natural population growth.[48] The number of squatters in Mount Elgon had increased to approximately 50,000 persons by 2010. Demand-induced land scarcity was also a result of immigration into the agriculturally-rich Mt. Elgon region. The influx of new communities from other Counties who bought land in the Chepyuk Settlement Scheme led to conflict between the Sabaot and the new settlers. This was because the Saboat believed that Mt. Elgon was their ancestral land and labelled the new immigrants as 'foreigners' who deserved no allocation of land whatsoever.

Insecurity and uncertainty of land ownership accounted for at least 5.7% of the cause of the conflicts in Mt. Elgon region.[49] This was because the resettlement of the Soy and the Mosop in Chepyuk I, II and now III had never been formalized through the issuance of land title deeds since its creation in 1968. Though President Uhuru issued 2, 000 title deeds to the

[46] KNCHR, "Mountain of Terror", 8.
[47] Simiyu, "Militianisation of Resource Conflicts," 14.
[48] Ibid, 15.
[49] Ibid, 7.

residents of Mt. Elgon on 16 December 2016 at Kopsiro grounds, the land issue remained unresolved. Failure to formalize land allocation on time made land ownership uncertain. Thus, parcels of land could change hands many times without the necessary transactions being formalized. For this reason, whenever annulment of allocation was effected or evictions were carried out, not just the initial owners lost the land but also those who had bought the land from former allottees were dispossessed.

Another cause of the conflict in Mount Elgon was the long history of conflict and inter-ethnic warfare among the Sabaot and neighbouring communities, manifested mainly as cattle rustling. Simiyu argues that the Sabaot community and their Sebei cousins in neighbouring Uganda had a tradition of militancy. This culture contributed to militarization of inter-community disputes turning even simple conflicts into wars. Intra-clan rivalry among the Sabaot also fuelled the conflict. The Mosop clan, for instance sponsored, the Moorland Defence Force while the Soy clan formed the SLDF. This entrenched culture of violence and militancy among the Sabaot encouraged the youth to join militia groups in order to protect perceived clam or ethnic rights.[50]

The agitation for and the re-introduction of multiparty politics in the early 1990s also played a role in the 1992 ethnic and land clashes that occurred in areas like Molo, Olenguruone, and Burnt Forest. The Sabaot also wanted to reclaim their land from migrants by evicting those they considered as 'foreigners' or non- Sabaot. The main targets were the Bukusu and Iteso from neighbouring districts who had moved into the area and purchased fertile agricultural land from the Mosop pastoralists who were returning to the moorland.

The conflict was also as a result of politicization of landlessness. To woo voters, political leaders promised to settle their supporters if elected. As an electioneering strategy, local politicians mobilized their supporters to threaten, burn or evict supporters of their opponents so as to gain numerical advantage in the event their opponents' supporters fled violence. In 2007, for instance, the supporters of Fred Kapondi encouraged a state of anarchy by threatening Serut's supporters who finally fled the district prior to the December 2007 elections. The later lost the seat to the former.[51]

[50] Simiyu, "Militianisation of Resource Conflicts", 7.
[51] Focused Group Discussion, Kapsokwony October 31, 2018.

The conflict in Mt. Elgon District was also due to proliferation of small and light weapons (SALW) in the region. Internally, instability in West Pokot and Turkana Counties made it easy for the Saboat to acquire arms.[52] The influx of arms was also fuelled by the porous Kenya-Uganda boarder. Externally, the protracted conflict in northern Uganda between the Lord's Resistance Army and the Uganda Peoples Defence Forces (UPDF) was another factor increasing the proliferation of SALW. In addition, instability in South Sudan made it easy for Saboat to acquire arms. The local residents stealthily bought weapons, either for self-defence or for cattle rustling.[53] The proliferation of SALW contributed to the militarization of land-based conflict in the area. [54]

Another factor that fuelled the conflict in Mount Elgon was perception of marginalization among the Sabaot in relation to the Bukusu in the County. The Sabaot community for long had felt marginalized by the Bukusu in terms of access to job opportunities in the Bungoma County Council.[55] To escape the perceived marginalization the Sabaot community demanded a district of their own while the Bukusu living in the heart of Mt. Elgon opposed the idea of curving out a new district for the Sabaot. The debate over the creation of district for the Saboat engendered animosity between the two communities. To solve the problem, President Moi granted the Sabaot their own district in 1993. Soon after the creation of Mt. Elgon District, the Bukusu therein began to feel marginalised.[56]

The conflict in Mount Elgon was also caused by political rivalry between the Sabaot and Bukusu based on party politics. In 1992, the majority of the Bukusu supported the opposition party, the Forum for the Restoration of Democracy (FORD), while the Sabaot remained steadfast in the then ruling party, the Kenya African National Union (KANU). This came at a time when majority of Kenyans had for long sought the abolition of the one party system because they believed that the ruling party, KANU had been responsible for wide-spread corruption and poor leadership.[57] When a multi-party political system was re-introduced in Kenya in 1992, the ruling elites in Mt. Elgon District like Wilberforce Kisiero and Joseph Kimkung', facing the challenges to their power resorted to the formation of militia groups to

[52] Oral Interview, Tom Ekisa, Kibabi University, February 8, 2019
[53] Simiyu. "Militianisation of Resource Conflicts", 8.
[54] Ibid, 8.
[55] Oral Interview, Kisiero, Cheptais, 31 October 2018.
[56] Oral interview, Focused Group Discussion, Cheptais, 31 October 2018.
[57] Kimenyi and Ndungu, "Sporadic Ethnic violence", 175.

champion their political interests.[58] Thus, the transition to pluralism spawned violence in Mt. Elgon District which targeted the Bukusu because they supported the opposition while the Sabaot supported KANU.

The conflict in 2006 was occasioned by inter and by intra-clan rivalry between first, the Mosop and the Soy, and secondly, between Soy factions allied to different local politicians namely, Fred Kapondi and John Serut.[59] Conflicts between the Soy and Mosop revolved around claims by the former that the government favoured the latter in land allocations. On the other hand, the Mosop were dissatisfied with the government decision to include the Soy in Chepyuk phase III, which they considered as compensation to them for the more expansive Chepkitale they had been evicted from.[60] The intra-clan conflict between Soy factions was primarily because of political rivalry.The rivalry between the two clans was aggravated by claims of marginalization. The Mosop clan felt that they were being politically marginalized by the Soy because of their small population. The Mosop, for instance had not been able to elect any political representative until 1997 when the first Mosop councillor was elected. By 2004, they only had one councillor, one chief and four assistant chiefs while the Soy had an MP, eleven councillors, sixteen chiefs and forty-two assistant chiefs.[61]

4.4 Circumstances Warranting Military Intervention in Mount Elgon Conflict

The internal military operation in Mount Elgon was code named Operation *Okoa Maisha* (save lives in Kiswahili). According to the government, the military operation was necessitated by a host of security reasons.[62] The police security briefs and numerous District Security Committee reports indicated that in the months preceding the March 2008 military intervention, various incidents of violent crime had been witnessed and reported in Mount Elgon and the surrounding areas. All the incidents of insecurity, were attributed to a local criminal gang SLDF which operated with impunity in the district for over two years.[63]

Data obtained from the National Police Service (NPS) indicated that the Mount Elgon conflict which initially started as local land disputes confined to Kopsiro and Cheptais divisions of then Mount Elgon District, had spread to neighbouring districts. It also shown

[58] Oral Interview, Jonh Wekesa, Cheptais, 23 October 2018.
[59] Simiyu. "Militianisation of Resource Conflicts, 38.
[60] KNCHR, "The Mountain of Terror", 12.
[61] Ibid, 12.
[62] Erick Kiraithe, "Kenya Police Security Media Briefs: SGI/Quarterly/ Restoring peace in Mt. Elgon", available at: http//www.sgiquarterly.org, Accessed 12 October 2018, 5
[63] Erick Kiraithe, "Kenya Police Security Media Briefs, 5

that the militia was engaged in criminal acts of murder, robbery, arson, rape and extortion. The results of this wave of violence was distress in the region in particular and a threat to national security generally. According to the NPS, the last criminal incident that triggered the military intervention was the grisly murder of 12 civilians who had been accused of betraying the SLDF gang in Kimama village of Cheptais division. Prior to this, the police had investigated over 145 cases of murder as well as several cases of rape and mutilation of body parts of the residents in the region. Schools in area were closed affecting over 10,000 primary school children. Herders in the area had also lost over 712 heads of cattle to the militia. Farming, the economic base of the region, had ground to a halt, exposing the residents to the possibility of famine. Over 13,000 families had been displaced and 5000 others had fled to Uganda as refugees. [64] The displacement had been witnessed in all the Divisions of Mt. Elgon District as shown in the map below.

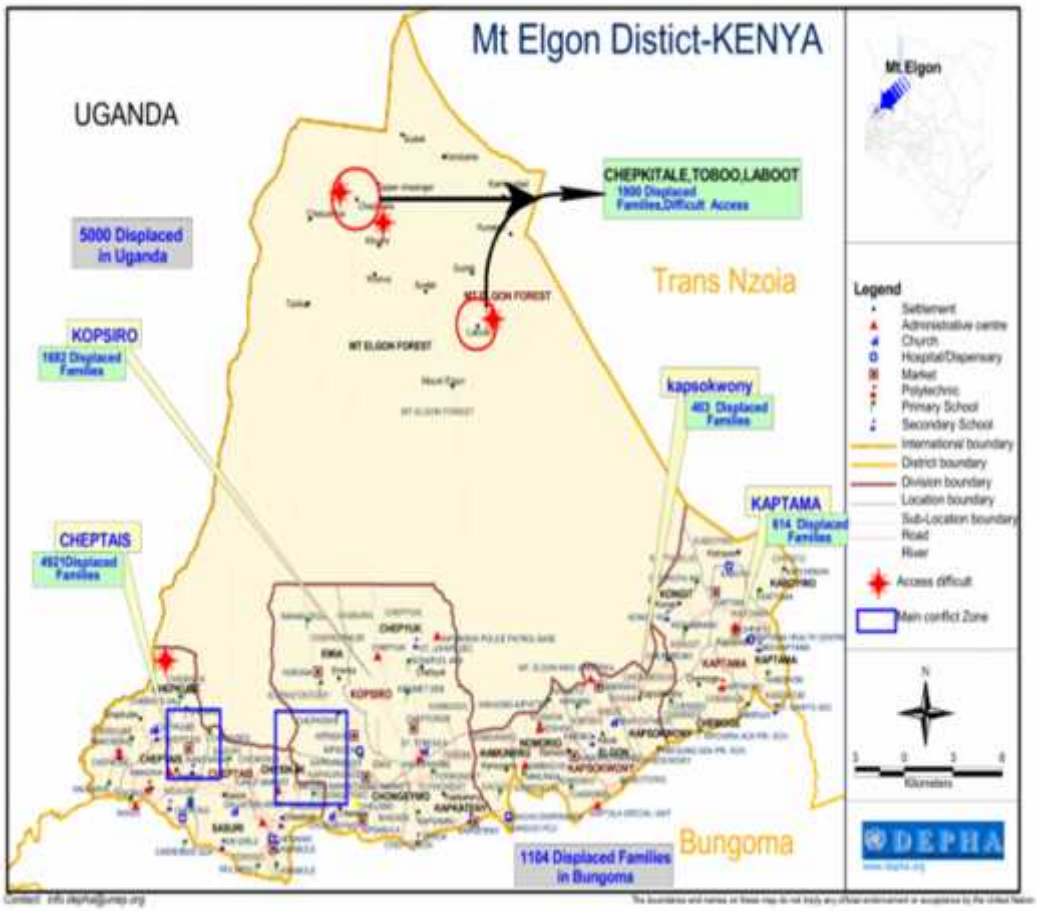

Figure 4: Map of Mt. Elgon District Showing Internally Displaced Persons During the Mount Elgon Conflict.
Source: https://reliefweb.int/map/kenya/mt-elgon-district-kenya

[64] Ibid, 5.

With time and as violence intensified, the residents of Mt. Elgon District begun calling for a more formidable force to end the violence. In response the government launched *Operation Okoa Maisha* on the night of 10 March 2008. According to the police spokesman, the mission of the operation was set in five related objectives. First, to apprehend criminals who had committed crimes against innocent people and confiscate all the firearms illegally held in the area. Second, to enable the government to create an enabling environment for the population to cooperate with the police in the investigation of serious crimes reported in the area. Thirdly, to arrest and bring to justice persons responsible for the crimes committed in that area. Fourthly, to prevent commission of further crimes in the area. Finally, to restore law and order in the region so as to enable relevant government authorities to comprehensively deal with the root causes of the conflict.[65] The stated objectives were all humanitarian, just and central to national security objective of ending barbaric militia acts violating the law and threatening national security.

Operation *Okoa Maisha* was extensive and robust and was meant to achieve results as soon as possible. Annihilation was therefore the most appropriate strategy to be adopted by the military. The first phase involved cordon and search thorough security patrols in Mt Elgon forest, caves and the inhabited areas to apprehend criminals and recover illegal firearms. It also included interrogation of all persons suspected of committing and abetting the commission of crimes in the area.[66] The first phase lasted five days and involved the screening of over 300 persons ranging from chiefs, assistant chiefs and teachers to ordinary people at Kapkota military camp.[67]

The second phase of the operation involved pacification of the area. This was meant to win the hearts and minds of the residents of Mt Elgon. The pacification of the area was a great success. According to the KDF sources, the first success of the operation was the ending of the fear of retribution by criminals, which the local residents had been subjected to. The feeling of fear had blocked citizens from volunteering information to security forces on criminals and criminal activities in the area.[68]

[65] Oral Interview, Erick Kiraithe, Nairobi, June 1, 2010.
[66] Oral Interview, Major Wako Wario* Nairobi, 25th October, 2018.
[67] Kenya National Commission on Human Rights Report "The Mount of Terror", 3.
[68] Oral Interview, Major Wako Wario* Nairobi, 25th October, 2018.

After acquiring valuable intelligence through local spies and military intelligence agents deployed in the area, the military was set for the third phase of the operation. Phase three, involved disarmament demobilisation and reintegration (DDR) of combatants and communities. The KDF employed coercive means to facilitate disarmament.[69] The basic purpose of DDR process in Mt Elgon was to eliminate SLDF's ability to regroup and rearm. Confiscation of the illegal arms held by the militia was a difficult which went on for several months. In this phase of the operation, the security forces gathered 41 AK47 rifles and over 1,027 rounds of assorted ammunition as well as hand grenades and other crude weapons like machetes, bows and poisoned arrows from the militia. The military also recovered 93 camouflage uniforms within the five days of the operation.[70] The disbarment was considered as one of the success of the *Operation Okoa Maisha*.

The fourth phase of the operation included the prevention of commission of further crimes in the District. The military successfully prevented commission of crimes in Mt. Elgon district and normalcy was restored. Schools reopened with teachers and civil servants resuming duty. Displaced persons returned home. Clearly, law and order prevailed in Mt. Elgon District after eighteen months of anarchy.[71]

4.5 Justification for the Military Intervention in Mount Elgon Conflict

Though the military intervention in the Mt. Elgon conflict was welcomed and criticised on an equal measure, the operation was justified on various reasons. Figure 4.2 below summarizes the views of the respondent in regard to normative justification of the military intervention.

[69]Boniface M. Ngulutu, "The Military in Post-Conflict Reconstruction: The Case of Kenya Defence Forces in Mount Elgon Conflict, 2005-2012," MA Armed Conflict and Peace Studies, University of Nairobi, 2013, 90.

[70] The Kenya Police, "Security Media Briefs: SGI/Quarterly/ Restoring peace in Mt. Elgon", available at: http//www.sgiquarterly.org/feature 20111TCM g html. Accessed on 12 May 2011, 5.

[71] The Kenya Police, "Security Media Briefs., 5

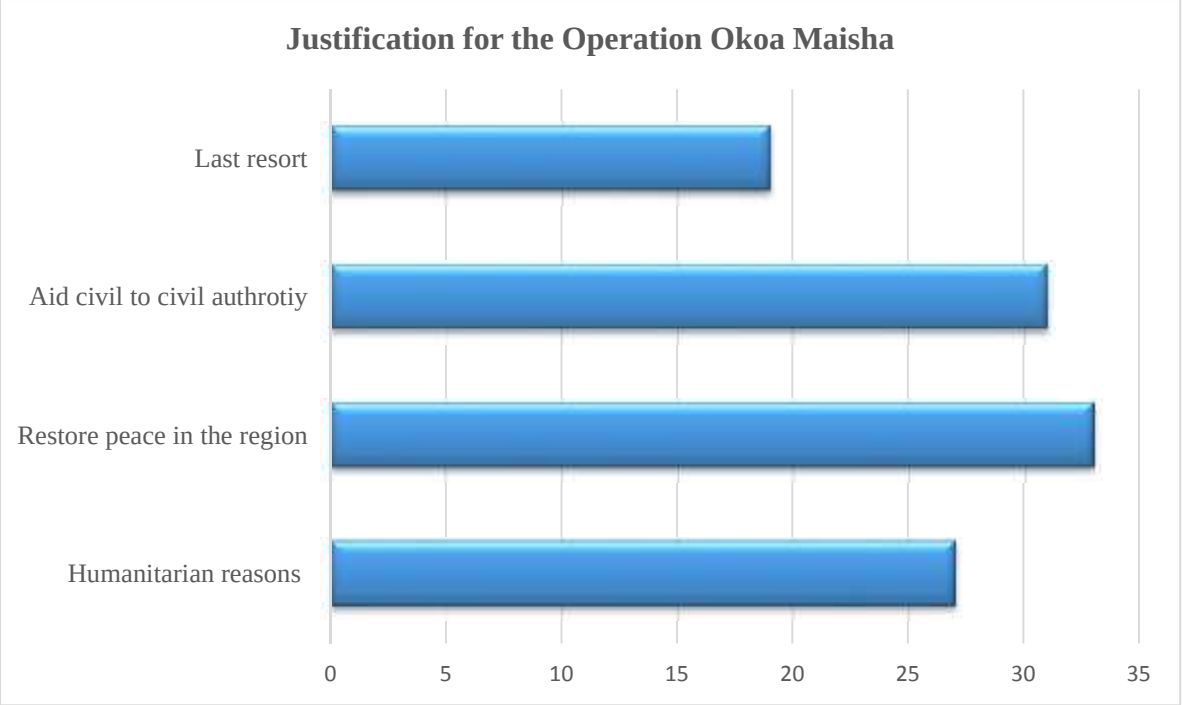

Figure 4.2: Justification for the Military Intervention in Mount Elgon Conflict
Source: Researcher, 2019

From Figure 4.2 above, military intervention was justified on humanitarian grounds on behalf of the people of Mt. Elgon facing gross human rights violation perpetuated by SLDF. This accounted for about 24%. The study noted that, at the beginning of the revolt, the SLDF militiamen received the backing of the members of the Soy clan of the Saboat community because it believed that the group had 'just cause and right intention' of defending the community and its ancestral land.[72] With time, the SLDF activities took a different turn; and it begun to engage in waves of criminal activities like destruction of property and 'butchering' the people it was meant to safeguard. The SLDF thus became a threat to national security. A spate of violence between October 2006 and April 2008 left over 600 people dead and about 63,000 displaced.[73] By all means this was gross violation of basic human rights. The violence also created insecurity that had to be countered in order to preserve human dignity and life.

In an effort to restore peace in the area, the government deployed security forces comprising of the regular and administration police, the Anti-Stock Theft Unit (ASTU), the General

[72]Brian Orend, "Michael Walzer on Resorting to Force: Just theory", *Canadian Journal of Political Science*, Vol. 33, No. 3, 2000), 523-547.
[73] Human Rights Watch report, "All Men Have Gone" War Crimes in Kenya's Mt. Elgon Conflict, Human Rights Watch, 2008, 17.

Service Unit (GSU) and the Rapid Deployment Unit (RDU) to the area. Several police-led interventions failed to resolve the conflict. Despite the large number of security forces in the area, SLDF continued to terrorize residents, leading to loss of more lives and a mass displacement.[74] In March 2008, after the initial police-led security response coded *Operation Tafuta Amani* (Seek Peace) failed to contain the rapidly evolving militia, the Kenyan military was deployed to flush out the group and to restore state control of the region. The involvement of KDF in the security operation was informed by the Constitution of Kenya which stated that the primary role of the military is to defend and protect the sovereignty and territorial integrity of the Republic. The secondary role, to support the civil authority.[75]

Operation *Okoa Maisha* became a much-discussed topic among the residents of Mt. Elgon District and Kenyans generally. Some people supported the operation while others opposed it. The local residents of Mt. Elgon District initially welcomed the crackdown but were quickly alienated by the strategy pursued by the security forces which some residents viewed as harassment and brutality to the community.[76] There was widespread public debate regarding whether the military intervention was legitimate or illegitimate, popular or not. Politicians and human rights activists criticized the operation but what remained unclear in this debate was whether the state was right in ordering the military intervention or not and whether the rhetoric surrounding the operation was true representation of the views of people of Mt. Elgon District concerning the intervention. Despite criticism, the government maintained that the operation was justified on the basis of national security.[77]

In the international context, the military interventions are justified as means to ending widespread violence in internal disputes. It is imperative to note that with the end of the Cold War, many intrastate conflicts occurred warranting increased military intervention in the form of peacekeeping missions.[78] These missions occurred when national militaries were faced with serious decisions over whether, when, and how to intervene in internal disputes. The UN Security Council during this time sanctioned military intervention in an effort to contain these

[74] Georgette, Gagnon, "Kenya Army and Rebel Militia Commit War Crimes in Mt. Elgon", Human Rights Watch Report 2008. Available on http//www.hrw.org/English/docs/2008/Kenya 18421, Retrieved on 1 May 2010.
[75] Kenya Law, the Constitution of Kenya 2010, Article 232.
[76] KNCHR, "Mountain of Terror", 4.
[77] Erick Kiraithe, "Kenya Police Security Media Briefs, 5
[78] United Nations Information Service, "60 Years of the United Nations Peacekeeping", (Vienna: Austria, Vienna International Centre, 2008), 6. Available on http://www.unis.univienna.org. Accessed on 18 April 2018.

new threats to world peace. With increased UN Peace Operations, debate on restoring peace in internal conflict through military intervention emerged.[79] Since the early 1990s, humanitarian agencies have strongly supported the use of military force in situations of gross human rights violations. However, humanitarian agencies have also strongly opposed the strategy of military interventions.[80]

The debate on military intervention in Mt. Elgon can also be analysed and justified in line with UN policy which dictates that before any intervention, the military should make certain decisions and ensure the intervention takes place in accordance with international norms on non-use of force and the primacy of state sovereignty as laid down in the UN charter. The military also needs to consider the high value placed on individual human rights as documented in the UN charter and enacted Human Rights Laws.[81]After meeting all these considerations the state may then sanction a military intervention.

The justification for military intervention against the SLDF was valid on a number of explanations. First, sovereignty dictates that the state (republic of Kenya) be the one to pressure warring parties in the Mt. Elgon conflict to negotiate for peace. The assumption is that with government ultimatum or military intervention for a few days would force the SLDF back to the negotiating table. But this was never the case with the two-month military intervention in the Mt. Elgon conflict against the armed militia. What the KDF conceived coercive diplomacy became a medium-sized war.[82]

According to Michael Walzer, the debate on military intervention can also be justified on the framework of just and unjust war. Walzer argues that a State can only wage war for the sake of a just cause of self-defence, protection of innocent people and punishment for wrong doing.[83] He adds that military intervention also requires serious calculations within individual intervening states of the appropriate cost in lives and finances to its own citizens to carry out the intervention. In addition to the risk of casualties, there is also the risk of failure. Thus the

[79] Hugo Slim, *Military interventions to Protect Humanitarian Rights: The Humanitarian Agency Perspective*, (London: Oxford University, 2001), 32.
[80] Ibid, 32.
[81] UN Charter. "The Principle of Non-Intervention and Non-Use of Force", Article 2 Par. 3, 4 and 7 of the UN Charter.
[82] Oral Inteview, Matesoro Chebus, 14 April 2019.
[83] Brian Orend, "Michael Walzer on Resorting to Force, *Canadian Journal of Political Science*, Vol. 33, No. 3, (2000), 523-547.

state can intervene if the benefits of universal good are proportional to, or "worth" than the universal evils. As Walzer points out "a state contemplating intervention or counter-intervention must weigh the dangers to itself, but it must also, and for moral reasons, weigh the dangers its action will impose on the people it is designed to benefit."[84]

The Mount Elgon conflict was a war pitting KDF against an outlawed militia. The war was one that was justified by at least two criteria of just war doctrine.[85] First, the military intervention was a last resort, initiated only after negotiations and government decrees and pleas for the militia to surrender failed. Secondly, the anticipated harm of armed intervention was relatively small compared to the criminal activities it sought to end. At worst the use of armed force was the lesser of the evils in the existential choice the military faced in the Mt. Elgon conflict.

From the public debate, it could be argued that the military intervention was unwise in terms of proportionality because it seemed like the military used unnecessarily force against a small militia incapable of acts of aggression, and that there was lack of proportionality as suggested by the just war theory. Conversely, it can be argued that the SLDF as a non-state actor was capable of making an armed attack on the state. Thus unchecked triumph of aggression by SLDF would have been a "greater evil" than war.[86] It was therefore possible for the government to construct the right of self-defence against SLDF. The act of securitization gave the SLDF militia a combatant status by making their acts equal to aggression against state security.

The military intervention was also justified because it in no way went against the international law. The international legal regime advocates for the respect of territorial integrity of sovereignty of states. Thus, any military in a state that unilaterally intervenes without the consent of the UN in internal conflict is by definition not contentious and not in violation of international law because internal operation is solely sovereign mandate accorded to states. As such allegations of commission of war crimes and crimes against humanity by

[84] Michael, Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd ed. (New York: Basic Books, 1992), 95.
[85] Bjorn Moller, "Kosovo and The Just War Tradition", Paper for the Commission on Internal Conflicts at the 18th International Peace Research Association Conference held in Tampere, August 5-9, 2000, 56.
[86] Brian Orend, "Michael Walzer on Resorting to Force", 523-547.

the military in Mt. Elgon are not within the jurisprudence of the International Criminal Court (ICC) as alleged by NGOs unless there is proof of human rights violation.

Another important parameter for justifying the military intervention was in assessing the success of the operation. There were two issues to measure success of military or third-party intervention according to Regan.[87] First, are the events or circumstances of conflict that precipitate the intervention and secondly, the range of motivational factors behind the intervention. According to security intelligence briefs of the NPS, the atrocities committed by SLDF were by any definitions grievous for any state security organs. There was thus a need to restore the rule of law and to end impunity perpetuated by the militia.[88]

The military intervention was also justified on the premise that there was no guarantee that a non-military intervention would have been effective in ending the violence witnessed. Prior to the police led operation *Tafuta Amani*, the government had used the provincial administration to resolve the conflict through non-violent means but the militia revolted against it. The SLDF also continued to engage in spate of violence even after an agreement was reached between the two warring clan factions. The State thus had a moral obligation to intervene when the lives of the people of Mount Elgon District and their property were endangered.

4.6 Operation of Torture: The Perspective of Civil Society on *Operation Okoa Maisha*

From several reports by human rights groups detailing the violations of human rights and torture in Mt Elgon District, the study concluded that from the onset, the civil society regarded the government security response to SLDF abuses as lacklustre, fostering a climate of impunity.[89] The Human Rights Watch argued that there was laxity on the part of state security organs since the emergence of the SLDF. The security agencies let the militia to gradually increase its control over the area, levying taxes over the already impoverished population. It also terrorized those who failed to follow their orders. During the early stages of the conflict, the government kept mum or took an unnecessarily long time before

[87] Patrick M. Regan, "Conditions of Successful Third Party Intervention in Intrastate Conflicts" *Journal of Conflict Resolution,* Vol. 40, No. 2, (1996), 336-359.
[88] Erick Kiraithe, "Kenya Police Security Media Briefs", 6.
[89] Human Rights Watch. "All The Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict," Report by the Human Rights Watch, 2008, 3.

decisively responding to the SLDF atrocities in March 2008.[90] The late deployment of the military, according to a section of the civil society, was thus uncalled for. For instance, the Human Rights Watch in its submission to the 41st Session of the United Nations Committee against Torture in Kenya voiced concerns over serious and widespread torture by state security forces in Mt. Elgon District. At the same time, it laid blame on the state for having failed to protect the rights of citizens by being unwilling to hold both state and non-state violators to account.[91].

Further reports of human rights organizations also indicated that, the victims of the SLDF received no justice from government. The reports document that the SLDF abducted civilians from their homes, while looting their homes and livestock and then marched their victims into the forest where they beat them, strung them up on trees and then mutilated them by cutting of their ears. Some were then forced to eat their own ears, and human waste.[92] Further, the victims were warned not to report the crimes to the police or else they would face serious consequences.[93] Some of the of the human rights organization reports that documented on alleged human rights abuses and crimes against humanity by the military were: "All the Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict" a report by the Human Rights Watch. Second, "Double Tragedy: Report on Medico-Legal Documentation of Torture and Related Violations in Mount Elgon Operation *Okoa Maisha*." Third, was the Medicines' Sans Frontiers' report, "Mt. Elgon: Does Anybody Care?" Finally, the Kenya National Commission on Human Rights' report, "Mountain of Terror".

An overview of these reports also showed that from August 2006 to the onset of the operation in March 2008, civilians living in Mount Elgon had been terrorized the SLDF then state agencies including the police led operations and the military intervention. The residents were thus double victimized, first by the militia and secondly by the state.[94] The reports add that the residents were also occasionally attacked by criminals who took advantage of the lawless situation. The residents were forced to move up and down the slopes of the mountain or to neighbouring districts to find safety. The residents lived in a precarious condition dependent

[90] Human Rights Watch. "All the Men Have Gone", 5.
[91] Ibid, 5.
[92] Ibid, 5.
[93] Ibid, 4.
[94]. Ibid, 4.

on local communities and humanitarian aid as government assistance was unforthcoming, assistance.[95]

The negative reports over the military intervention was further given credence by the report of the special rapporteur on extrajudicial, arbitrary or summary executions who claimed that the police killings were officially sanctioned and that there existed a police 'death squad'. The report also highlighted that the government laxity which had allowed organized criminal gangs to operate with impunity amounted to abetting crime, claims which the government refuted. The government asserted that no torture had ever taken place and it did not condone extrajudicial killings. Instead the government was committed, to ensuring the rights of all. The government also reiterated its determination to help the people of Mt. Elgon area prior to operation *Okoa Maisha* through the Operation *Tafuta Amani*.[96] But civil society groups insisted that the military operation was characterized by torture which amounted to human rights violation.

4.7 Perceptions about the Success of the Military Intervention in Mount Elgon

There are varied perceptions regarding the success of military intervention in Mt. Elgon. Many of the residents perceived the military to have tremendously achieved its objectives. They credit the military for wiping out the SLDF and restoring law and order in the region.[97] The military was also able to foster peace in a previously lawless area in which more than 1,200 people were killed during months of inter-clan violence.[98] However, a section of residents were of the contrary opinion. They argued that, as early as May 2007, the residents of Mt. Elgon District had expressed fear and scepticism over the impending security operation to flush out SLDF militia.[99] They also feared that innocent people, including men, women and children, could be harassed and sometimes killed in such operations. The operations could also lead to closure of schools. The residents of the region especially women feared that the some criminals could also take advantage of such operations to rape women

[95] Medicines Sans Frontiers, "Mt. Elgon: Does Anybody Care?" Report 2008, 2. Available at: www.msf.org.uk/mount_elgon_report_20080616 Accessed 18 June 2017.
[96] Government of Kenya "Government Response to Mars Group Accusation of gross human rights Violation in Mt. Elgon," , 2009, 5. Available on www.marsgroupkenya.org/pdfs/2009/06/Kenya-Government-Response, Accessed 18 June 2017.
[97] Interview, Focused Group Discussion, Cheptais, 16 January 2019.
[98] Oral Interview, Sub-County Commander, KapsKwony, 9 February, 2019.
[99] Allan Kisia, Robert Wanyonyi and Isaiah Lucheli, "Women Oppose Police Search in Mt. Elgon", *Daily Nation*, 22 October 2007, 16.

and commit other crimes.[100] When the SLDF activities increasingly became brutal and the police and GSU security contingents present in region seemed to be out rightly overwhelmed, the residents of Mt. Elgon called for a more formidable force to deal with the situation.

When the military intervention was announced residents of Mt. Elgon District were ecstatic. They welcomed the military with the hope that it would stop militia brutality.[101] Prior to the military intervention in March 2008, the residents had gone through a rough time in the hands of the militiamen and then police during *Operation Tafuta Amani*. The suffering occasioned by the militia and police operation made the intervention by the military highly longed-for. Immediately the military stepped in, the victims of SLDF volunteered information on the whereabouts of the militiamen to the military. The residents also provided intelligence reports that aided the military operation. Women and children frequented military camps for food aid and clinical services. The military also cultivated good civil-military relation by conducting medical camps and distributing humanitarian assistance.[102]

The residents of Mt. Elgon also supported the military as the troops pursued the militia up the mountain into their caves. As the military intensified the search up the mountain, the militiamen ran out of their hideouts into towns. Some ran back into the villages and begun to operate within the population. They concealed themselves amongst the residents, making military strategy of pursuing the militiamen up the mountain counterproductive. The military resorted to pursuing the militiamen into the villages. As the manhunt for the militiamen in the villages was stepped up, the residents began to witness military brutality. Some villagers especially men fled in fear of being tortured. The good civil-military relations established initially became short-lived as owing to the fear instilled by the military strategy. The residents feared a repeat of the brutality they had witnessed in the earlier police operations in case the military rounded men in the villages and towns of Cheptais and Kopsiro Divisions for interrogation and screening at Kapkota military camp. In the swop, conducted in May 2008, a total of 3,265 persons were detained in Kapkota and approximately 2,187 were released after questioning.[103] The rest were held for further interrogation and were later

[100] Peace Net Kenya, "A Brief Report on the Peace net Led Mission to Mt. Elgon", 25 May 2007, 6. Available on htt://www.internal displacement.org. Accessed on 1 June 2011.
[101] Human Rights Watch, "All the Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict," The Human Rights Watch Report, 2008, p. 6.
[102] Oral Interview, Focused Group Discussion, Lanet Barracks, and 4 February 2019.
[103] Isura Christopher, 300 still missing 3 years after operation "Okoa maisha" in Mt. Elgon, available at:

charged. Residents blamed the military for using excessive force against their teenagers during the military swoop. They were also agitated that the military failed to distinguish between the innocent civilians and the militiamen.[104]

Though the strategy of rounding up all men was abhorred, the residents of Mt. Elgon District supported the intervention for ending the violence. The residents perceived the military action at least as a lesser evil. As one informant recounted to the researcher, when the military choppers were first spotted in Cheptais and Kopsiro Divisions, the villagers were elated, but this elation was short-lived. The military's biggest mistake during the operation was failure to draw a line between the local men and the militia. The indiscriminate military action made everyone a target, a casualty and a victim. The soldiers swooped on villages at dawn as scared residents ran for their lives. Virtually everyone was tortured.[105] When probed further, the informants told the researcher that at the end, the military saved the residents from the merciless militia. Comparatively, the military was therefore a lesser evil. The militiamen operated with no mercy compared to the military who sometimes treated people humanely.[106]

The residents of Mt. Elgon District, particularly women, had different perceptions on the military intervention. Their perceptions reflected their diversity. Depending on the category of their victimization and by which group, the women of Mt. Elgon District were either 'military widows' or 'SLDF widows'.[107] The SLDF widows were women whose widowhood was occasioned by the militia killing their husbands. These women also endured torture from SLDF fighters. This category of women supported the military intervention. Most of these women are members of the Mosop clan.[108] The SLDF widows denied the allegations that the military committed rape, arguing that although the military tortured and killed their relatives, some of the residents deserved such treatment since most said victims were militiamen who failed to surrender to the military. Therefore, when the amnesty period ended the military acted and should not be blamed.[109]

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http://westfm.co.ke/index-page-news-bid-3728.htm#ixzz2cn3nYPXf , Accessed on January 9, 2019.

[104] Oral Interview, Focused Group Discussion, Cheptais, 23 October 2018

[105] Oral interview, Mr. Peter Kirwa, Cheptais, 23 October 2018.

[106] Oral Interview, Focused Group Discussion, Cheptais, 23 October 2018

[107] Oral interview, Jackeline Takko, Cheptais, 23 October 2018.

[108] Oral Interview, Reverend Stephen Kirwa, Kapsokwony, 29 October 2018.

[109] Oral Interview Focused Group Discussion, Cheptais, 23 October 2018.

The second category were the "military widows", women widowed as a result of the military intervention. These women also happen to be the widows of ex-SLDF combatants. They therefore, suffer double victimization. This category holds a contrary opinion to that held by the former category. They blamed the military for using excessive force against their husbands. They also blamed the military for having dumped the bodies of those who succumbed to death during interrogation at Chepcheiwa cave just like the SLDF.[110] Peace activists in the region believed that there were about 800 human skulls at Chepcheiwa cemetery in Mt. Elgon.[111]They held that their men were fighting for a just communal cause. However, this category of women like the former group were of the opinion that the SLDF actions lacked a sense of direction. Some of the women in this category also became victims of the SLDF. They were very bitter about the militia because they had been forcefully made 'wives' and occasionally raped by the other militiamen.[112]

This second category of women also absolved the military of rape allegations but blame the Rapid Deployment Unit (RDU) and the GSU for sexual harassment. These two police contingents had participated in the earlier operation that the local termed *anti-janjaweed*. Other than rape, the women also blamed the police for wanton destruction of property.[113] This view was also shared by women peace builders, another category of women in the post-conflict reconstruction stage of the conflict. They faulted information absolving the military of rape. This category argued that since it was a joint military and police operation, it was not possible to pinpoint the really perpetrators of sexual violence as either the police or the military. [114]

In general, most of the women in Mt. Elgon District found the military friendly. They often visited the military camp for medical attention and also in search of food aid as the military had it in plenty.[115] Majority of these women absolved the military of rape allegations. Claims refuted by social workers in the region who held that the women in the region were either enticed or coerced into sex by either generosity or might of the soldier's logistics respectively. One of the informants narrated that the military camped on top of the mountain and far away from the people but the women still followed them there. Some of these women

[110] Oral Interview, Focused Group Discussion, Cheptais, 23 October 2018
[111] Oral Interview, Focused Group Discussion with Civil Society, Cheptais, 23 October 2018.
[112] Oral Interview Focused Group Discussion, Chemondi, 21 October 2018.
[113] Oral Interview Focused Group Discussion, Chemondi, 21 October 2018.
[114] Oral Interview, Jacklyne Temko, Cheptais, 21 October 2018.
[115] Focused Group Discussion, Cheptais, 24 October 2018.

were young girls that had been widows of ex-SLDF who ran to military camps for cover as they feared that the military would target them for torture after the death of their husbands. Moreover, the death of their SLDF husbands also left them vulnerable without support they were so used to. During the reign of the SLDF, the militia used to confiscate and slaughter animals by force. They also demanded food quota from each family. This ensured there was plenty of food for their families at the expense of their victims.[116] The researcher was also informed that these young women had also gotten used to befriending the security personnel especially the police and ASTU in the region in order to spy on the police. A number of informants argued that if at all some women slept with police or military personnel it was at their convenience.[117] An assertion negated by some members of the public and the civil society who argue that in the prevailing conditions of desolations and misery intimidated the women into unwarranted "consent" and this amounted to rape.[118]

The overall assessment of the intervention shows that although the military generally did well, it was blamed for torture leading to the death of some innocent members of the community. The general perception of the informants about the intervention can be summarised as follows.

Table 4.2: Perception of Respondents on the Success of *Operation Okoa Maisha*

Category of informants	Yes	No	Undecided	Total
Military officers/personnel	6	2	2	10
County security committee	2	1	0	3
Politicians	1	2	1	4
Civil society organizations	3	2	0	5
Researchers and experts	4	2	2	10
Victims/witness (Male)	7	13	2	20
Victims/witness (Female)	12	6	2	20
Total	35	27	9	70

Source: Research, 2019

[116] Focused Group Discussion, Cheptais, 24 October 2018.
[117] Oral Interview, Rosemary Cheminiwa, SLDF widow at Chemondi market, 23 October, 2018.
[118] Oral Interview, Focused Group Discussion, Cheptais, 23 October 2018.

From Table 4.1 above 50% (35 informants) of the sample opined that military intervention was successful while 38% (27 informants) were of the contrary opinion that the military intervention in *Operation Okoa Maisah* was unjustified. Approximately 12% of the informants were undecided over the justification of the military intervention. The Mt. Elgon residents' perception of the military intervention is therefore similar to what Nicholas Wheeler summed up as "the agonizing moral choices" involved in any decision to use force in the rescue and protection of people enduring massive cruelty and suffering.[119] Thus, while all military interventions tend to bring about an end to violent conflict, setting the beginning of post-conflict reconstruction and peace building, the success of interventions has been compromised by atrocities committed by the military while in operation.[120]

The existence of this criticism has made it impossible to give the military a clean bill of health in the intervention, thus making them as 'a necessary evil'. During the intervention in Mt. Elgon conflict, the military did not intend to do any harm but good intentions as supported by local women. This is evident in the cooperation between the military and most residents in the region. The residents also, especially women assisted the military by volunteering information leading to arrests of the militiamen and their disarmament. In fact, residents of Mt. Elgon trusted the military more than local police in handling the situation. Many of them travelled to Kapkota camp to report cases of drug abuse and of theft which were under the police jurisdiction.[121] This was a testimony that Mt. Elgon women supported the military action in ending SLDF activities.

4.8 Summary

This chapter has demonstrated that conflict over land was the centre of the violence in Mount Elgon District. The chapter has also shown how the colonial legacy and the historical injustice coupled with political meddling, patronage and culture of rewarding sycophants with land exacerbated the conflict. It has also showed how the political elites appropriated the land issue to fight their political opponents. The discussion also showed how the politicians tapped into feelings of marginalization within the community to articulate grievances about historical injustices. The chapter has also shown that the government at first downplayed the conflict as it was seen as a clan issue. However, the conflict spread and caused deaths,

[119] Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: OUP, 2000), 51.
[120] Wheeler, *Saving Strangers*, 123.
[121] Oral Interview, Mr. Wekesa, Kapkota 24 October 2018.

displacements and wanton destruction of property. Even though, the military intervention won the hearts of the local residents in Mt. Elgon District by ending the violence, in the opinion of the residents of the area, lasting peace can only be achieved if the root causes of the conflict were addressed. The success of the operation despite of the criticism is a clear indication that if well timed and managed, military interventions should serve the immediate purpose of restoring law and order. Operation *Okoa Maisha* thus serves as a good example of the military's ability to restore national security and peace in the wake of internal disputes notwithstanding, the military's ability to do 'good' is tainted by isolated cases of brutality and torture.

CHAPTER FIVE

THE AL - SHABAAB THREAT AND THE KENYA DEFENCE FORCES COUNTER TERRORISM STRATEGY IN *OPERATION LINDA NCHI*

5.1 Overview

Operation *Linda Nchi*, was officially declared on 16 October 2011, two days after Kenya Defence Forces (KDF) launched a manoeuvre against Al-Shabaab militants, in what is widely documented as the Kenya military intervention in Somalia. Hence the public perception of the military action as an external intervention. Many are oblivious of the fact the operation was a two-fold military campaign comprising of the deep and close operations concurrently conducted as an internal and external operation in pursuit of alleged abductors and terrorists. Whereas the deep operations carried inside Somalia was in the public limelight, little is said about the internal operation conducted close to the Kenya-Somalia border in the Kenya's 'forgotten' north.[1]

Operation *Linda Nchi* was necessitated by a number of internal and external circumstances of wanton national insecurity in Kenya allegedly perpetuated by Al-Shabaab militants. As succinctly put by Orwa Ojodeh, Al-Shabaab was a snake whose body was in Somalia and its head in Nairobi ready to rattle.[2] The group was in 2010 ranked 15 among the 120 blacklisted terror groups worldwide.[3] It was also linked to international terrorist groups such as the Al-Qaida and Islamic State (ISIS). The group has mutated periodically with the mutant becoming more military adept than the predecessor. Al-Shabaab, the latter, was linked to several terrorist attacks in Somalia and Kenya, making the group not only a threat to Somalia and Kenya but the entire Horn of Africa. It is for this reason that counterinsurgency measures against the group attracts global and regional military intervention. Prior to the KDF intervention, the USA had led five countries in a military intervention in the early 1990s. The Ethiopian troops also intervened. The African Mission in Somalia (AMISOM) completes the list of international and regional forces embroiled in the Somalia conflict.

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[1] From the Shifta War to Al Shabaab: Why Kenya is its Own Worst Enemy, Available at: https://medium.com/.../from-the-shifta-war-to-al-shabaab-why-kenya-is-its-own-worst. Accessed on, 21st October 2018, p. 3

[2] Look no further, the jihadi enemy is here with us – not in Somalia, *Daily Nation*, December 6, 2014. Available at: https://www.nation.co.ke. Accessed on March 2019.

[3] Benjamin Freedman "Officially Blacklisted Extremist/Terrorist (Support) Organizations a Comparison of Lists From six Countries and two International Organizations, *Journal of Perspectives on Terrorism*, Vol. 4, No. 2 (2010), 46-52

Despite the international and regional interventions, Al-Shabaab kept on executing terrorists' attacks in Kenya. It also abducted, threatened and killed foreign nationals and international humanitarian workers operating in Somalia and from Kenya. The group had also sabotaged the Somalia peace process by creating criminality as well as intensifying terrorism in the region. Al-Shabaab also hoisted its flag in Yumbis area of Garissa County, Kenya.[4] This amounted to aggression of the state boundary and sovereignty. It also radicalized and recruited numerous Kenyan citizen into violent extremism.[5] More importantly, it established training bases in the Boni Forest, Lamu County in Coast of Kenya.[6] The group also attacked military camps and overran police station in strategy meant to bolster their armoury among other numerous attacks. This chapter interrogates the KDF counter-terrorism strategies in Operation *Linda Nchi*. The chapter begins by outlining a brief history of conflict in Somalia to showcase how the protracted war in Somalia has made the country become a safe haven for terrorism that threatens Kenya's internal security. The chapter then examines the origin, rise and strategies of Al-Shabaab. Finally, the chapter evaluates the legal justification and the success of the military operation.

5.2 Historical Context of the Somalia Civil War

The Somalia civil war began in 1991 with the toppling of Mohammed Siad Barre, the then President of Somalia. The first phase of the civil war stemmed from the insurrection against Barre's regime by a combination of militia groups which included: the Somali Salvation Democratic Front (SSDF), United Somali Congress (USC), Somali National Movement (SNM), and the Somali Patriotic Movement (SPM). Most of these groups began to compete for power amongst themselves after the collapse of Barre's regime. Siad Barre had come to power in 1969 following a military coup. In the early years of his reign, he created a top-down, socialist-oriented ideology called 'scientific socialism' which was initially popular among the Somalians. But by 1971, scientific socialism had transformed from a development ideology to tyranny that raffled feathers among the Muslim leaders in Somalia.[7]

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[4] Abadimalik Hajjir, County Official says Al-Shabaab Hoisted Flag in Yumbis Village, *Daily Nation*, 22 May 2015, 11.

[5] Sirkku Hellsten, "Radicalization and Terrorist Recruitment among Kenya's Youth", The Nordic Africa Institute, Policy Note No 1, 2016, 1.

[6] Cyrus Ombati Police Discover Al-Shabaab Hideout in Boni Forest, *The Standard*, September 2, 2018. Available at: https://www.standardmedia.co.ke. . Retrieved on16th November 2018.

[7] Hussein, M. Adam, 'Somali, Rural Production Organization and Prospects for Reconstruction' in Beyond *Conflict in the Horn*: The Prospects for Peace, Recovery, and Development in Ethiopia, Somalia, Eritrea, and Sudan, Ed. Martin Doornbos, Lionel Cliffe, Abdel Ghaffar M. Ahmed, & John Markakis (Africa World Press, 2002) 150

Barre's regime also begun championing the Pan-Somalism ideology. His autocratic power was galvanized on the basis of historical irredentist claims over the Ogaden region. He took advantage of the Ethiopian revolution of 1974 which deposed Emperor Haile Selassie and bestowed Mengistu Haile Mariam as an opportunity to seize the Somali inhabited territory of Ogaden in southern Ethiopia. Siad Barre's regime therefore, planned and executed attacks against Ethiopia in 1977 in order to reclaim the Ogaden region. Barre's invasion of Ethiopia was on the verge of success when the Soviet Union, then an ally of Somalia switched sides and began to support Ethiopia. Subsequently, Barre's regime was weakened and it shrank to clan level. In 1989, civil war broke out in northern Somalia pitting Barre's Isaq clan against other clans and their warlords.[8] The warlords managed to overthrow Barre in 1991 after two years of civil strife. On 26 January1991, a counter-revolution took place to attempt to reinstate him as leader of Somalia. The counter-action intensified the inter-clan fighting causing a protract civil war lasting for three decades.

The Somalia civil war disintegrated as well as created disunity among the semi-autonomous states in the country. While inter-clan warfare ravaged the state of Jubaland, the more relatively 'peaceful' state of Somaliland proclaimed self-independence on 18 May 1991. The proclamation was however never recognized by any nation, regional body or international organization.[9] The self-proclaimed independence was advantageous to the state. It managed to insulate Somaliland from the widespread violence compared that witnessed in Jubaland. For instance, in the period between June and October, 1993, several gun battles were fought in Mogadishu between local gunmen and peacekeepers, resulting in the death of 24 Pakistanis and 19 US soldiers, most of whom were killed by Somali militants.[10] Meanwhile, relative calm was witnessed in Somaliland.

With intensification of hostilities among warring factions, the Somalia crisis quickly drew international attention. The global community sought peaceful approach to resolution of the civil war. Peace talks began on earnest from in 1991. However, most of the peace initiatives for Somalia failed.[11] The study established that some of the major peace initiatives included: The Djibouti Conference of 1991, the Addis Ababa Conference of 1993, the Cairo

[8] Peter Woodward, "Somalia and Sudan: A Tale of Two Peace processes," *The Round Table* Vol. 93, No 18 (2004) 375-481
[9] Peter Woodward, *Somalia and Sudan,* 7.
[10] "War tears Somalia a part" an up-to-date report on Mogadishu, *ITN/CNN Report* 17 October, 2007, 3.
[11] International Crisis Group, African Report No 79 *Biting the Somalia Bullet.* 12

Conference of 1997, the Arta Conference of 2000, and the Eldoret Peace Process of 2002 which resulted in the formation of Transitional Federal Government of Somalia.[12] According to the International Crisis Group (ICG), there were thirteen major international peace initiatives for Somalia. The October 2002 Eldoret peace process initiated by Inter-governmental Authority on Development (IGAD), was the longest and most expensive.[13] The 2002 IGAD process was somehow successful as it led to formation of the Transitional Federal Government (TFG) in Nairobi. The Somalia TFG operated from Nairobi for two years because it was still too chaotic to run government in Mogadishu.[14]

In early 2006, the TFG formed in Nairobi relocated to Somalia to attempt to establish a temporary seat of government in Baidoa. During the early part of 2006, the Alliance for the Restoration of Peace and Counter Terrorism (ARPCT) was formed to ensure sustainability of the peace process reached at in Nairobi. As an alliance of mostly secular Mogadishu-based warlords, ARPCT opposed the rise of the *Sharia* law favoured by the Islamic Courts Union (ICU) that had rapidly consolidated power in Somalia. Conflict of interest among these two groups led to renewed violence in Mogadishu.

In June 2006, the ICU fighters successfully captured the capital city of Somalia and managed to oust the Central Intelligence Agency (CIA) backed ARPCT out of the city. ICU then persuaded and coerced other warlords to join their faction in order to expand her power base towards Puntland from Jubaland.[15] The ICU's growing power base and militancy led to increasingly open warfare between the Islamists and the other factions of Somalia, including the Puntland and Galmudug Forces.[16] Later in the year, the militant wing of the ICU and TFG forces fought in the Battle of Baidoa, Bandiraley, and Beledweyn until December 2006.

In January 2007, the US intervened militarily in Somalia by conducting airstrikes against Islamist positions in Ras Kamboni. This was part of efforts to capture or kill al-Qaeda operatives embedded within the ICU forces. No sooner had the ICU been routed from the battlefield than their troops dispersed to begin a guerrilla warfare against Ethiopian and

[12] Pius T. Migue, Oscar M. Paul M Oluoch, Charles O. Imbiakha, Daniel M. Mugoro and David O. Kwach, *Operation Linda Inchi: Kenya's Military Experience in Somalia*, (Nairobi, Kenya Literature Bureau, 2014), 42
[13] International Crisis Group, *Biting the Somalia Bullet,* 2.
[14] Ibid, 12.
[15] Michael Van Notten, "From Nation-State to Stateless Nation: The Somali Experiences", 24 April, 2000, Amsterdam, Avaailable at: http://www.liberalia.com/htm/mvn_stateless_somalis.htm Accessed on 5 May 2018.
[16] Van Notten, From Nation-State to Stateless Nation, 10.

Somali government forces simultaneously.[17] To ensure that the ICU were completely defeated, a proposed African Union Mission to Somalia (AMISOM) was authorized to deploy approximately 8,000 peacekeepers to Somalia. This mission widened the scope of countries that could participate over the earlier proposed mission led by IGAD nations. Even before AMISOM troops moved into Somalia, the Islamist group known as the Popular Movement in the Land of two Migrations (PRM), vowed to oppose the presence of foreign troops in Somalia.[18]

In January 2009, Ethiopian soldiers withdrew from Somalia, leaving behind an AMISOM force. The AMISOM contingent was to help the fragile coalition government and its troops enforce authority. Following Ethiopia's withdrawal from Somalia, the southern half of the country fell into the hands of radical Islamist rebels. The rebels established *Sharia* law in areas under their control. On 7 May 2009, the rebels attacked and captured parts of Mogadishu but failed to overthrow the government, which maintained control over a small section of the city.[19] Under the Islamic rebels, governance of Somalia became a tragedy in that dictatorial regime of Siad Barre became a lesser evil compared to those who replaced him.[20]

5.3 Mutative Nature of the Somalia Conflict

As pointed out earlier, the long civil war in Somali has constantly been changing. The study found that for over twenty eight years, the conflict has undergone through state collapse, failed peace talks, violent lawlessness and "warlordism'. It had mutated from a civil war to Islamic extremism. [21] The conflict had become globalized in early 2000s when Al-Qaeda operatives joined in.[22] According to Menkhaus, the Somali conflict could be disaggregated into four distinct crises. First, a protracted conflict as a result of state collapse and inability to form a central administration since 1991.[23] Any attempt to revive a centralized government have in most cases exacerbated violence. The country seemingly has refused peace. The

[17] Ibid, 11.
[18] Ibid, 11.
[19] Woodward, *Somalia and Sudan*, 375-481.
[20] Abdi, Ali A. "Education in Somalia: History, Destruction, and Calls for Reconstruction." *Comparative Education* Vol. 34, No. 3 (1998): 327-40.
[21] Ken Menkhaus, Somalia: "A country in Peril, a Policy Nightmare" Enough Strategy Paper, 3 September 2008, available at http://www.hiiraan.com/print2_news/2008/Sept?somalia_a_co accessed on 27 September 2008.
[22] Ken Menkhaus ed. 'State Collapse in Somalia: Second thoughts in *Review of African Political Economy*, Vol. 30, No 97 (The Horn of Conflict 2003), 405
[23] Ken Menkhaus 'State Collapse in Somalia, 405

unending spate of violence has made the country not only dangerous and insecure but also inaccessible to regional and international partners. It is for this reason that Menkhaus described the Somalia conflict as a nightmare which the world had grown numb to.[24]

The second perspective of prolonged conflict in Somalia according to Ken Menkhaus was not simply a product of diplomatic incompetence, missed opportunities, and lack of external intervention, but also an outcome spoilers out to sabotage the Somalia peace process and subvert the political transition. Spoilers are leaders and parties who believe the emerging peace threatens their power, world view, and interests and who use violence to undermine attempts to achieve it. The shift "from warlord to landlord" gave some actors greater interests in governance and security, but not necessarily in state revival. Certain political and economic interest groups within Somalia were profiteering in the state of anarchy. The spoilers endeavoured to perpetuate conflict in order to continue benefiting. Somalia's leaders have also myopic in their quest for power as demonstrated by continued support for clan system that has derailed all the efforts to establish western-styled democracy advocated by many.[25]

The third perspective of the nature of intermittent Somali conflict was due to the changing interest of various actors. In 1991 the country was in a genuine state of civil war, but since then the armed clashes have been localized. In the early 1990s the fighting was mainly inter-clan in nature, pitting large groups against one another, the Darood versus Hawiye. In the late 1990s the war fragmented further with deadly internal quarrels within the clan. The descending nature of conflict into lower levels of clan lineage had many implications. For one, the warfare had been localized to fighting between sub-clans. Secondly, there was increased insecurity, especially kidnapping for ransom.[26]

The fourth disaggregate crisis of the Somalia civil war, was the rise of category of lawless youth engaging in acts of criminality. Described by Menkhaus as 'mad max' anarchy of young, armed gunmen riding battlewagons and terrorizing citizens.[27] The collapse of state has created conditions ripe for impunity and lawlessness. The environment created was also

[24] Koen Vlasenroot, "A Societal View *on* Violence *and* War: Conflict and Militia Formation in Eastern Congo." in Kaarsholm P. (ed.) *Violence, Political Culture* & *Development* in *Africa*. (Oxford: Currey Publishers, 2004), 16.
[25] Ken Menkhaus 'State Collapse in Somalia', 405.
[26] Ibid, 405.
[27] Ibid, 405.

conducive for opportunistic criminality. Piracy and terrorism for instance emerged as consequences of this and posed a serious logistical problem in the Gulf of Aden, the waters of Yemen and the port of Mombasa.

In summary, the mutative nature of the civil war in Somalia, described by the four strands of conflict discussed above, have made conflict in Somalia to defy all foreign, diplomatic, military and state-building interventions and peace processes.[28] For instance the ICU was able to institutionalize the communities and constitute a legal system in 2006. However, moderate Somalis blamed ICU for implementing the sharia law to the letter in a polarized society before reconciliation was achieved.

5.4 The Origin and Rise of Al-Shabaab

The Republic of Somalia has seen militant groups come and go in its decades of political upheaval. The study however established that fundamental Islamic movements in Somalia emerged in late 1960s, when Somalia gained exposure to less moderate Islam in the Middle East. The motivation to fundamentalism was a reaction to Siad Barre autocratic leadership.[29] Barre constituted developmental dictatorship ideology of 'scientific socialism' which met strong opposition from Muslim leaders. In 1984, Barre executed ten prominent Muslim leaders and scholars and prosecuted hundreds who were opposed his regime.[30] The assassinations sheiks sparked criticism from Muslim leaders and major clan powerbrokers, who eventually deposed Siad Barre's regime.[31] The collapse of central government in Somalia, plagued the country into decades of anarchy. In this lawless conditions, two Islamist groups became prominent. The first was the Al-Salafiya Al-jaadid and the second was Al-Ithad Al-Islamiya.

These two groups were considered as the forerunners of al-Shabab, and the incubator for many of its leaders. The al-Ittihad al-Islami (AIAI) or "Unity of Islam" or Islamic Union (IU)

[28] Mark Bradbury and Sally Healy 'Whose peace is it anyway? Connecting Somali and international peacemaking' in *Accord an international review of peace initiative 1ssue 21* (London, Conciliation and Resources Publishers 2010), 77.
[29] Michael Walls, "State Formation in Somaliland: Building Peace from Civil War," Paper presented at 2008 International Peace Research Conference, at Katholieke University in Leuven, Belgium, July 14-19, 2008, 10.
[30] Abdurahman M. Abdullahi, "Perspective on the State Collapse in Somalia," in *Somalia at the Crossroads: Challenges and Perspectives on Reconstituting a Failed State* ed. Abdullahi A. Osman and Issaka K. Souaré, (London: Adonis and Abbey Publishers, Ltd., 2007), 44.
[31] Shaul Shay, *Somalia between Jihad and Restoration* (New Brunswick, N.J.: Transaction Publishers, 2008), 8.

was a militant Salafi group that was founded in 1983,[32] and comprised mainly of educated, young men who had studied or worked in the Middle East.[33] IU received significant funding and support from the Salafi/Wahhabi movement and the Saudi Arabia based charity organizations. Members of IU believed that political Islam was the only way to rid Somalia of its corrupt leadership. The group had two goals. First, to defeat Siad Barre's regime and to replace it with an Islamic state. Secondly, to unify the greater Somalia that included NFD of Kenya and the Ogaden region in Ethiopia.[34]

Led by Mohamed Farrah Aideed's rebel forces, the IU seized strategic sites such as seaports and commercial crossroads in Somalia.[35] It took control of Kismayo and Merka and established a seat of power at Bosaso from which they controlled the environs.[36] Its reign was in Bosasa was short lived. After the defeat, IU moved its base inland and controlled the town of Luuq near the border between Somalia, Ethiopia and Kenya.[37] The control of Luuq region was significant due to its close proximity to Ethiopia and Kenya. This was due to IU's commitment to create a Greater Somalia. Like other pan-Somalia movements, the IU claims stirred up separatist unrest, from 1996 to 1997. During this period, Ethiopia experienced a string of assassination attempts and bombings occasioned by the group.[38] The IU was defeated by Colonel Abdulahi Yusuf who was the president of the Northern Easter region, the group was finally annihilated by the Ethiopian military in the Gedo region.[39]

Though completely weakened by constant attacks from the Ethiopian forces, remnants of IU still maintained a safe haven in Luuq. In the early 2000s, a rift developed between IU's old guard, who had decided to create a political front, and younger members, who sought the establishment of a Greater Somalia. The hard-liners eventually joined forces with an alliance of sharia courts known as the Islamic Courts Union (ICU). The IU eventually disintegrated leading to the rejuvenation of the ICU. Thus, ICU was a second incarnation militant groups in Somalia. ICU was more militarily adept and capable of governing than the IU. Its leaders

[32] ICG, "Somalia: Countering Terrorism in Failed State" International Crisis Group (ICG), *Africa Report*, No. 45, (2002), 16.
[33] Menkhaus, *Somalia*, 56.
[34] Gregory A. Pirio and Hrach Gregorian, "Jihadist Threat in Africa," *Middle East Times*, 11 July 2006, 12.
[35] Menkhaus, *Somalia*, 56.
[36] Ibid, 57.
[37] Jan Ameen, "Somalia: Building Sovereignty or Restoring Peace?" in *Peacebuilding as Politics: Cultivating Peace in Fragile Societies*, ed. Elizabeth M. Cousens, *et al.* (Boulder: Lynne Rienner Publishers, 2000), 56.
[38] Menkhaus, *Somalia*, 60.
[39] Ruhela Pal Saita, *Somalia: From the Dawn of Civilization to Modern Times* (Jangpura, New Delhi, Vikas Publishing House PVT Ltd, 1994), 216.

were also more committed to a global jihadist ideology. It is for this reason that ICU drew more international attention than its predecessor. In June 2006, ICU won a series of strategic gains and seized Mogadishu and Kismayo. [40] It also took control of Beletuein through armed battles that saw the governor of Beletuein flee to Ethiopia.[41] Like IU, the rise of ICU was centred on its ideology of eyeing the Greater Islamic state in East Africa.[42] ICU also had focused leadership. Under Sheikh Hassan Dahir Aweys, ICU got connected to al-Qaeda movement. Indeed, the USA listed Aweys as a global terrorist in September 2001.[43]

Since ICU controlled most of Somalia's key strategic points, it was able to establish training bases in most parts of the country. By October 2006, ICU had sixteen operational terrorist training camps in Somalia.[44] These camps attracted, hundreds of trainee terrorists from Afghanistan, Chechnya, Iraq, Pakistan, and the Arabian Peninsula. The foreign volunteers also provided training in asymmetric warfare members of the ICU.[45] This gave ICU added military strength drawn from both Somalia and others parts of the Muslim world. The presence of foreign fighters in the ICU expanded ICU ambitions beyond Somalia. In the guise of fighting the Americans infidels, the ICU called on all Muslims to wage a holy war against any person or nation invading Somalia.[46]

International jihadist leaders took note of the steady rise and begun rallying support it by urging Muslims to fight against those opposed to Islam across the world. One supporter of ICU was Osama bin Laden who in June 2006 stated as follows:

> We will continue, God willing, to fight you and your allies everywhere, in Iraq and Afghanistan and in Somalia and Sudan, until we waste all your money and kill your men, and you will return to your country in defeat as we defeated you before in Somalia. We warn all the countries in the world from accepting a U.S. proposal to send international forces to Somalia. We swear to God that we will fight their soldiers in Somalia, and we reserve our right to punish them on their lands and every accessible place at the appropriate time and in the appropriate manner.[47]

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[40]Daveed Gartenstein-Ross "The Strategic Challenge of Somalia's Al-Shabaab Dimensions of Jihad" *Middle East Quarterly* (2009), 25-36.

[41] Sunguta West, "Somalia's ICU and Its Roots in al-Ittihad al-Islami," *Terrorism Monitor,* Aug. 4, 2006, 18.

[42] Ibid, 18.

[43] Executive Order 13224, U.S. Treasury Dept., Sept. 23, 2001.

[44] Partners International Foundation, "Initial Assessment on the Potential Impact of Terrorism in Eastern Africa: Focus on Somalia," *Partners International Foundation,* (Newtown, Conn., 2002), 48.

[45] Bruno Schiemsky, et al., "Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1676", U.N. Security Council Committee, New York, Nov. 2006, 42.

[46] Michelle Shephard, 'Back to Somalia: Asho's Sad End," *The Toronto Star*, 21 December 2008, 21.

[47] Osama bin Laden as quoted by Alex Wilner, "Is Somalia the Next Afghanistan?" *Atlantic Institute for Market Studies, Halifax*, Nov. 24, 2006.

This speech by the Al-Qaeda leader in support of ICU reassured the group. It also confirmed that the group had the backing of Somali and foreigners. While the IU had little chance to rule beyond Luuq, the ICU imposed *Sharia* laws on some of the key territories it controlled. The rules it imposed were far-reaching. It conducted mass arrests of citizens watching movies, abolished live music at weddings, killed several people for watching soccer, and arrested a *karate* instructor and his female students because the lessons involved constituted mixing of the sexes that was purportedly against the Islamic teachings.[48]

The strict implementation of *Sharia* law by ICU often alienated locals, though the group was also determined to win popular support and to defeat the warlords. Under the leadership of Hassan Dahir Awey, ICU sought to harness Islam and Somali nationalism by destroying Mogadishu warlords like Qanyare, Qebyid. Bashir Rage and Ohamed Dhere hence bringing relative peace and prosperity to parts of Somalia.[49] ICU emphasised on stability and the rule of law. It therefore, won the sympathy of the business community, which saw the ICU's strict rules as means to reduce security costs. ICU also abolished checkpoints established by the warlords which cost businesses several millions of dollars a year.[50] The Somali citizens who had lived under insecure, anarchic conditions benefited immensely under the ICU. The head of the ICU executive council, Sheikh Sharif Sheikh Ahmed later became Somali's president in spite of warnings from the UN's monitoring group on Somalia that the ICU was capable of turning Somalia into an 'Iraq-type' scenario replete with roadside suicide bombers and other forms of terrorist activities.[51]

In the late 2006, when the last stronghold of the Transitional Federal Government (TFG) in Baidoa was under siege, many TFG fighters defected from the government to the ICU. As result, the TFG was immensely weakened as ICU gained controlled. All that prevented the TFG governments' destruction were Ethiopian soldiers who launched counter attacks on ICU whenever the ICU assaulted Baidoa.[52] The Islamic Courts could not match Ethiopian airpower. The US also supported Ethiopia's intervention by sending armaments and

[48] Peter J. Pham, "Financing Somalia's Islamist Warlords" *World Defense Review*, 21 September 2006, 13.
[49] Cedric Barnes and Harun Hassan "The Rise and Fall of Mogadishu's Islamic Court", Chatham House Briefing Paper, AFP BP 07/02., April 2007, 115.
[50] Schiemsky, *et al*., "Report of the Monitoring Group on Somalia," 33.
[51] Bruno Schiemsky et al., Report of the Monitoring Group on Somalia to United Nations Security Council, July 17, 2007, 17
[52] Bill Roggio, "The Battle of Baidoa," *The Long War Journal*, Dec. 23, 2006.

personnel including helicopter gunships and elite Task Force 88.[53] After the Ethiopian invasion of Somalia, in 2006, the ICU ceased to exist and its members were either absorbed by TFG or joined Al-Shabaab that rose to fill the vacuum created by collapse of ICU.

Al-Shabaab (aka Shabab, aka, the Youth, aka Mujahidin Al-Shabaab Movement, aka Mujahidin Youth Movement, aka MYM, aka Al- Shabaab Al-Islam, etc.), emerged from ICU, which split in 2006 during the course of the second Ethiopian insurgency against the rag tag militia.[54]A clear break between Al-Shabaab and other insurgent groups came in late 2007 when the group boycotted the Asmara conference attended by groups opposed to global jihadist ideology earning it acceptance by Ayman al-Zawahiri.[55] As an offshoot of the ICU, the group then evolved in phases. The first transformation was ideological. Though all these groups embraced Islamic law, a significant faction of IU and ICU leaders had a vision that focused on Somalia as a nation as opposed to Al-Shabaab that had officially proclaimed as a branch of Al-Qaeda.

The second phase involved the group establishing affectionate relations with Al-Qaeda. According to Hansen, Al-Shabaab made a self-proclamation as a branch of Al-Qaeda.[56] The proclamation confirmed fears that Bin Laden's organization had a long presence in Somalia.[57] Mingst argues that the Al-Qaeda terror movement dispatched trainers to liaise with the Islamic Union prior to the 1993 battle for Mogadishu when 18 US soldiers were killed.[58] Despite that connection, Al-Shabaab emerged as a distinct entity, whose leaders reached out to Al-Qaeda's senior leadership. The chief military strategist of the Al-Shabaab for instance, openly declared his allegiance to Bin Laden.[59]

The third reason for prominent rise of Al-Shabaab was the groups' opportunity and ability to govern. Hansen has provided a detailed account is their art of governance, in the field of

[53] Daveed Gartenstein-Ross, "Blackhawk Up," *Weekly Standard*, January 29, 2007.
[54]Pius T. Migue, Oscar M. Oluoch, Paul M. Njuguma, Charles O. Imbiakha, Daniel M. Mugoro and David O. Kwach, *Operation Linda Inchi: Kenya's Military Experience in Somlia*, (Nairobi, Kenya Literature Bureau, 2014) p. 42
[55] Stig Jarle Hansen (Ed.), *Al-Shabaab in Somalia: The History and Ideology of a Militant Islamist Group*, (Oxford University Press, New York, 2013), 208.
[56] Ibid, 208.
[57] Karen A. Mingst and Margaret P. Karns, *The United Nations in the 21st Century*, 3rd ed. (Boulder: West view Press, 2006), 100.
[58]Karen A. Mingst and Margaret P. Karns, *The United Nations in the 21st Century*, 100.
[59] Nick Grace, "Al-Shabaab Reaches Out to al Qaeda Senior Leaders, Announces Death of al Sudani," *The Long War Journal*, Vol, 2, No. 2, (2008), 112 – 126.

taxation, economy or justice. Hansen argues that Al-Shabaab reformed governance beyond its predecessors.[60] Though dedicated to implementing Sharia law and to dispense justice, the Islamic Union could not control any territory for a sustained period apart from the town of Luuq. In contrast, Al-Shabaab came to control broad swaths of Somalia. Although, Somalians were not especially religious and adhere to the moderate Sufi branch of Islam, the courts were largely welcome in Somalia as a result of disappearance of the police and judicial System.[61]

The failure of the clan system in Somalia is also stated as another reasons for the growth of Al-Shabaab. Hasen notes that nationalism under the clan system had failed because the warlords were unable to maintain law and order and thus posed a sorry state of the country as collapsed state. The sorry state of affairs gave rise to various divisions among the local population. When people did not get the sense of security from their own rulers, they turned to the religious institutions for protection and justice. Hence the rise of groups that preceded Al-Shabaab. With local and international backing the group expanded and built military capacity which incorporated foreign fighters. They expanded their control in almost all directions from court to police to aid agencies as well as intelligence.[62]

5.5 Al-Shabaab at Glance

The history of Al-Shabaab is documented by Daveed Gartenstein-Ross.[63] In this section, the study in a glance explores the history and strategy of the group. Al-Shabaab is a multi-clan terrorist group, which emerged to occupy the 'power vacuum' left by the ICU after its defeat by Ethiopian forces in 2006. At inception the group comprised of approximately 6,000 armed and salaried militants in Somalia.[64] This figure may be inaccurate owing to the group's secretiveness and the fact that the group recruits informally and clandestinely in other countries. Its fighters are drawn from Somalia and from other countries across the globe. Largely from Muslim dominated regions of East Africa and the Gulf states. The Somali diaspora in the US and Europe also provide rich recruitment enclaves for Al-Shabaab.[65] Al-Shabaab ability to blend both local Somalis and several foreign fighters gave the group

[60] Hansen (Ed.), *Al-Shabaab in Somalia*, 208.
[61] Rob Wise, "Al-Shabaab", *AQAM Futures Project Case Studies* Series No.2, (Centre for Strategic and International Studies, 2011), 6.
[62] Hansen (Ed.), *Al-Shabaab in Somalia*, 208.
[63] Gartenstein-Ross, "The Strategic Challenge of Somalia's Al-Shabaab dimensions of Jihad", 28.
[64] Andrew Lipmann, "Violent Islamist Extremism: Al-Shabaab Recruitment in America", Report on A Hearing before the Senate Homeland Security and Governmental Affairs Committee, National Counterterrorism Center USA. 2009, 16.
[65] Ibid, 13.

strategic advantage of the local terrain in asymmetric warfare. The fighters are very experienced in asymmetrical warfare and use a wide array of weaponry. They operate in small clandestine units of less than nine but occasionally mount attacks in battalions of more than 1000 troops.[66]

Originally, the Al-Shabaab had a domestic agenda of creating an Islamic Somali state governed by Sharia Law. Its aim was to topple the Transitional Federal Government (TFG) which the group termed a foreign imposition. Al-Shabaab employed various tactics including brutal beheading, assassination and suicide bombing with targets ranging from churches, mosques and government installations inside and outside Somalia. They also practised and enforced radical forms of *Sharia* law, including forcing women to wear *Burqas* and banning the wearing of bras. It also compelled men to grow beards and to wear ankle-short trousers. Al-Shabaab banned music, dancing, watching of football games and movies. Recently they banned the making and sale of triangular-shaped popular snack, *samosas* which they considered un- Islamic.[67]

As opposed to the ICU and the earlier groups that targeted Ethiopia, Al-Shabaab fronted attacks against Kenya. The features of Al-Shabaab are well captured in the KDF war diary, and a book co-authored by Migue *et, al* who describe Al-Shabaab as follows:

> Al-Shabaab had attracted hundreds of foreign fighters into Somalia. It aggressively expanded its territorial ambition and established relations with Al-Qaeda network. Al-Shabaab controlled more territory than any other group in Somalia including TFG, semi-autonomous Puntland and the self-declared independent Somaliland. It was a well-organized convectional force with leadership structure, military capacity, financial base, intelligence wing, air arsenal power and a semblance of navy at its infancy conducting piracy in the waters of the Indian Ocean.[68]

In this book Al-Shabaab is depicted as a well-devoted group with viable military capability and a clear chain of command. The group's diverse and elaborated conscription processes

[66] Ahmed A. Hassan, "Al-Shabaab Threat Clouds the Horn of Africa" *Wardheer News* (Somalia), February 3, 2009.
[67] Shamsia Ramadhan, ed. "Somalia in the Eye of Terror", *Horn of Africa Bulletin*, (Life and Peace Institute, 2011), 11.
[68] Pius T. Migue, Oscar M. Oluoch, Paul M. Njuguma, Charles O. Imbiakha, Daniel M. Mugoro and David O. Kwach, *Operation Linda Inchi: Kenya's Military Experience in Somlia*, (Nairobi, Kenya Literature Bureau, 2014), 23.

makes it a global melting pot of extremist Islamic elements. It has also boosted its strategic outlook, enabling it to control a number of territories.

Ideologically, Al-Shabaab is founded on Islamic fundamentalism. As illustrated by a number of scholars, Al-Shabaab represented a global jihadist vision. Like the IU and ICU, Al-Shabaab contented that religious governance was the solution to Somalia's ills and anarchy. While addressing a rally in the Southern city of Markka, Sheikh Mukhtar Robow, the Al-Shabaab spokesmen, emphasized the importance of complying with Islamic law. He urged members of Al-Shabaab to be committed to Islamic law as a means of distinguishing Al-Shabaab from the Alliance for the Re-liberation of Somalia. He explained that Al-Shabaab had boycotted the Asmara peace conference because the organization declined to work with the non-Muslim Eritrean state.[69] Sheikh Mukhtar Robow further argued that cooperation with "infidels" would corrupt the course of jihad. He cited that Al-Shabaab declined to attend the Eritrean conference because Eritrea was after mediation that would have left members of the ICU in the lands of the *Kuffaar*. He added that, Al-Shabaab was opposed to the ICU's clan-backed politics since Al-Shabaab is comprised of many different tribes as such it undermined the country's clan structure.[70].

Al-Shabaab was also against Western civilization and Christian values. In 2011, the militant group banned the teaching of Geography and History and toured schools in Middle Shabelle, including Jowhar, to donate new textbooks in Arabic ostensibly to replace those of Geography and History. In early 2012, the Al-Shabaab group in Lower Juba region banned learning of English in schools. The Islamist group also prohibited ringing of bells in schools. It claimed that ringing of bells promoted Western and Christian values. [71]

The study also noted that Al-Shabaab established links with other terror cells. Al-Qaeda in particular never ignored al-Shabaab's overtures. It also reciprocated the group's actions. The Al Qaeda first took note of the developments in Somalia in 2006 when the Islamic Courts captured Mogadishu. This came at the time when Ethiopia intervened to push back the ICU's advance on Baidoa, al-Qaeda's leader Ayman al-Zawahiri soon appeared in a web-based video and called for Muslims to fight the Ethiopians. He stated:

[69] Amriki, "A Message to the Mujaahideen," 4.
[70] Ibid. 4.
[71] Mohamed Shill, "Al – Shabaab Ban Teaching of Geography and History" *Homeland: Society*, October 16, 2011.

> I appeal to the Lions of Islam in Yemen, the state of faith and wisdom. I appeal to my brothers, the lions of Islam in the Arab Peninsula, the cradle of conquests. And I also appeal to my brothers, the lions of Islam in Egypt, Sudan, the Arab Maghreb, and everywhere in the Muslim world to rise up to aid their Muslim brethren in Somalia.[72]

On 5 July2007, al-Qaeda released a video that described Somalia as one of the three main theatres for al-Qaeda's mujahedeen along with Iraq and Afghanistan. Al-Qaeda leaders called their Al-Shabaab counterparts brothers.[73]

Osama bin Laden also issued a video devoted to Al-Shabaab in March 2009, entitled "Fight on, Champions of Somalia," Bin Laden explicitly endorsed Al-Shabaab and denounced the Alliance for the Re-liberation of Somalia, saying that when NATO supported former president Abdullahi Yusuf, the mujahedeen were not fooled. In bin Laden's view, Sheikh Sharif Sheikh Ahmed -who had been an ICU official before becoming ARS's leader had gone against Islam.

In terms of strategy, Al-Shabaab had robust strategic outlook. Al-Shabaab fighting force has over the years demonstrated that the group is capable of conducting combat operations. Its strategy is implemented under strict version of *Sharia* law. As militant group, its military capacity is bolstered its operation of terrorist training camps inherited from the ICU. Its strategy is also enhanced by many training camps across the world from which many ardent fighters graduated. Its ability to garner massive recruitment had made the group a significant security concern to several countries in the Horn of Africa. Given the relationship with Al-Qaeda, Al-Shabaab enjoyed direct connections to transnational terrorism.

Al-Shabaab's training doctrine encompassed both military and ideological training. In 2006, Frederick Nzwili, reported that training camps ran by General Aweys and Al-Shabaab founder, Aden Hashi Ayro included indoctrination into fundamentalist ideology. The indoctrination aimed at advocating jihad in Islamic states.[74] The *Economist* highlights the highly fundamentalist environment in which Al-Shabaab trained. Al-Shabaab recruits were indoctrinated to disavow Western music, and videos. They were instead introduced to

[72] Frederick Nzwili, "Somalia Mujahedeen Confirm al-Qaeda Suspect Abu Talha al-Sudani Killed Last Year" *Terrorism Focus.*, (Washington, D.C: Jamestown Foundation, 2008), 26. Available on http//www.jamestown.org.
[73] Ibid, 26.
[74] Frederick Nzwili, "Leadership Profile: Somali's Islamic Court Union," *Terrorism Focus*, (Washington, D.C Jamestown Foundation, 2006), 66.

cigarettes smoking and chewing of *khat* to get mildly high.[75] Under the influence of *khat*, the recruits were then indoctrinated to kill in the spirit of martyrdom expecting reward after death.

The Al-Shabaab rely on the strategy of intimidation by disheartening Somali government and other intervening forces. They also deploy propagandist warfare by dropping leaflets warning locals against negotiated or reconciled resolution of the conflict. They also have elaborate media propaganda. The militia also uses guerrilla tactics such as attack using small arms, remote-controlled roadside bombing and assassinations. For mobility, Al-Shabaab rely on "technical" converted four-wheel drive Jeeps and Land cruiser mounted with anti-aircraft machine gun. Their weapons include: AK47, G3, M16, hand grenades Improvised Explosive Device (IED), machine guns, recoilless cannons, Rocket Propelled Grenades (RPG), Anti-tank rockets and 60 MM Mortar.[76]

Al-Shabaab has a tight command and control structures across Somalia. The regional command post are in Mogadishu, Hiraan, Bay and Bakool, Middle and Lower Shabelle, Gedo, Middle and Lower Juba and Kismayu among others. Each regional command post focuses on key target. For instance, the Mogadishu command centre targets Mogadishu airport, strategic highways, seaports and AMISOM headquarters. Al-Shabaab's decision-making structure is centralized and led by a 10-member governing council or *Shurah*.[77]

The strictness of al-Shabaab's *Sharia* rulings can be seen in the laws that it implemented and the punishments it meted on alleged criminals. Amnesty International claimed a 13 year-old girl, rape victim, Aisha Ibrahim Duhulow was executed in public by the Al-Shabaab militants on 27 October 2008 in the southern port town of Kismayo.[78] In late 2008, as Al-Shabaab seized Markka. Al-Shabaab leaders then informed residents that cinema houses and music recording studios were banned. It also warned that action would be taken against anyone found on the streets or opening their shop during prayer times. In January 2009, in the same city, Al-Shabaab executed a politician for apostasy, alleging his cooperation with Ethiopian

[75] Pitts, Damien Evan, "New Destinations of Islamic Fundamental Terrorism: The Rise of Al Shabaab." Master's Thesis, University of Tennessee, 2015, 8.
[76] Migue et al. *Operation Linda Inchi,* 27.
[77] Task Force on Terrorism and Ideology "Defeating Terrorists, Not Terrorism: Assessing U.S. Counterterrorism Policy from 9/11 to ISIS" (2017)
[78] Somali Rape Victim Stoned to Death was 13 – CBS News, Available on. Accessed on 9 July 2019 *https://www.cbsnews.com/news/somali-rape-victim-stoned-to-death-was-13/*

forces. On 28 January 2009 the militia amputated the hand of unnamed man in Kismayo convicted of stealing fishing nets. In February the same year, they sentenced to death a number of youths caught using narcotic drugs in Baidoa to public lashings.[79] In addition to Sharia, Al-Shabaab has implemented other rules designed to help it maintain power. It has implemented rules directed at journalists that required that no reports could be disseminated of which the Al-Shabaab administration was unaware of. It also insisted that only 'factual' news be presented and that nothing detrimental to the practice of *Sharia* could be reported. Al-Shabaab also insisted that no music could be played on the radio as this encouraged sin in the World.[80]

Al-Shabaab's rules have been enforced not only by administrative methods but also through intimidation. In 2008, London's *Sunday Times* reported that Al-Shabaab was shutting down business sectors in Mogadishu by carrying out selective attacks and sending 'night letter' warnings to other business owners.[81] In January 2009, for example, Kismayo residents rioted after Al-Shabaab transformed a soccer stadium into a market.[82] Residents of Somalia for long expressed displeasure over Al-Shabaab in employing this strategy.

Like any other insurgent organization, Al-Shabaab has a strong economic and financial resource base. Financial resources are critical to the group's survival and the accomplishment of its set goals. Al-Shabaab funding is locally sourced from support groups including mosques. The group benefited from several sources of income over the years, including other terrorist groups; piracy; kidnapping; and extortion of local businesses, farmers, and aid groups.[83] Other major sources of income emanated from the control of the strategic parts of Mogadishu and the seaport of Kismayo. The group also received funds from tax revenues from Bakarah market, taxation of goods, and from levies imposed on *khat* and other narcotics. It also sourced funds through charcoal exports. Al-Shabab also relies on smuggling contraband sugar across the border into Kenya, bringing in tens of millions dollars annually. The group also received financial support from external sources from sympathizers in the

[79] "Somalia: Al-Shabaab Bans Films, Music in Southern Port City of Marka," *Gobolada.com*, November 13, 2008,
[80] "Somalia: Al-Shabaab Bans Films, Music," Nov. 2008, 23.
[81] Daveed Gartenstein-Ross, "The Strategic Challenge of Somalia's Al-Shabaab Dimensions of Jihad", *Middle East Quarterly* Fall 2009, pp. 25-36
[82] Michael Weinstein, "Somalia: Ideological Diversity in Country's Islamic Courts Movement," *Garowe Online*, Sept. 25, 2008.
[83] Migue, et al., *Operation Linda Inchi*, 28.

Gulf States, the Horn of Africa and certain segments within the Somali in diaspora. [84] It is believed that Al-Qaeda provided considerable financial and operational support to Al-Shabaab.

5.6 Factors that Warranted the *Operation Linda Nchi*

There were several reasons as to why the military launched *Operations Linda Nchi*. Figure 5.1 below presents the views of the informants about the stated reasons for interventions.

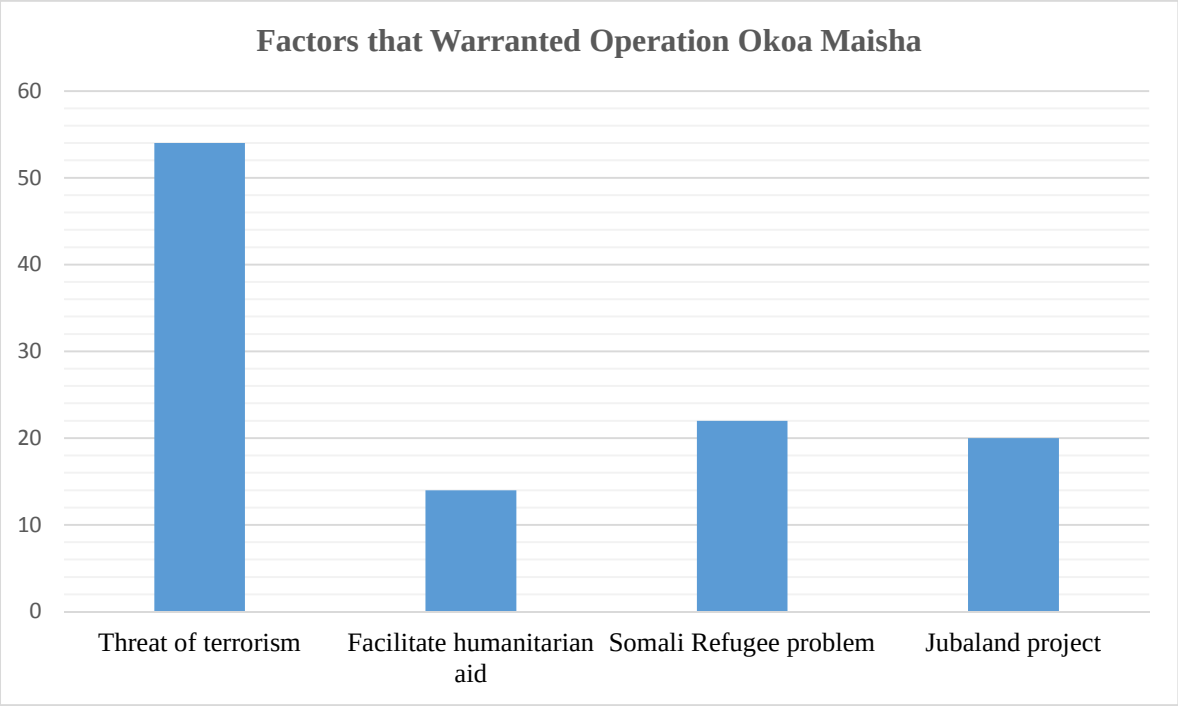

Figure 5.1: Factors that Warranted the *Operation Linda Nchi*
Source: Researcher

In Figure 5.1, 54% of the informants stated that the main reason for the intervention was the threat of terrorism perpetuated by Al-Shabaab that owes her origin to AIAI and IU. The study found that since the collapse of central government in Somalia in 1991, these extremist groups had facilitated terrorist attacks in the region.[85] These militant groups were also linked to Al-Qaeda. The groups' strategy relied upon use of intimidation and violence to undermine the Somalia governments and its regional supporters. The militants killed government officials working to bring peace in Somalia and humanitarian workers. The groups also

[84]Migue, et al., *Operation Linda Inchi*, 27.

[85] International Crisis Group. Africa Reports No. 95, *Counter-Terrorism in Somalia: Losing Hearts and Minds?* 11 July 2005; and No. 100, *Somalia's Islamists*, 12 December 2005; and Briefing No. 74, *Somalia's Divided Islamists*, 18 May 2010.

claimed responsibility for several high-profile bombings and shootings in both Somalia and Ethiopia.[86] The invasion of Ethiopia in Somalia led to infiltration of the militants into Kenya where they built considerable infrastructure for recruitment and fundraising among the Somali populations in Nairobi, Mombasa and North Eastern Province.[87] Its members secretly travelled between Kenya and Somalia to disguise arrests. Some of their leaders took part in the 7 August 1998 bomb blast targeting the US embassy in Nairobi and Dar es Salaam in which 225 were killed and over 4,000 wounded.[88]

Although increased international attention after the 1998 US embassy bomb blast in Nairobi led to the capture or killing of a number of the group's leaders, Al-Shabab-Al-Qaeda operatives remained a serious threat to Kenya. On 28 November 2002, it attacked Paradise hotel, a beach front lodge in Kikambala, Kenya. The hotel was owned and frequented visited by Israeli tourists. The attack killed 15 and injured about 80 people from different nationalities. On the same day, at about 5:00 p.m. East African time, Al-Qaeda cell in East Africa attempted to shoot down an Arkia airline flight 582, a Boeing 757-300 aircraft departing Mombasa's Moi International Airport for Tel Aviv. On board the aircraft were 263 passengers and 10 crew who narrowly missed two surface-to-air missiles fired at them.[89]

Unlike the AIAI and the ICU, which were relatively calm and operated within Somalia, the Al-Shabaab attacks go beyond Kenya to the rest of the East African region. On 11 July 2010, Al-Shabaab bombed Kampala, killing 85 civilians and injuring dozens of others. This confirmed longstanding fears that the group could become a regional threat. The attack came after several explicit warnings that it would "bring war to Uganda and Burundi" to revenge for their role in AMISOM. According to Al-Shabab, the attack on Kampala was in retaliation for the civilians killed by AMISOM shelling in Mogadishu orchestrated by Uganda troops. Besides the Kampala attack, Al-Shabaab also fired mortars from civilian-occupied areas into AMISOM bases on the same day.[90]

The second factor that warranted Kenya's military intervention was the desire to create a conducive environment for humanitarian aid in Somalia. This accounted for 14% of the

[86] International Crisis Group, Africa Reports No.95, 79
[87] International Crisis Group, Africa Reports No.95, 79
[88] International Crisis Group, Briefing No.85, 43
[89] International Crisis Group, Africa Report, No.79, 8.
[90]United Nations "Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853", 2010, 55-56.

informants. The intervention was hoped to reduce the influx of Somalia refugees fleeing dire humanitarian condition in their country. The United Nations in 2010 had declared that there was a famine in Lower Shabelle and Bakool regions and near-famine conditions throughout southern Somalia.[91] This declaration sparked international attention to the plight of the people facing starvation in Somalia. The wisdom to send humanitarian aid to Somalia was however jeopardized by al-Qaeda-affiliated militant groups opposed to it. The dilemma, was not simply a matter of politics or preference, but rather, one of practicality because Al-Shabaab controlled most of southern and central regions of the Somalia. The militants had banned international aid agencies from operating within territories under its control. They enforced the ban by raiding local offices to destroy foodstuffs and medical supplies. The group also kidnapped aid workers.[92]

Earlier on, Al-Shabaab had established the office for the Supervision of the Affairs of Foreign Agencies (OSAFA) in July 2009. This body monitored the movements of all non-governmental organizations (NGOs) and international organizations that operated within Somalia.[93] OSAFA ordered and closure of the United Nations Development Program (UNDP), the United Nations Department of Security and Safety (UNDSS), and the United Nations Political Office for Somalia (UNPOS) for engaging in activities "hostile" to Islam.[94] Following the issuance of the ban on the UN agencies in Somalia, Al-Shabaab militants raided UN offices in Baidoa and in Wajid. The UN was forced to suspend its operations in these cities for security reasons.

The severe conditions in southern Somalia drove families to seek assistance outside Al-Shabaab controlled areas. The UN had declared the drought as one of the worst in 60 years. The WFP estimated that 2.85 million Somalis needed emergency assistance with 1.65 of them living in Al-Shabaab-controlled territory.[95] Reports also indicated that close to 3,500 Somali refugees entered Kenya in a day. [96] Al-Shabaab had prevented some of these families

[91] Katherine Zimmerman, "Al - Shabaab History with Humanitarian Assistance", 2011, 3.
[92] Ibid, 3.
[93] "Shabaab Restricts NGO Activity; Closes UN Offices," *Site Intelligence Group*. Available at on http://www.criticalthreats.org -27-2011.
[94] "Shabaab Bans UN Mine Action," Site *Intelligence Group*, December 18, 2009.
[95] "Somalia Emergency Operation 200281," *UN World Food Program*, July 2011. Available: http://one.wfp.org/operations.pdf
[96] Horn of Africa Drought Crisis Situation Report, No. 5, *UN OCHA*, July 21, 2011. Available: http://reliefweb.int/sites.pdf

from leaving its controlled territories.[97] Al-Shabaab spokesman Sheikh Ali Mohamed Rage, also known as Ali Dhere, banned the entry of humanitarian agencies into famine-afflicted regions arguing that the declaration of a famine was part of a political propaganda to discredit the Al-Shabaab administration.[98] Another Al-Shabaab leader, Sheikh Mukhtar Robow Ali, aka Abu Mansur, accused the WFP of destroying the local agriculture by distributing aid.[99] This criticism came at a time the WFP was the only aid agencies permitted to operate in Al-Shabaab-controlled territory. The WFP also suspend its operations in southern Somalia citing security reasons.[100]

Al-Shabaab's attacks on aid workers and agencies' offices made most of southern and central parts of Somalia one of the most hostile environments for humanitarian activities in the world. The WFP reported that 14 of its employees had been killed by Al-Shabaab between 2008 and 2010.[101] Al-Shabaab also used the presence of aid agencies to its advantage. In some instances, the group benefited financially through fees extracted for security assurances or from ransom paid for release of the kidnapped aid workers. In other instances, the families of Al-Shabaab militants, were registered as internally displaced persons and received food rations.

The third reason for intervention revolved around the Somali refugee problem and it accounted for 22% of the respondents. The study found that at the time of intervention, Kenya hosted approximately 320,000 refugees from Somalia.[102] This number of refugees was a burden that exerted an enormous toll on locals and the government. The Kenyan government was deeply alarmed at the ever increasing population at the Dadaab refugee camp. The refugees did not only get their way into refugee camps but also sneaked into urban centres where they passed as Kenyan Somali. This made the government uneasy about the growth of the native ethnic Somali population in Kenya. More so, the government was

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[97] "Al Shabaab Blocks Drought-Hit People from Fleeing to Kenya," *Shabelle Media Network*, July 9, 2011. Available: http://allafrica.com/stories/201107110361.html

[98] Hamsa Omar, "Somali Militants Reject Aid as Thousands Seek Shelter in Nation's Capital," *Bloomberg*, July 23, 2011. Available: http://www.bloomberg.com/news/2011-07-23

[99] "Al-Shabaab Bans WFP Food Distribution in Southern Somalia," *Garowe Online*, November 2, 2009. Available: http://www.garoweonline.com

[100] Ibrahim Mohamed, "Somali Rebels Order WFP to Halt Relief Food Imports," *Reuters*, November 25, 2009. Available: http://uk.reuters.com

[101] UN, "UN Security Council Report of the Monitoring Group of Somalia", March 10, 2010. Available: http://www.un.org/sc/committees/751/mongroup.shtml

[102] International Crisis Group, "Kenya's Military Intervention in Somalia", International Crisis Group, Africa Report No. 184, February 2012, 6.

worried over the increased economic clout of Somalis in Eastleigh estate in Nairobi. The government was also aware of a growing anti-Somali sentiments in the major urban centres.[103]Documentation of refugees had become a big problem. A large but unknown number had obtained Kenyan identity cards and passports illegally. Largely, due to corruption, but also because it is often difficult to distinguish Kenyan Somalis from Somalia Somali.[104]

Just as Franco Mitterrand, the former French president, once said all countries have a threshold of tolerance (*seuil de tolerance*) when it comes to the number of foreigners within their borders.[105] Kenya felt "chocked" by the Somali refugees. But as a signatory to the UN refugee convention, which bars forced return of refugees, Kenya had no option than open her border to hordes of refugees. The military intervention was therefore undertaken to establish a "safe zone" to which the Somali refugees could return.[106] Through the *Ugali* strategy the political objective of the *Operation Linda Nchi* was to settle refugees on safe places inside Somalia.[107]

The fourth argument given for the intervention was the need to create a peaceful state of Jubaland. For years, Kenya was passive in the face of spill over from Somalia's two decade conflict.[108] Unlike Ethiopia, Kenya did not try to shape Somali political developments to advance its interests through sponsorship of local militia along the border to create a buffer zone, or to engage in cross-border military operations against armed groups.[109] Instead Kenya sponsored a lengthy Somali peace process that culminated in the creation of the Transitional Federal Government (TFG). Kenya subsequently became a strong diplomatic supporter of the TFG, which earned Al-Shabaab's wrath. Al-Shabaab occasionally issued threats and attacked Kenya. Kenya did not act through military operation until 2010 when the costs of the Somali crisis mounted on Kenya.[110]

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[103] Yusuf Ghazzali, "Kenya: Don't use *Linda Nchi Operation* to Demonize Somalis", *The Star*, October 26, 2011.
[104] International Crisis Group Briefing No. 85, *Kenyan Somali Islamic Radicalization*, op. cit., 8.
[105] Franco Mitterrand quoted in James Hollifield 'Ideas, Institutions and Society: on Limits of Immigration Control in France, December 1997.
[106]African Blog "Kenya, Jubaland, and Somalia's Refugees: No Quick fixes", *Africa blog*, (London; London School of Economics, 2011), 11.
[107] Cyrus Ombati, "Relocation of Somali Refugees from Dadaab to start 'soon'", *The Standard*, 22 January 2012, 16.
[108] Ken Menkhaus, "After the Kenyan Intervention" *Enough project Paper*, 12 January 2012.
[109] Ibid, 4.
[110] Ibid, 3.

Disappointed by the performance of TFG and increased consolidation of the Jubaland region by Al-Shabaab, Kenya hatched a plan to create friendlier buffer zones along its borders. In doing so, Kenya was borrowing a leave from the Ethiopia's "containment" policy on Somalia. Ethiopia had executed this strategy by cultivating and maintaining local Somali allies along its long border with Somalia. Kenya therefore, made alliances with militant groups rivalling Al-Shabaab. The Kenyan government succeeded in encouraging some of these Somali rivals to work together in the "Joint Task Force" operated with Kenyan forces in the Juba regions. Since 2011, Kenyan troops have worked with at least six Somali allies namely; Ras Kamboni; the TFG; the self-declared "Azania" regional administration; the Isiolo militia; the al-Sunna Wal Jamma militia; and various Gedo region clan militias. The Jubaland project included training some 2,500 militiamen and establishing an administrative structure headed by Mohamed Abdi Mohamed then the TFG Defence Minister.[111] Yet, the project was neither entirely Kenyan-conceived.[112]

The Kidnappings of foreign nationals inside Kenya was yet another and the immediate reason for intervention. Although a military intervention was premeditated, the timeline for KDF intervention was accelerated by a string of cross-border kidnapping targeting Western tourists in the Kenyan coast and aid workers in the Dadaab refugee camp. Tourism, a key industry for foreign exchange was threatened. Above all Nairobi hosts a large UN presence and Western interest that would have been jeopardized by terror attacks. Therefore, when several Europeans citizens were seized in the Lamu area in September and October 2011, tourism industry was hit hard. The last stroke that warranted swift military operation appeared when two Spanish aid workers with Medicines Sans Frontiers (MSF) were kidnapped in a Dadaab refugee camp on 13October 2011. Two days later, Kenyan troops swung into action and crossed the border into Somalia.[113]

5.7 The *Operation Linda Nchi*

The *Operation Linda Nchi* was jointly announced by the Ministers for Internal Security and Defence on 16 October 2011. However, Kenyan troops onslaught towards and into the Somalia boarder commenced on 14th October 2011. The hasty intervention revealed that the

[111] International Crisis Group, "Kenya's Military Intervention in Somalia", 6.
[112] Robert Young Pelton, "Kenya Modified Invasion to suit US Concerns", *Somalia Report* 11 November 2011, 7, Available at: http://www.somaliareport.com, Accessed on 7 March 2019.
[113] Robert Young Pelton, "Kenya Modified Invasion to suit US Concerns", 6.

military command had not had no prior consultation with other senior state officials.[114] Most of the countries in the region, including Kenya allies such as Ethiopia, were also taken by surprise. The hasty decision was also vivid as President Mwai Kibaki finally informed the public that Kenya was at war two days later after the cabinet's approval of the intervention.[115] Furthermore, Kenya had not carried pre-deployment training of her forces before the operation. Pre-deployment training is mandatory in all overseas missions including peacekeeping operations.[116]

The diplomatic row between the countries in the onset of the *Operation Linda Nchi* showed failure of international diplomacy for several reasons. First, ordinarily, such operation should have been preceded by regional and wider shuttle diplomacy to obtain moral and material support. Instead, the operation was hurriedly launched before the Ministry of Foreign Affairs engaged with relevant stakeholders. Kenya's shuttle diplomacy went into action days after the operation began.[117] Secondly, the clumsiness with which the Kenya and Somali administrations handled the operation revealed lack of diplomatic consensus. Mogadishu denied Nairobi's claim of prior consultations.[118] It was until 18 October 2011 after Foreign Minister Moses Wetang'ula and Defence Minister Yussuf Haji met President Sheikh Sharif Ahmed and Prime Minister Abdiweli Mohamed Ali that the deal was sealed. In this consultation, Kenya obtained a joint declaration that the military action should be conducted together with the TFG. On 24 October, the Somali president appeared to be in breach of on the agreement for fear of being seen to support foreign intervention. He made confusing and contradictory statements that appeared not to support the intervention. He stated that although he welcomed Kenya's support, he was against the presence of the military.[119]

After the diplomatic row, TFG began to support the operation. It deployed an estimated 2,500 SNA soldiers along Jubaland. Majority of these soldiers had been trained and equipped form Kenya. To win regional support, the Kenan Foreign Affairs minister travelled to Addis Ababa to obtain the belated support of Ethiopia and the chairperson of the African Union (AU). As a result of the Kenya military intervention, Intergovernmental Authority on Development

[114] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.
[115] Peter Leftie, "Kenya, Somalia Seal Pact to Hit Al-Shabaab", *Daily Nation*, 19 October 2011, 19.
[116] Oral Interview, Major John Kibett*, Defence Headquarters, 10 October 2018.
[117] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.
[118] Peter Leftie, "Kenya, Somalia Seal Pact to Hit Al-Shabaab", *Daily Nation*, 19 October 2011, 19.
[119] "Why Somali President wants Kenya Army Out", *The Star*, 27 October 2011, 6.

(IGAD), convened an extraordinary meeting on 21 October 2011 to deliberate over the intervention. At the end of the meeting, IGAD issued a communiqué that welcomed the operation. It also supported the 'up-scaling' of the security operations.[120]

The unilateral decision by Kenya to intervene in Somalia also took the Western powers by surprise who questioned the operation's feasibility. It also expressed worries over Kenya's capability to sustain the operation. In order to win international support for the operation the Kenyan Prime Minister Raila Odinga's visited Israel in early November 2011 to seek counter-terrorism support. This became a diplomatic blunder that antagonized many Muslims states while Al-Shabaab used the episode to set up a propaganda against the Kenya operation. Al-Shabaab in particular exploited Israel's promise to build a "coalition against the fundamentalist" in East Africa incorporating Kenya, Ethiopia, South Sudan and Tanzania which was perceived as a ploy for "destroying Muslim people and their religion".[121] This perception complicated the situation. Religious differences were slowly being dragged into a well-intended military intervention. The state of Israel had apparently promised to avail to Kenya drones, tanks, ammunition and electronic surveillance equipment to bolster her operation.[122] When the shuttle diplomacy to have the West and the Gulf nations support the operation succeeded, the Kenyan administration began to push for its troops to join AMISOM. This would have made it financially and legally easier for its allies to give more assistance. In December 2011, the African Union (AU) approved KDF participation in AMISOM. The West also begun to voice support. Despite Kenyan pleas for direct military assistance from the West, several key allies, including the United States of America, the United Kingdom and France, only provided modest logistical and intelligence support during the operation.[123]

Kenya's move to join AMISOM also provided a new twist to the operation. First, there were concerns that AMISOM's mandate, to protect the Transitional Federal Institutions, could restrict KDF's enforcement operations. As a result, KDF started pushing for a broader mandate under AMISOM.[124] Secondly, there were disputes among troop contributing

[120] IGAD Council of Ministers, "Communiqué of the 41st Extra-Ordinary Session of the IGAD Council of Ministers", October 21, 2011.
[121] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.
[122] Maxime Perez, "Israel's Big Return to East and Horn of Africa", *The Africa Report* 16 December 2011,12. Available at: http://www.africareport.com
[123] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.
[124] Ken Menkhaus, "After the Kenyan Intervention in Somalia", 7.

countries over leadership and command of AMISOM with the entry of Kenya. The US Ambassador and alternate representative for special political affairs to the UN, Jeffrey DeLaurentis, and the UN Under-Secretary-General for Political Affairs Lynn Pascoe also cited the need to clarify "command and control" arrangements for the expanded AMISOM force.[125] The troop contributing countries of the AMISOM contingent finally settled on a command structure that gave countries autonomy of operations in their assigned sectors.

5.8 The Evolving Goals of *Operation Linda Nchi*

The purported aims of the *Operation Linda Nchi* have kept evolving from the onset of the operation. To begin with, it was "hot pursuit" of kidnappers of foreign national in Kenya identified as Al-Shabaab.[126] A week later on the 20 October 2011, the stated goal shifted to destroying or weakening of Al-Shabaab as well as establishing a buffer zone of 100 km between Kenya and Somalia.[127] This was meant to push Al-Shabaab at least one hundred kilometres away from the Kenya-Somalia border. Ten days later, the Chief of the Kenya Defence Forces, General Julius Karangi, parted ways with the initial plan to stage a six month operation and declared that the operation had no time limit and would continue until Kenya was safe from Al-Shabaab attacks.[128] Over time, it came to appear that another aim of the Kenyan intervention was not only security of the state but also the liberation of the port city of Kismayo.[129] The resort to this was occasioned by the intelligence reports that showed that, the Al-Shabaab earned substantial revenue from the control of Kismayo. The loss of which would break its economic strength and drastically reduce its strategic capability. According to the UN reports, Al-Shabaab collected an estimated $35 to $50 million annually in custom tolls and taxes on businesses in the port of Kismayo.[130]

The diversity of the operational goals demanded cautious approach in undertaking the operation. There was modest progress of the intervention due to both the technicalities and the torrential rains pounding the area from October to December 2011. By February 2012, Afmadow town had not yet been captured as planned.[131] The capture of Afmadow was to

[125] UN Security Council "UN Security Council Press Statement on Somalia", SC/10517, New York, 11 January. 2012.
[126] Ken Menkhaus, "After the Kenyan Intervention in Somalia", 7.
[127] Ibid, 7.
[128] Gabe Joselow, "Kenya to Stay in Somalia until Safe from Al-Shabaab Menace", *Voice of America*, 29 October 2011.
[129] Oral interview, Crisis Group interview, Kenya Army Officer, Nairobi, 22 November 2011.
[130] Ken Menkhaus, "After the Kenyan Intervention in Somalia, 7.
[131] Oral interview, Focused Group Discussion, Langata Barracks, 10 October 2018

precede the takeover of Kismayo. This takeover was expected to have occurred within the first six months of the operation. Initial projected success therefore seemed farfetched. The Defence Minister, Mohamed Yusuf Haji acknowledged these challenges, when he said on 15 January 2012 that Kenya was unwilling to take Kismayo without international financial and logistical support. There were also lingering questions over the capture of Kismayo. The crucial question was what to be done with Kismayo if it was captured? The Kenya military had three options for Kismayo. According to Yusuf Haji, the then Defence Minister, the first option for Kenya, was to hand over control of the Port City to a Somali militia. The second option was to stay and control it. The third option was to hand over the city to the Somalia Transitional Federal Government.[132]

5.9 Justification for the *Operation Linda Nchi*

This section examines the normative justification of the Kenya military intervention against Al-Shabaab. It is imperative to note that there are distinct theoretical and normative explanations for resorting to force in the face of aggression against a sovereignty state by either a state or non-state actor. History holds that states resort to armed engagements for various reasons. The obvious justification to the use of force has centred on the following: state law and constitution, the United Nations (UN) charter, the resolutions of the UN Security Council, provisions of the law of armed conflict, the principles of conduct of hostilities and the just war traditions. We begin by analysing the domestic and international discourse in support of the operation.

First, *Operation Linda Nchi* was justified under the Kenyan Constitution 2010 in the following three sub-sections of Article 241 (3) of the Constitution of Kenya:

> Article 241 (3)–
> (a) The Defence Forces are responsible for the defence and protection of the sovereignty and territorial integrity of the Republic;
> (b) The Defence Forces shall assist and cooperate with other authorities in situations of emergency or disaster management.
> (c) The Defence Forces may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.[133]

[132] Fred Oluoch and Mwaura Kimani, "Haji Says No to Kismayu Attack Without Back-up", *The East African*, 15 January 2012.
[133] Laws of Kenya. The *Constitution of Kenya*, 2010. Published by the National Council for Law. Available at: www.kenyalaw.org. Accessed on January 17, 2019.

From the above articles of the constitution it is clear that the military is charged with the responsibility of protecting the country's sovereignty and territorial integrity against all sorts of threats. It is also mandated to aid the civil authorities during emergency and disaster operations. The constitution also stipulates that military involvement in internal security operations must be endorsed by the national assembly, which also defines the scope and modes of operations.

Secondly, the *Operation Linda Nchi* was also legitimized through parliamentary approval. In the motion seeking deployment of the KDF under the mandate of AMISOM passed on 16 October 2011, the then minister for Defence Mohamed Yusuf Haji is quoted saying:

> Mr. Speaker Sir.
> This august house will recall that there have been numerous cases of Al-Shabaab impunity and cross border incursion that have been propagated by the militants… Attacks on Dajabula police post in 2009, Liboi GSU Camp in 2010, laying of mines and improvised explosive devices,… kidnapping of 2 Catholic nuns in Elwak, …Aware that IGAD and AU extraordinary sessions requested Kenya to integrate into AMISOM, I move the motion that this house approves the deployment of national security forces in Somali to serve under the auspices of AMISOM pursuant to the provision of Article 240 (8) a (ii) and (ii) of the Constitution of Kenya…
>
> I thank this august house and all the Members of Parliament and the people of Kenya and the international community for their understanding and support…[134]

The passing of the motion demonstrated that the deployment of the troops was in line with the aspirations of Kenya's Constitution 2010, pursuant to Article 232 and 239 (6).

Third, the intervention was also justified under the article 51 of the United Nations Charter. Article 51 provides for the right of countries to engage in self-defence, including collective self-defence, against an armed attack. Article 51 of the UN Charter states:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under

[134] The Kenya National Assembly, Official Hansard, Wednesday 7 December 2011, Available at: *www.parliament.go.ke/the-national-assembly/house-business/hansard.* Accessed on 17 January 2019.

> the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[135]

Article 51 of the UN Charter was cited by the US in support of the Vietnam War. US presented legal argument that, "although South Vietnam was not an independent sovereign State or a member of the United Nations, it nevertheless enjoyed the right of self-defence, and the United States as peace loving nation was entitled to protect its interest under the UN collective defence."[136] Forthwith, Kenya did not declare war on Somalia but rather invoked her right to self-defence against a threat emanating from her neighbour. By invoking Article 51 of the UN Charter, Kenya proclaimed self-defence as an inherent right and declared that it had to do whatever was necessary to keep her borders secure from terrorism and economic sabotage. The use of this particular article as the legal justification for Kenya's invasion raised a lot of questions regarding what constituted an armed attack against the state and whether such actions necessitated an invasion of this magnitude. Furthermore, some have argued that Kenya did not follow the right procedure required in pursuit of the right to self-defence as the country did not report its intended actions to the UN Security Council (UNSC).[137]

Fourth, the intervention was also justified under the just war tradition. According to the just war tradition, war is an act of last resort. This presumption is upheld by Mumo and Mwanzia who argue that war is mostly considered the last resort in the pursuit of the national interests of states. [138] Mumo and Mwanzia further argue that, states have been slow to resort to war since the end of the Second World War.[139] More often than not they may opt to interact with their potential adversaries through peaceful means. Such adversaries may take the form of state or non-state actors, which may include sub-national groups, belligerent movements or any other formation(s) perceived to be a threat to state security and survival. It was under such circumstances that Kenya sent its troops to Somalia in pursuit of the Al Qaeda-linked terror organization, Al-Shabaab in mid-October 2011.

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[135] Chapter VII, United Nations Chater,

[136] Benjamin B. Ferencz, "War Crimes Law and the Vietnam War," *The American University Law Review*, Vol. 17, No. 3 (1968), 36-48.

[137] Christian J. Tams, "The use of force against terrorists", *European Journal of International Law*, Vol. 20 No. (2009), pp. 359–397.

[138]Mumo Nzau and Charles Mwanzia. "Diplomatic Manoeuvre and Kenya's Military Campaign in Somalia" *AMANI Journal, A Journal of the International Peace Support Training Centre*, Vol. 1, No. 1, (2014), 1-8.

[139] Nzau and & Mwanzia. "Diplomatic Manoeuvre and Kenya's Military Campaign in Somalia"**,** 2

Michael Walzer one of the key contemporaries proponents of the just war tradition defines aggression as "the every violation of the territorial integrity and political sovereignty of an independent state."[140] The right to territorial integrity the right of a nation not to be invaded. It is derived from the common life its members have made on this piece of land. Walzer claims, "Only crossing of a drawn boundary by an invading army amounts to aggression". [141] Walzer also emphasizes that crossing a boundary by an invading army, would be such a cause of aggression. He warns that aggression is both "morally and physically coercive," forcing men and women to fight for their lives and rights for no good reason.[142]

Whereas the Kenya military intervention would be justified in a number of the accounts of the just war tradition. There are three instances where the military intervention was critiqued as unjust. To begin with, the KDF launched incursion on 14 October 2011 before officially approval of parliament on 16 October 2011. For two days therefore, the troops were operating illegally. This caused diplomatic row between Nairobi and Mogadishu. As a result, the government launched shuttle diplomacy to try to convince the Somalia authorities. The military however, dismissed this criticism on basis of surprise attack principle and that the operation was long premeditated.

Secondly, the operation is viewed as an act of occupation. The continued presence of Kenyan soldiers is Somalia long after the capture of Kismayo is deemed as "Christian occupation".[143] Foreign occupation is an unjust reason for waging war according to the just war tradition. Further Kenya seems to have unclear post-Kismayo plan after defeating Al-Shabaab.[144] The question relating to the governance of Kismayo, is construed as Kenya plan not only to eliminate Al-Shabaab and withdraw but also shows Kenya's deeper interest in Kismayo. Lack of a clear exit strategy casts further doubts on the intention for the intervention in Somalia. Kenya therefore needed a clear post-Kismayo explanation that will be acceptable by the Somali government and the country's citizens lest its presence in Somalia be considered as foreign occupation.

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[140] Walzer Michael *Just and Unjust Wars* (New York: Basic Books, 1977), 76.

[141] Guthrie, Charles; Quinlan, Michael, *"The Structure of the Tradition". Just War: The Just War Tradition: Ethics in Modern Warfare.* (2007), 11–15.

[142] Walzer Michael *Just and Unjust Wars*, 76.

[143] "Risks and Opportunities in Kenya's Intervention in Somalia", *Daily Nation*, Available at: https://www.nation.co.ke. Accessed on 30th November 2018.

[144] Luckystar Miyandazi, Kenya's military intervention in Somalia: An Intricate Process, ACCORD Policy and Practice Briefs, (Durban: African Centre for the Constructive Resolution of Disputes, 2012, 7-8.

The participation of the KFD as part of the AMISOM contingent also remains unclear considering that the Djibouti Peace Agreement signed between the TFG and the opposition Alliance for the Re-Liberation of Somalia (ARS) in August 2008 prohibited countries neighbouring Somalia from contributing troops to any peacekeeping force in the country.[145] The provision of this agreement implied that Kenya and Ethiopia were not to intervene or send peacekeeping troops to Somalia. Thus, legitimate peacekeepers in Somalia as per this agreement were to come from Burundi and Uganda, Ghana, Malawi and Nigeria who had promised to contribute troops to join AMISOM.[146] However, the Kenyan authorities argued that the troops joined AMISOM to safeguard Kenya's interest at stake and after parliamentary approval.[147]According realism, the natural state of international politics is that of anarchy in the sense that there is no legal authority to bind a states when it perceives that breaking any agreement with other states is in its interests. States are thus egoistic in pursuit of self-interest.[148]

5.10 The Success of Kenya's Military Operation against Al-Shabaab

Measuring success of a military intervention is somehow contentious and tricky. Since success means different things to different people. Given the icy grounds for measuring success, the common asked questions include: military success over what and for who? For Kenya or for the army? Success in battle or in war? These questions notwithstanding, isolating the success of close operations from deep operations in the *Operation Linda Nchi* is a daunting task. This is because of the very thin distinction separating the strategies used in the two military campaigns. Especially because, Al-Shabaab, the ultimate target, operates in an undefined battled field. Its actions seem to exist in a continuum of all-in-Kenya and all-out of-Kenya and occasionally inside and outside Somalia. Similarly, the conduct of *Operation Linda Nchi* oscillated indistinctively from deep to close operations on everyday basis. What therefore amounts to success of the purely internal operation may in one way or another be understood in terms of the overall success of *Operation Linda Nchi.* Figure 5.2 below gives a summary of the informants' responses on the perceived success of the operation.

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[145] United Nations Department of Political Affairs. 2012. Somalia. *United Nations Department of Political Affairs*. Available at: http://www.un.org/wcm/content/site/undpa/main/activities_by_region/africa/somalia, Accessed 29 January 2019.

[146]African Union Mission in Somalia. 2012. Frequently asked questions. *African Union Mission in Somalia*. Available from: http://amisom-au.org/about/frequently-asked-questions Accessed 3 October 2012.

[147]The Kenya National Assembly, Official Hansard, 7 December, 2011

[148] Helen Milner, "The Assumption of Anarchy in International Relations Theory: A Critique." *Review of International Studies* Vol. 17, No. 1 (1991): 67-85. http://www.jstor.org/stable/20097244.

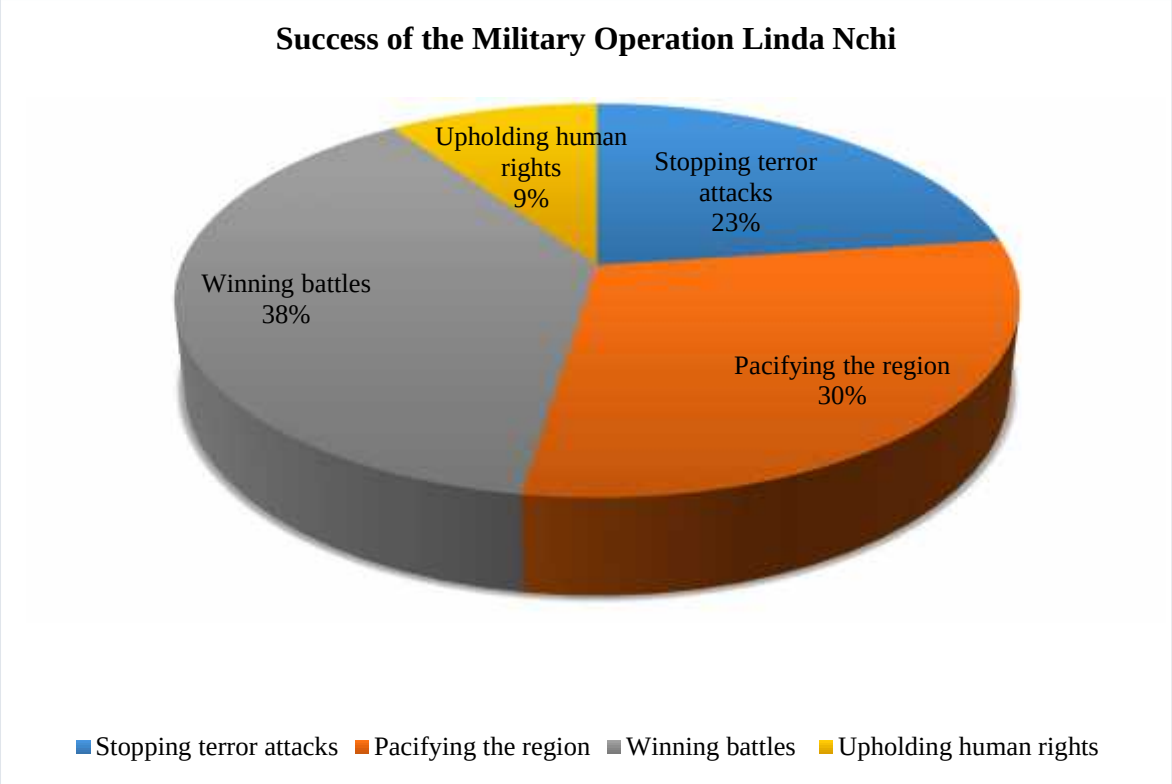

Figure 5.2: The success of *Operation Linda Nchi*
Source: Researcher

For many, and as indicated in Figure 5.5 above, the success of *Operation Linda Nchi* was to be assessed in terms of stopping terror attacks. Ultimately this would not be and if it was, then success of the operation was improbable and at 23% because of the ongoing attacks on Kenyan soil day by day. According to Cannon and Pkalya, Kenya is not susceptible to Al-Shabaab attacks because of the army presence in Somalia. The reasons of attack also go beyond Kenya sharing a border with Somalia. Al-Shabaab attacks Kenya for strategic and rational reasons.[149] It targets Kenya more than other frontline states because of the opportune spaces linked to Kenya's international status. Kenya is relatively free and independent and its media widely publicizes terrorist attacks. Kenya also has a robust and lucrative tourist sector that provides soft targets for Al-Shabaab. The presence of radicalized Kenyan fighters in the group's ranks has also made it easier for the group to wage terror attacks on Kenya. Other reasons increasing the propensity of Al-Shabaab attacks on Kenya included, the expanding democratic space and high levels of corruption within the country. [150] These factors act as Al-

[149] Brendon J. Cannon & Dominic Ruto Pkalya, "Why al-Shabaab Attacks Kenya: Questioning the Narrative Paradigm," *Terrorism and Political Violence*, DOI: 10.1080/09546553.2017.1290607, (2017), 10.
[150] Brendon J. Cannon & Dominic Ruto Pkalya, "Why al-Shabaab Attacks Kenya? 2017.

Shabaab's motivations to plan and execute terrorist attacks on Kenya, hence diminishing the overall success of the operation.

Although the International Crisis Group (ICG) warned that KDF's intervention against the Al- Shabaab was the biggest security gamble Kenya had ever taken since independence,[151] *Operation Linda Nchi* achieved debatable success. Reading chapter 12 of Migue *et.al*'s book one gets inspired by the gallant actions of the Kenyan troops. The book, an official military account written by serving military officers, gives first-hand account of the operation successes. In chapter twelve, General Julius Karangi, the then Chief of the Defence Forces of Kenya was quoted saying, "there is no battle we set out to win that we lost".[152] This statement asserts that KDF fought successful battles with varying objectives. Some operations were fought to capture towns, some to extricate Kenyan troops captured in ambush or landmine incidents and some in support of allied forces. Some of the landmark battles include: the battle of Hoosingo, the battle of Facade, the battle of Afmadhow, the battle of Miido and the Fall of Harbole and Biibi. Others include, the captures of Sooyac and Jana Cabdala and the capture of Kismayo.[153] The military account is however disputed by researchers arguing that winning battles cannot be considered as success of the operation.[154] This assertion is supported by Nolan who argues that wars are not won by military genious or one decisive battle.[155] Besides, the highest merit in war does not lie in winning a hundred victories in a hundred battles; rather, the highest merit lies in breaking the enemy's resistance without fighting.[156]

According to KDF weekly media briefs on 26 February 2012, the KDF had liberated 95,000 square kilometres initial controlled by Al-Shabaab in Somalia. The military spokesman, Colonel Cyrus Oguna said that the large swathes of Somalia had been freed from the grip of Al-Shabaab. The ultimate objective of the *Operation Linda Nchi* after the capture of Afmadow was to capture the port of Kismayo.[157] KDF operated along three axes with corresponding Sectors. Northern Sector, proceeded from the Kenyan town of El Waq toward

[151] International Crisis Group, "Kenya's Military Intervention in Somalia", 1.
[152] Migue, et al., *Operation Linda Inchi: Kenya's Military Experience in Somalia*, 174.
[153] Ibid, 174-201.
[154] Oral Interview, Focused Group Discussion, Nairobi, 21 September 2019.
[155]Cathal J Nolan, *The Allure of Battle: A History of How Wars Have Been Won and Lost* (Oxford: Oxford University Press, 2017), 1.
[156] Sun Tzu, *The Art of War*, translated by Lionel Giles, (Leicester: Allandale Online Publishing, 2000), 10.
[157] Isaiah Lucheli, "KDF Capture Major Areas in Somalia", *Sunday Standard* February 26, 2012.

Baardheere on the Juba River while the Central Sector, advanced from Liboi to Afmadow; and Southern Sector manoeuvred from the Somali coastal town of Ras Kambooni to Kismayo.[158] According to the International Crisis Group, KDF initially had two battalions between October and December 2011 but number pf troops increased significantly after the Cabinet approved request that about 4,700 Kenyan troops would join AMISOM.[159]

In the Northern Sector, the KDF fought and defeated the remnants of the 2,500-strong Ogaden Force. This force was had earlier been trained KDF as part of the Jubaland project in 2009. In Central and Southern Sector, the KDF fought alongside the Ras Kambooni Brigade. Conflict between the TFG forces and the Ras Kambooni Brigade, hampered the operation and explains in part why the offensive along the Liboi-Afmadow-Kismayo road made little progress in the beginning of the operation.[160]

The success of Operation *Linda Nchi* was also measured in terms of upholding human rights. KDF's respect for human rights endeared the force to locals in Somalia. KDF did not only liberate areas controlled by Al-Shabaab but also participated in humanitarian aid. The KDF succeeded in amelioration of human rights violations occurring in Somalia prior to the intervention, the human rights abuses included gender and sex-based and forceful conscription of child soldiers.[161]

The Central Sector was regarded as the most difficult us to navigate in because it led to Kismayo, the stronghold of Al-Shabaab. Operations in this sector were therefore undertaken cautiously in an attempt to capture the port city. It involved a lot of forth and back strategic planning. Success was then not immediate. The advance to Kismayo stalled several times before reaching Afnadow. Intelligence reports mid-November 2011 indicated that hundreds of Al-Shabaab fighters had been deployed to Afmadow to resist KDF's advance.[162] After months of waiting, KDF in early 2012 managed to take control of Afmadhow. This was a major breakthrough for the operation.

[158] Oral Interview, Crisis Group interview, Army spokesperson, Nairobi, November 22, 2011.
[159] UN Security Council, "Somalia: February 2012 Monthly Forecast," UN security Council Report, New York February. 2012
[160] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.
[161] Migue, et al., *Operation Linda Inchi: Kenya's Military Experience in Somalia*, 222-229.
[162] Migue, et al., *Operation Linda Inchi, 6*.

For the first six months after the launch of *Operation Linda Nchi* across the border, hostilities in the Southern sector were more active. Partially because the Ras Kambooni Brigade operated alongside Kenyan forces to defeat the Al-Shabaab. KDF also used local spies which allowed the clearing of several Al- Shabaab training camps and bases. The Ras Kambooni Brigade reportedly seized the border town of Kulbiyow from which hit-and-run attacks were launched against KDF bases. KDF also stepped up aerial bombardments in Gedo and Juba, causing harm to Al-Shabaab. Though the bombardment yielded success it was critiqued for causing collateral damage.[163] KDF's *ugali* strategy finally paid on 28 September 2012, when KDF and TFG forces captured the port of Kismayo, 'the last rebel stronghold of Al-Shabaab fighters'.[164] The general success of the KDF operations are described as turning point for the public image of the force. The success changed the public image of the KDF as ceremonial army. The KDF also proved its capability in both conventional and asymmetrical warfare.

Whereas the official KDF account of the *Operation Linda Nchi* speaks volumes of strategic achievements, its overall success in the operations was watered down by numerous criticisms. To begin with, the UN report made allegations of KDF non-compliance with the charcoal-export ban in Kismayo. The UN's Somalia and Eritrea Monitoring Group report said that Kenyan troops assigned to AMISOM were receiving $2 (Sh200) per bag of charcoal to aid illegal charcoal business translating to $12 million (Sh1.2 billion) annually. Kenyan forces' collusion in the illicit trade illegally earned Al-Shabaab at least Ksh1 billion ($10 million) a year used in funding the group's military capability.[165]

The success of the military operation was also marred by Al-Shabaab continued attacks on Kenya. Since the intervention, a series of explosions have rocked various regions in Kenya mainly in retaliatory attacks by Al-Shabaab. According to the US Embassy in Kenya, the country experienced 17 attacks involving grenades or explosive devices between 2011 and 2012. In these attacks at least 48 people died and approximately 200 were injured. Nine attacks occurred in North Eastern Province, four in Nairobi and four in Mombasa. Targets included police stations and police vehicles, nightclubs and bars, churches and religious gatherings, downtown building of small shops, and bus stations.[166] On 21 September 2013,

[163] International Crisis Group, "Kenya's Military Intervention in Somalia", .9.
[164] Oral interview, Colonel Cyrus Oguna, During Weekly KDF Media Briefs, September 28, 2012.
[165] "KDF 'Aiding' Sh 22b Illegal Charcoal Trade" *The standard*, May 25, 2015, Kenya. Available at: *https://www.standardmedia.co.ke* . Accessed on November 21, 2018.
[166] US Embassy Nairobi- Travel Advisory, 10 September 2012.

four masked gunmen believed to be Al-Shabaab attacked the Westgate Shopping Mall throwing grenades and firing indiscriminately at shoppers. The subsequent siege lasted eighty hours and caused sixty seven deaths.[167]

Further, reading the mood of the country, it appeared like military successes in the operation were either slim or dwindled. At the onset of the operation, Kenyans were both euphoric and patriotic about the military intervention. National prayers were said in support of the operation and media stations highlighted the troops advance. Radio stations reached out to soldiers to send greetings to their loved ones, but as time progressed all this stopped. The military media updates also stopped. Churches too had stopped praying. What followed was news on casualties, an indication that the overwhelming support that existed at the onset of the operation had been dashed by lack of success and high expectations.

According to Sun Tzu, the moral law causes the people to be in complete accord with their ruler, so that they will follow him regardless of their lives, undismayed by any danger.[168] Moral law is context in which any military strategy must work in order to succeed. It is also the 'who cloth' of citizens and other external forces which influences the success or failure of strategy. Context as determinant of military strategy is defined as the reaction of citizen to recent experience of the military. It is the willingness of people to support military operation. It is also the general perception of the peoples that vital interests of the state are at stake, hence the need for military action. At the beginning of the operation the general citizenry supported the operations. Their support dwindled with time. Instead of supporting the operation, people are calling for withdrawal of troops from Somalia by 2013. The constant calls to withdraw troops from Somalia by the Opposition leaders and a section of civil society was a clear indication that the earlier mood in support of the operation that was live in late 2011was non-existent or extremely low. Only a winning exit strategy was being awaited for to save the face of the Kenya military.[169]

Even though it was clear that KDF achieved remarkable success in the war compared to losses, winning battles did not automatically translate to winning the war. Al-Shabaab seems

[167] Daniel Howden, "Terror in Nairobi: The Full Story behind Al-Shabaab's Mall Attack" *The Guardian*, October 14, 2013.

[168] Sun Tzu, *Art of War*, 13.

[169] Oral, Interview, Capt. (Rtd) Werunga, 12, December, 2018

motivated to engage in protracted war. The group seems to have a long term political goal of attacking unknown to Kenya. Engaging such enemy may draw the country into protracted war that may exhaust troops and the taxpayer. As legendary Sun Tzu warned, "When you engage in actual fighting, and victory is long in coming, then men's weapons will grow dull and their ardour will be damped." Kenya's long wait for victory requires rethinking about the objectives and strategies of the operation. Though pulling troops out of Somalia will be a clear win for Al-Shabaab, the reality is that there is no instance when a country has benefited from prolonged warfare. KDF requires quick winning and exit strategy. KDF also needs to put itself beyond the possibility of defeat, and then wait for an opportunity of defeating the enemy.

Finally, the ultimate success of *Operation Linda Nchi* was in lessons learnt from the incursion. The operation presented the military with an opportunity to reflect and change its strategy. The first success was the development and training on close-quarter battles. Including fighting in built areas like cities. Simulation of the same was in cooperated in basic military training doctrine for both Cadets and Service men. Secondly, KDF troops were now battle-tested as opposed to ceremonial soldiers as known before. KDF was also able to test her logistical line. The military was also able to establish special force units and to create more infantry units. Kenya has also achieved strategic interest in the region as a force to reckon with.[170]

5.11 Challenges Faced by Kenya Defence Forces in *Operation Linda Nchi*

Despite the remarkable tactical success achieved by the KDF in the operation, the Kenyan troops faced numerous challenges. The first challenge Kenya faced was fighting counter-insurgency warfare. Even though, the KDF troops had killed hundreds of Al-Shabaab militiamen and destroyed their weaponry, Al-Shabaab remained a fearsome enemy that understood the local environment and terrain. This gave Al-Shabaab an advantage over its enemies in the asymmetric warfare. It was clear that rather than fight in the open, the Al-Shabaab would melt into the background, allowing Kenyan mechanized infantry to move deeper into its heartland. The Al-Shabaab fighters strategically blended with the civilian population. The Al-Shabaab also deployed guerrilla tactics. Moreover, the ideology adopted by the group had attracted the conscription of the youth willing to fight for the cause of Islam.

[170] Oral Interview, Focused Group Discussion, Nairobi, 21 February 2019.

Al-Shabaab had also become a religious fundamentalist force fighting a foreign ideology, 'Christian' occupation of Somalia.[171] The militia tactfully drew KDF into a guerrilla warfare but the former was quick to learn the latter's strategy and adopted asymmetric warfare.[172]

The second challenge faced by Kenya was of losing coalition forces fighting alongside the KDF to her enemies. Al-Shabaab won the support other clan militias by promoting their commanders, putting pressure on the fragile coalition of interests among the Kenya-sponsored militias. At the same time, Al-Shabaab launched a recruitment drive among Harti, Hawiye and Dir clans.[173] Although Al-Shabaab was unpopular because of its poor handling of famine and harsh enforcement of *Sharia* law, many Somalis were grateful to the relative peace established by the Al-Shabaab administration. The locals therefore, were sceptical and hard hearted about any foreign attempt to foster peace in Somalia. Resentment of foreign occupation became an effective rallying point for Al-Shabaab against the KDF operation. Together with the perception that Somali refugees in Kenya were being mistreated, the Al-Shabaab propaganda stirred up nationalism on which both the militia and TFG President Sheikh Sharif were trying to capitalize on.[174]

The third challenge was the dilemma of carrying out pacification operations without severing relation with the Republic of Somalia. Pacification operation is the act of forcibly suppressing or eliminating a population considered to be hostile.[175] A pacification operation attempts to create or maintain peace by mollifying a hostile community through diplomacy or peace agreement. Pacification operations also involve winning the heart and minds of the people affected by military campaigns. Winning the hearts and minds of Somalis was a big challenge for KDF. This challenge proved even stronger when Al-Shabaab initiated propaganda of portraying KDF as an occupying force. Such strategy had been successfully applied against Ethiopia in 2006.[176] Occupation is the direct control of a territory of a state by foreign forces.[177] Military occupation is a matter of international law and is illegal under the principle of sovereignty.

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[171] International Crisis Group, "Kenya's Military Intervention in Somalia", 8.
[172] Oral Interview, Lt. General Kasoan, Kenya Army Commander, Kenya Military Academy, 6 June 2012.
[173] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.
[174] Human Rights Watch, "Kenya: Security Forces Abusing Civilians Near Somalia Border", Human Rights Watch, 12 January 2012.
[175] Vietnam War Dictionary. Available at: www.vietnamgear.com
[176] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.
[177] Adam Roberts, ed. "What is a Military Occupation" in *Occupation, Resistance and Law:*

The fourth challenge that the Kenyan troops faced was of staging urban conflict in Kismayo. KDF and its militia allies SNA and Ras Kamboni fighters engaged in grinding urban warfare, which the KDF had little experience in. [178] Moreover, fighting in built up areas meant that KDF fighters could not enjoy the heavy military arsenal they had mobilised. KDF was also under test to prove its capability since it had taken AMISOM's thousands of Burundian and Ugandan troops almost two years and more than 500 casualties to capture Mogadishu.[179] Close quarter operations are delicate and dangerous.[180] It is a matter of life and death to the individual soldier and requires maximum caution.

The KDF managed to capture Kismayo through the Beach Landing Strategy on the night of 27 September 2012.[181] In the beach landing operation, four Kenyan warships approached Kismayo stealthily in the silence of the night. The special fighting troops approached the beach using 11M Naval Special Warfare Rigid Inflatable Boats. After docking, the military deployed hundreds forces into the beaches. This operation was carefully planned and rehearsed and KDF became, the first African military to execute beach landing. Though highly dangerous, the strategy helped KDF infantry battalions to overcome the challenge of engaging in urban conflict. The beach landing was aided by special aerial support. The Kenya Air Force shelling Al-Shabaab's armouries and warehouses. The aerial attacks completely destroyed the group's fire power and capacity to receive and resupply essential logistics to counter KDF's onslaught.[182]

After overcoming challenges of urban combat inside Somalia, there was yet another challenge for KDF. This was the challenge of combating guerrilla and terrorist attacks inside Kenya. Al-Shabaab continued to execute numerous attacks inside Kenya. Kenya experienced more than twenty terror attacks linked to Al-Shabaab in the first few months of Operation *Linda Nchi* in 2011. The first attacks occurred in Nairobi and targeted bus stops, restaurants, nightclubs, and churches in response the country beefed up national security to combat the terror attacks. With the build-up of security across the country, particularly in Nairobi, subsequent attacks became confined to the towns of Garissa and Wajir in the former NFD

International Law on Military Occupations and on Resistance, (Oxford University Press, 1985), 250-305

[178] International Crisis Group, "Kenya's Military Intervention in Somalia", 9.

[179] Ibid, 9.

[180] Oral Interview, Captain (Rtd) Werunga, Nairobi, 15th January 2019.

[181] Ali, Admin, "Kismayo Falls to KDF and TFG Forces', *Aljazeera News*, September 28, 2012.

[182] Peter Nguli, "How Al-Shabaab's Stronghold Fell to KDF", *The Standard*, 28 September 2012.

and along the Kenya-Somalia border. Moreover, Al-Shabaab sympathizers within Kenya posed a major threat by radicalizing and recruiting youths to commit terror attacks. The police swoop against Al-Shabaab sympathizers especially of Somali decent, became a deepening concern. Fears emerged that continued security operation targeting members from the Somali community could radicalize Kenyan Somalis, as well as Muslims in general. The Human Rights Watch report blamed the police for terrorizing and profiling the Somalis in the former NFD and in Eastleigh in Nairobi in the pretext of enforcing national security. The civil society also warned that the strategy of profiling was bound to work against the Kenya government's overall counter terrorism strategy. [183]

There are other challenges that bogged down *Operation Linda Nchi*. First, the rising number of casualties borne in battles. By the first anniversary of the invasion, KDF had recorded 26 deaths from the operation. Several deaths were recorded in subsequent years. A number of soldiers went missing in action. Some were abducted and their whereabouts had not been established. Other soldiers suffered permanent injuries while others had mild injuries. Secondly, back at home many Kenyans had lost lives due to the grenade attacks by the Al-Shabaab. Soldiers back at home were neither spared. Several grenade attacks in Garissa had claimed lives of many security officers. Third, soldiers in the battle front had witnessed massive deaths. All these events had led to psychological impact among the soldiers.

Lack of media strategy was another challenge affecting the KDF counter-insurgency operation. The media plays a crucial role in information sharing. Based on information from the battlefield a military intervention would either receive citizen's support or criticism. During the early stages of the campaign, the military embedded Kenyan journalists among the troops. Media houses reported the success and challenges of the operation. The military oversaw the reporting to ensure media houses produced positive accounts of the mission. Frequent media briefs earned the military support from the public. As the operations progressed, silence became the norm of the operation. The control of information was meant to conceal atrocities. Some argued that KDF adopted the strategy of silence about troop casualties and the fate of prisoners of war (PoWs). This strategy was adopted after it became apparent KDF suffered casualties in Somalia.[184] Similar strategy of silence and opaqueness

[183] Human Rights Watch "Kenya: Security Forces Arbitrarily Detaining People", Human Rights Watch Report, 28 November 2011. Available at: https://www.hrw.org/news. Accessed on 28 January 2019.
[184] Kipchumba Some, "KDF Soldiers Still Missing as Military Remains Cage", *Daily Nation*, 7 October 2018.

was used in the *Shifta* war and the Wagalla massacre to conceal the truth about the operations as Anderson notes.

> During the Wagalla massacre President Daniel Arap Moi's government mounted a campaign of misinformation and denial. Those who had witnessed the killings were at first silenced by threat and intimidation, then by arrest, and even deportation. Writings about Wagalla were banned in Kenya.[185]

The rare military media briefings after attack on the Kenyan side was considered by key informants of this study as an attempt to prevent details of attacks meted on Kenya. Further, the law enacted to prohibit reporting or distribution of images or information likely to cause public fear or undermine security operations, did not only mislead the public but also created opportunity for Al-Shabaab to propagandize their victories and perhaps to exaggerate them. Key informants of the study argued that regular media reports on progress of counter-terrorism strategy was essential in winning the hearts and minds of the Kenyans but also countering fake news and propaganda by the terrorists and their sympathizers.[186]

KDF officers also faced a challenge of mistrust while undertaking the operation. The mistrust was caused by deep resentment and suspicion between officers. Some officers accused fellow officers of leaking sensitive security intelligence thus frustrating the counter-terrorism efforts. Military officers of Somali origin were perceived as terrorists 'sympathizers'. They were often recalled from operation and accused of failure to execute tasks with precision. Allegation of mistrust has led to some security officers from the Somali community to quit the job. The perception of mistrust made them feel 'less' gallant to defend the country as compared to officers from other communities perceived as natives.[187]

5.12 Summary

This chapter has outlined a history of the Somalia civil war to illustrate how the conflict created instability in Somalia leading to the rise of extremist groups. The Somali conflict dates back to the collapse of the Siad Barre regime in 1991. The protracted conflict descended into factional fighting and anarchy. Numerous peace efforts in Somalia have failed to bring stability. In 2006, the Council of Islamic Courts (ICU) took over power but was

[185] David M. Anderson Remembering Wagalla: State Violence in Northern Kenya, 1962–1991 *Journal of Eastern African Studies*, Vol. 8, No. 4, (2014), 658–676
[186] Oral Interview, Captain (Rtd) Werunga, Nairobi, 15 January 2019.
[187] Adow Mohamed, Why Muslim Officers are Leaving KDF *The Star* 30 July 2016.

ousted by Ethiopian Forces. After defeat, ICU transformed to Al-Shabaab. The group that claimed responsibility for several high-profile bombings and shootings in Somalia. The chapter has also demonstrated that Kenya has long suffered from spill over of Somalia crisis. The terrorist have destabilized Kenya's North Eastern province. The strife in Somalia has increased refugee flow into Kenya, placing considerable strain on the country. Uncounted numbers of Somalis, including some Al-Shabaab members have taken advantage of corruption in Kenya to secure Kenyan identity cards. This and other reasons prompted the Kenya's intervention in Somalia.

Finally, the chapter has demonstrated that the military strategy against Al-Shabaab may have been justified and made substantive gains in terms of success but if history of intervention in Somalia was anything to go by, then the probable success in *Operation Linda Nchi* is imagined. This is because earlier intercession in Somalia such as that of the US in 1992 and Ethiopia in 1996 yielded no success. What seems to be a common theme in the Somalia intervention is that intervening forces enter, reach a stalemate, and exit.

CHAPTER SIX

SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter summarizes issues interrogated in the study. They include, the normative principles of military intervention, circumstances that warrant military intervention, its justification and the outcomes of military interventions. It then discusses the conclusion and the recommendations of the study. The chapter end by suggesting areas for future researcher.

6.2 Summary of Findings

Chapter one introduced pertinent issues of the study, by giving the background to the study, the statement of the problem, the objectives, purpose, justification and significance of the study. It further, reviewed multi-disciplinary literature that informed the study. The literature presented was reviewed in themes related to the objectives of the study. The objectives were: first, to interrogate the normative principles that guide military interventions in internal disputes in Kenya. Second, to examine the circumstances that have warranted increased Kenya military intervention in selected internal disputes from 1963 to 2013. Third, to evaluate the legal and theoretical justification of the KDF interventions in selected internal disputes from 1963 to 2013. Finally to assess the success of Kenya military interventions in pacification of selected internal disputes in the same period. The chapter then analysed, Murat Onder's theory of military centrality in politics, theory of securitization and the just war tradition that were used to weave together all the elements of the study. The chapter concluded by analysing all the key sections of the methodology adopted by the study.

In chapter two, the study sought to provide answers to the first research question. Which stated as, "What are the normative principle that informed KDF internal military operations from 1963 to 2013?" From the discussions, it emerged that resolution of internal disputes is a jurisdiction of all national security agencies, the police, paramilitary and the armed forces. Depending on the severity of the threat, the police, the paramilitary police and state's defence forces may be deployed to end an existing controversy under well stipulated mandates. Whereas the police are charged with the general function of maintaining law and order within a state, the military's roles is to safeguard state sovereignty and integrity against internal and external aggression. The military also gives aid civil authority. In the discussion it also

became apparent that the military is the last bastion of national security.[1] The study also noted that any military deployment within or beyond the borders is declared by the Commander-in-Chief of the defence forces after approval by parliament. The role of the military in internal operations includes protecting persons and property especially the VIPs and vulnerable points (VP). Other operations are, prevention of the escalation of violence, surveillance, intelligence gathering and reconnaissance. The military also carries out casualty evacuation and counter-terrorism operations among other roles they may be assigned from time to time.

The chapter also discussed types and levels of force applicable in internal military operations. It observed that when intervening internally, the military exercises level of force similar to that of civil police. The military also applies the principle of constraints that guide police forces, particularly in relation to the use of force and firearms. The study also noted that the levels of force used in internal security operations varies with the type of threat. It also emerged that troops sometimes have little control of the nature and type of force used despite the existence of international legal frameworks on the use of force. The study also noted that Kenya military personnel face several challenges while executing internal operations. The biggest challenge being the lack of proper security equipment to enable them use selective fire among others.

Chapter two also discussed ethical principles of conduct of hostilities that guide military operations. They include, the principles of proportionality, necessity, humanity, discrimination, distinction, precaution and limitation among others. It also emerged that foot soldiers, and junior commanders such as section commanders are unware of the existence of such principles. The troops and section commanders can however easily memorize the marksmanship principles which enable the soldier to fire quick and on target shots. They were also aware of the general principles of war.[2] Senior military commanders however, exhibited knowledge of these principles. The study noted that lack of knowledge of the principles of conduct of internal operations may hinder the military from executing them successfully.

[1] Ministry of Defence, The Defence White Paper 2017, (Nairobi, Government Printers) p. 8
[2] Oral Interview, Focused Group Discussion, 29th November, Lanet Barracks*

In terms of training, it emerged that while the existing military training doctrine does not expressly include internal military operations, the KDF training doctrine is anchored on five pillars namely: good citizenship, good soldierism, professionalism, culture and religion, and resettlement.[3] These pillars enable troops to acquire principles and values to conduct internal intervention. The study noted that the skills in basic military training were necessary but not sufficient in dealing with internal security operations. For this reason, there is a need to re-adjustment military training to encompass drills on internal military operations.

Chapter two concluded by examining international and domestic legal and theoretical frameworks that guide internal military intervention in Kenya. Some of the international laws guiding the conduct of military operation other than war (MOOTW) included: the law of armed conflict, the international humanitarian law, the customary law, the Geneva Convention and their Additional Protocols. Finally, domestic law and the Constitution provide elaborate guidelines to regulate the conduct of both international and non-international armed conflicts within a given state. From the discussion, it was established that majority of the troops were ignorant of the existence of these elaborate legal framework. They were however much aware of the Defence Forces Act (DFA) and publication on their terms and conditions of service.

The study also noted that threats to national security in Kenya are highly constructed. This is because security is rated first among the hierarchy of political goods. Security of the people is consequently the cardinal function of the government of Kenya.[4] The primary role of a state's armed forces in promoting national security is not only the defence of the country's territorial integrity but also to deal with internal threats to national security. The secondary role of the military is to give aid the civil authorities by assisting the civil police to maintain or restore law and order. The Constitution of Kenya in pursuant of this goal obligates the military with the responsibility of dealing with much lower levels of internal tension, political violence or civil strife. Moreover, the increase in the internal security threats in in the post-Cold War era requires, in certain situations, the introduction of the armed forces in management of internal disputes. When state armed forces carry out internal operations, they are guided by their own national circumstances and regulations or may operate in the context of United Nations peace

[3] KDF Training Doctrine Manual 1.
[4] Ministry of Defence, The Defence White Paper 2017, (Nairobi, Government Printers) p. 3

support operations. The national security threats that warrant military intervention in Kenya from 1963 to 2013 include the irredentist claims and the *Shifta* war, cattle rustling and banditry, the attempted military coups, interethnic strife, land and resource based conflicts, election related violence and terrorism.

The third objective of the study was to examine the justification for the three Kenya military interventions in internal interventions. As noted earlier, military interventions in conflict situations remain contentious when they occur or fail to occur. This is because of a number of factors. To begin with a military intervention may be legitimate or illegitimate. Secondly, the operation strategies may not receive civil society support. Thirdly, military intervention and operations may be executed contrary to fundamentals of basic human rights law. The intervention may also be marred operational challenges that hinder the overall success of the operation. In short, military interventions elicit mixed feelings among the general population when they occur or fail to occur.

Notwithstanding the criticism levelled against military interventions, the study noted that there are several arguments that are frequently made in support of or against military intervention. Military interventions ending violence and usher in conducive atmosphere to begin podt-conflict reconstruction. Military intervention come as last resort and are prompted by acute humanitarian problems. Moreover, military intervention in Kenya are justified constitutionally under aid to civil authority. It also emerged that internal military interventions are justified under Chapter VII of the United Nations Charter.

Military interventions are also justified for safeguarding national interest. Sun Tzu asserts that militaries must only intervene in the interest of the state. He asserts: "If not in the interests of the state, do not act."[5] Founded on this philosophy, states are justified to use force to safeguard national interest. According to the realist school, states compete for power and may use any available means to maximize her interests.[6] Kenya's national interests include the following: protection of state sovereignty and territorial integrity, preservation of national security, promotion of economic development, enhancement of regional and global peace and

[5] John F. Troxell, "Military Power and The Use of Force" in *U. S. Army War College Guide to National Security Issues, Volume I: Theory of War and Strategy, 5th* edition, ed. J. Boone Bartholomees, Jr.(PA: US Army War College, 2012), 159.

[6] Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 1948, 123.

security and enhancement of national prestige.[7] Kenya's national security interests are stated so as to protect state sovereignty and territorial integrity, maintain her political independence and to ensure socio-economic development. Kenya exercise her power to legitimize military intervention as a last bastion of defence when sovereignty and territorial integrity are under threat.

The military intervention in the cases of the *Shifta* campaigns and the *Operation Linda Nchi* can be understood in terms of Kenya's desires to protect her national interests. In the *Shifta* war, Kenya's sovereignty and territorial integrity were at stake. Losing an inch of land leave alone the expansive NFD region translated to loss of power. Under measures of safeguarding sovereignty and territorial integrity, Kenya was drawn into war it may have avoided if an agreement was reached during the Lancaster Conference. In launching *Operation Linda Nchi*, Kenya outlined the following as the national security objectives. First, protection of state sovereignty and territorial integrity against Al-Shabaab aggression. Second, protection of national security in the wake of terrorist attacks. Third, to enhance national prestige by protecting foreign nationals inside Kenya. Fourth, to enhance regional and global peace and security by having peaceful and governable state of Jubaland.

Military intervention are also justified as a measure of deterrence. Military patrols along the Kenya Somalia border were meant to prevent Al-Shabaab from attacking Kenya. Preventive attacks also deter aggression. The doctrine of pre-emptive strikes as means of military deterrence gained legitimacy as justifications for military action after the 11 September 2001 terrorism attack in the US. When President George W. Bush contended that a threat from another country or from a terrorist group was sufficient to justify military intervention. The Bush doctrine states: 'We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge.'[8] The Bush doctrine on war on terror has immense influence in many countries including Kenya. It is the basis of war on terror and the anti-terrorism bill enacted in Kenya. The war on terror also influences radical changes in Kenya's foreign policy. For long, Kenya maintained a policy of good neighbourliness and peaceful coexistence. Kenya had also vowed not to interfere with the interests of other states. The decision by President Kibaki in October 2011 to deploy troops in foreign land to protect

[7] Ministry of Defence, The Defence White Paper 2017, (Nairobi, Government Printers, 2017) p. 8
[8] Malone David M. Review of J. L. Holzgrefe, "Humanitarian Intervention: Ethical, Legal and Political Dilemmas" *The American Journal of International Law* 97, No. 4 (2003): 999-1002.

Kenya's national interests was interpreted as radical departure from the past in terms of foreign policy.[9]

Military interventions are also justified under humanitarianism. Holzgrefe, defines humanitarian intervention as the threat of use of force by a state, or group of states, aimed at preventing or ending widespread and grave violations of fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.[10] Humanitarian interventions are designed to save lives and relieve suffering as well as protecting socio-ethnic factions or a minority.[11] Humanitarian intervention is justified under the principle of 'responsibility to protect'. A doctrine that first obligates individual states and then the international community to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

There are principles for humanitarian intervention. These are: first, the principle of minimum humanitarian standards. This principles defines the threshold of unacceptable violation of human rights. Second, the principle of human flourishing which argues that military interventions should aim at prosperous and dignified humanity. Third, the principle of appropriate means which requires intervening troops to use means and force that is necessary, sufficient, proportional, and legitimate. Fourth, the principle of local enablement which advocates that operations be conducted in terms accepted by local communities. [12]

Other principles include: the principle of reflexivity which argues that intervener's motives and behaviour should be compatible with the professed purpose of their intervention. The principle of complementarity which advocates that intervener's actions should mutually complement local initiatives. The principle of accountability which says that interveners should hold themselves accountable to the international community. The principle of contingency and graduated response which propounds that where possible, intervention should be preventive, nonviolent and with the consent of all parties. Finally, the principle of

[9] International Crisis Group, "Kenya's Military Intervention in Somalia", 2012, 6

[10] Malone David M. *The American Journal of International Law* 97, No. 4 (2003): 999-1002.

[11] Frederic S. Pearson and Robert Baumann, "International Military Intervention, 1946−1988" Inter-University Consortium for Political and Social Research, Data Collection 6035, University of Michigan, 1993, 15

[12] Fernando R. Tesón Eight Principles for Humanitarian Intervention, Journal of Military Ethics, 5, No. 2, (2006) 93-113

universality, that advocates that just humanitarian intervention should be endorsed by the international community.[13]

The last objective of the study endeavoured to explain what amounts to success of military intervention in intrastate conflicts. Measuring an intervention's success is difficult.[14] For the purposes of the study, success in military intervention was defined as whether the region's stability was restored during the intervention. Success was also about controlling human rights violation during and in the post-intervention period. In ascertaining the success of KDF operations, the study distinguished between traditional and modern concept of intervention success. Traditionally, intervention success was narrowly defined using the objective of the intervention: 'end human suffering', 'regime change,' 'securing a capital city,' 'opening up corridors of humanitarian assistance,' and 'rescuing captured troops.' There are numerous advantages of relying on this definition. First, the narrower the objective, the greater extent to which success can be achieved. Secondly, it reduces the risk of getting bogged down where there is no clear mandate. Thirdly, it shortens the steps to an exit strategy.

The modern definition of success took into consideration the mission objectives and the post war justice. Success in military intervention was judged against three theoretical perspectives: the human-centric approach, strategic approach and the restorative-justice approach. The human-centric approach advanced by Seybolt, relies on the tenets of just-war principle of 'do-more-good than harm'.[15] For this reason, human-centric success of intervention is achieved when and if in a humanitarian intervention some people who would have died if no military assistance was granted, fail to die because of the actions of military personnel.[16] According to this approach, if an intervention saved lives immediately, then it served its purpose regardless of the aftermath of the war. However, scholars and conflict practitioners increasingly consider jus *post bellum* (justice after war) as an important component of examining intervention success.

[13] Oliver Ramsbotham, "Humanitarian Intervention 1990–5: a Need to Re-conceptualize?" *Review of International Studies* 23, No. 4 (1997): 445–68
[14] Swami Dayananda Saraswati, The Concept of Success, Arsha Vidya Gurukulam 14th Anniversary Souvenir, 2000, 14
[15] Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford: Oxford University Press, 2008), 30.
[16] Ibid, 31.

The strategic approach to success of military intervention examined a number of issues. First, what were the target objectives of the intervention? For instance, 'Did the military kill or capture our enemy?' When this is achieved then the 'mission was accomplished.'[17] Those who advocate for this approach perceive that simply killing or capturing a particular target is deemed as military success. This argument may both be true as well as misleading. It is true since the ultimate purpose of military action is to subdue the enemy. The enemy will only comply through application of military force. The statement is however, misleading because it wholly ignores the political, economic, systemic, and humanitarian consequences of intervention such as violation of human rights and destruction of property and the environment. All of these issues must be part of any effort to evaluate overall success of military intervention and thus the need of the restorative approach.

Restorative approach of judging military success borrows heavily from the theory of restorative justice. Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour during the intervention. Proponents of these theory recognize that conflict is a veil underneath crime is committed. They also assert that intervention causes harm to justice. Successful military intervention should focus on repairing that harm. In this context, the restorative approach to judging military success acknowledges that military intervention may result in violation of human rights and disruption people relationships. Success in military intervention should therefore not just focus on the immediate human centric needs or missioned tasks accomplished but rather focus on restorative justice by seeking to repair harm caused by military intervention. It involves the perpetrators denouncing crimes committed and both the victims and perpetrators actively participating in truth justice and reconciliation process. Military intervention is successful if interventionist uphold human rights during the operation and perform social work that enhances civil military relationship.

In cross referencing with reviewed literature, success in military intervention can be analysed using Lahneman principles. Lahneman highlights ten fundamental questions that act as principles for military intervention in internal conflicts. These are: first, what are the principal circumstances that prompt military intervention? Second, what is the nature of intervention force - police or military? Third, at what phase of the internal conflict did the intervention

[17] Ibid, 31

occur? Fourth, what is the goal of intervention? Is it political, military, economic or social justice? Fifth, in what ways may the intervening forces have improved their goal attainment? Sixth, would an earlier intervention have improved the situation? Seventh, would a more powerful force have improved the situation? Eight, to what extent was the military intervention sufficient in resolving the conflict? Or, to what extent would a non-military intervention be sufficient to produce long-lasting peace? Nine, did a clear exit strategy of the intervening force exist at the start of intervention? Finally, was the intervention a "success"? [18]

Taking all these factors into consideration, success in military intervention can be inferred from combination of both the traditional and modern definition of military success. Thus we need first take into consideration the human-centric approach as primary means of assessing military success. Military intervention should first and foremost be undertaken to save lives. Any intervention that leads to further loss of life is deemed to have failed. Secondly, military intervention should have reasonable success, based on the principles just war i.e. have a right reason, a right intention, and come as last resort. It should be declared by proper authority and the gains made be proportionate. Finally it should be initiated when there is a high probability of success. By considering the tenets of just-war traditions states may reconsider military interventions that are doomed to fail from the beginning. Third military interventions should have the full support of local, domestic, regional and international bodies. Fourth, internal military intervention should seek to achieve national interests. Finally, military intervention should take into consideration justice in, during and after military intervention. This is an all-inclusive approach taking into account all perspectives of success of military intervention.

6.3 Conclusion of the Study

KDF has participated in several military interventions of varying duration, extent and political controversies since 1963. During Mzee Jomo Kenyatta's the military intervened in the *Shifta* War. Under Daniel Torotich Arap Moi, the KDF intervened in the Wagalla massacres and the *Operation Nuyndo* in West Pokot. During the third regime under Mwa Kibaki, KDF intervened in Mount Elgon and Somalia. Going by these history, more military interventions will be witnessed. In an era where the use of military intervention is being

[18] W. J. Lahneman, *Military Interventions: Cases in Context for Twenty First Century*, (Lanhary USA: Rowman and Littlefield Publishers Inc., 2004), 116.

debated and criticized, public opinion is important in making or breaking military interventions. The monumental impact of public opinion can be seen through the electorate's decision process.

With the growing awareness and concern for human rights, there is need to reassess the military strategy employed in internal operation so as to change the public image about military intervention. The current strategy alienated civilians. By changing the public perception of military intervention, public criticism over military intervention will be a thing of the past. How can this be done? The starting point is to put into practice the normative assumption that the civilians control the military.[19] Civilian control of the military is a doctrine in the military and political science that places the ultimate responsibility for country strategic decision making in hands of the civilian political leadership, rather than professional military officers.[20] Although this is enshrined in the constitution, actual participation of the civilians in military decision making process is overlooked. It is important that before intervention, public participation should be sourced. At present, the state makes the decision for military intervention without proactively seeking the public's opinion. It is worthwhile to note that military success is not just determined by the outcome on the battlefield but also by the public opinion. For a long time public opinion has been disregarded by military commanders or state agents as inconsequential.

Secondly military intervention can be remodelled to assume the role of a surrogate institution by capitalizing on opportunities provided in civic-military operations (CMO). Anthony Anderson argues that societies suffering from atrocities committed by militia welcome the military interventions because the post-conflict societies view the military as a surrogate that replaces former discredited institutions. [21] Therefore, the military is expected to have a significant impact on the transformation of popular attitudes toward security until new local institutions are built. While intervening in local conflicts the military should establish a good

[19] Samuel *P*. Huntington, *The Soldier and the State*: *The Theory and Politics of Civil-Military Relations* (Cambridge: The Belknap Press, 1957), 127.
[20] Croissant A., Kuehn D., Lorenz P., Chambers P.W. "Explaining Civilian Control of the Military in New Democracies" in *Democratization and Civilian Control in Asia. Critical Studies of the Asia Pacific Series.* (London: Palgrave Macmillan, 2013), 1.
[21]Ibid, 1.

will through ethical behaviour, impartial implementation of the mandate, basic humanity and military professionalism.[22]

The third way to improve civilian-military cooperation (CIMIC) is by having the military engaged in community service before, during, and after combat. Civilian-military cooperation is vital for the civilian population to regain its footing in order to build a stable society. Military participation in community service helps in winning the minds and heart of the victims of intervention. For instance, after the Biafra war, Gown's administration invested money in the reconstruction of the East. The government also organized the National Youth Service (NYS), a program that drafted college graduates to perform community service for a year.[23] Without community pacification, the good will towards the military intervention fades. The community will refrain from giving information that would help the military operation to restore law and order. This is what hampered the police led operation *Tafuta Amani* in Mt. Elgon.

The initial police-led operation in Mount Elgon operation failed because the police compelled the residents to give information about the SLDF militia. As a result the local community found it extremely difficult to divulge information or to relate positively with the police unless encouraged to do so. This never happened until the army intervened in March 2008. Failure of implies that the military need not employ the strategy of rounding up victims for screening. Instead, for success in operations the military, should take active measures to involve the population in the security situation on a hierarchical basis over time as the situation permits. The local people should have a voice in community security affairs through a consultative mechanism. The civilian voice should be expanded as the security situation improves. Such a progressive program must ensure that the surrogate security force does not impede the drive to self-sufficiency but rather encourage the local population including women and the youth to build capacity to take control of its own affairs.

The fourth way to improve the image of the military is through developing a proper complaint process. The military should guarantee a free and fair complaint process that ensures the exercise rights of victims *vis-a-vis* security. An independent ombudsman- type of

[22] Catriona Goulay, "Partners Apart: Managing Civil-Military Co-operation in Humanitarian Interventions" in *Journal of International Peacekeeping, Disarmament* Volume 4, No. *3*, (2000).
[23] Fearon and Laitin, *Nigeria, Random Narrative*, 8.

office to which citizens could take complaints should be established and feedback given to the community through the independent office on how the complaint was dealt with. The creation of such system earlier on in the post conflict period would assist in building confidence within the civil society.[24] The KDF Ombudsman's office could be staffed by civilians. This office could receive and address complaints against KDF officers and make binding recommendations to address them. Involving civilians in auditing military work is not new, indeed the KDF has involved the public in its recruitment process, consistently using the media to emphasise that the process is open and free from manipulation and corruption. Such initiatives need to be deepened, extended and institutionalised. Furthermore, improving public knowledge of the existing accountability structures and how they can use them would help activate greater public use of the forums and enhance accountability.

Democratic participation and transparency is also key in improving public perception of military intervention. During the intervention, government agents and military commanders should be democratic. The military should also remain apolitical at all times and avoid political manipulation. Security agents, politicians and provincial administrators should not take sides. In the *Shifta* war, the local administration was biased. The military operation was also motivated by the political climate. In Mt. Elgon, the provincial administration was accused of going against the aspiration of the residents and was accused of wrong doing by abetting corruption and illegal land allocation in the *Shifta* war and Operation *Okoa Maisha* respectively. The politicians were also accused of funding the SLDF militia. To ensure impartiality there is need for military intervention in local conflict to be sanctioned and controlled by a civilian body like the UN. However, the problem with this approach is the UN bureaucracy which takes long to act.

Another way in which military operations can be remodelled to suit internal operations is by cultivating a good image through civil-military cooperation and using its resources to support local reconstruction that are not only seen to be aiding their operations but also winning the hearts and minds of the local community. Such as organizing medical camps, carrying out food distributions and reconstruction of infrastructure among other activities. However, even if the military undertakes these civil military operation (CMO) projects in good faith, the dilemma is that the civil society is often critical, arguing that the activity is ill-considered and

[24] Xavier Francis Ichani "Military Intervention in Local Conflicts: Justification, Perceptions Lessons and Recommendations" *JIARM*, (2014), 416-432.

motivated by military considerations as opposed to the needs of the community. In Mt. Elgon District, the military opened new roads only to be accused of doing so in order to ensure accessibility to their logistics and the success of the operations.[25]

A different way of rethinking military intervention is through interlacing military stick measures with community-based carrot measures during the operation. Regan argues that stability in military-civil operation are likely to be successful when military interventions are partnered with civilian-led peacebuilding initiatives that implements reform packages within a broadly defined resolution process. Regan concurs that mixed strategies combining negotiation with force are the most successful in shortening violence.[26] Regan argues that negotiated settlements and consent prior to intervention appear to be the most important ingredients of success in ending violence.

Finally, there is also need to rethink concept of counter-terrorism. Since 11 September 2001, governments around the world have tried various approaches in dealing with terrorism. According to Sederberg, terrorism can be handled like war through military intervention or be dealt through the court system. The most relied counter-terror strategy is repression.[27] Where military action was expected to diminish terrorist ability to engage in violence. This is proving to be counter-productive. Hence the need to appreciate theory of change approach. Theory of change framework is based on a continuum of isolation and engagement.[28] Isolation essentially proposes a strategy of identifying, targeting and eliminating individuals and groups who espouse violence defined as terrorism famously referred to as 'listing'. Engagement refers to strategies that require contact, consultation and dialogue. In particular, it suggests that successful peace building and conflict transformation demands that engagement must happen with a wider set of people and stakeholders at multiple levels of society.[29] Complementary application of both isolation and engagement is seen as plausible

[25] Oral Interview, Colonel Cyrus Oguna, DOD, October 2014.
[26] Patrick Regan, *Civil Wars and Foreign Powers: Interventions and Intrastate Conflict* (Ann Arbor: University of Michigan Press, 2000), 67.
[27] Peter C. Sederberg, "Global Terrorism: Problems of Challenge and Response" in *The New Global Terrorism, Characteristics, Causes, Control*, ed. Charles W. Keegly Jr, (New Jersey: Prentice Hall, 2003), 274.
[28] John P. Lederach, "Addressing Terrorism: A Theory of Change Approach" *Somalia: Creating Space for fresh Approaches to Peace building*, (Uppsala, Sweden: Life & Peace Institute, 2012), 7.
[29] John P. Lederach, *Preparing for Peace: Conflict Transmission through Cultures*, (New York: Syracuse University Press, 1995), 96.

in dealing with extremism. This is because there is no one technique that is a "magic bullet" in dealing with terrorist situation.[30]

Alongside engagement is the question of negotiating with groups that use force. The much asked question is should the government reach out engage terrorists in negotiations with the aim to persuading them to eschew violence? This question is not new. Since 11 September 2001, the question of negotiating with enemies has provoked controversial debate. Often becoming an exchange of politically and morally charged heat. Understandably, governments seek to shield themselves from such heat by categorical asserting that they will not talk to terrorists. Despite such claims, more than a few governments have talked and do talk with groups and individuals they regard as "terrorists". Such interactions are not routine, but rare.[31]

Although nothing is as unpopular as the so called entering into talks with terrorists, time and again, governments and innocent civilians face the unpalatable reality from terrorist attacks. Under such circumstances, counterterrorism strategies such us military repression, policing, isolation, targeted killing, profiling and arrest may not work or may be insufficient to end terrorism. At worse they may worsen the problem. Furthermore the violence to obliterate terrorism may be so bloody and indiscriminate killing innocent civilians and violate the international law, or destabilize the state while become morally repulsive as the initial terror attacks. Ironically the cure may be worse that the disease. In such condition, entering into talks with the perpetrator may be viable.[32]

Ultimately harsh, aggressive policies in response to terrorism fail so often in their stated aims because they are so badly misunderstand and ignore the psychology of the enemy and of observers.[33] Strength and power alone are not enough to defeat terrorism. Aggression and force are too crude because they deceive by meeting short term psychological needs of the state and its citizens by offering indications of success, terrorists disabled; weapons confiscated; operations and networks disrupted. Yet appearances and accolades may be

[30] James Lutz and Brenda Lutz, *Terrorism: the Basics*, (London: Routledge, 2011), 144.
[31] N. Quinney and H. Coyne. *Talking to Groups that Use Terror*, (Washington DC: United Institute of Peace 2012), 1.
[32] United Institute of Peace, "When to Negotiate with Terrorist" USIP Special Report, 2010, 10.
[33] A. Silk, "Fire of Iolaus: The Role of State Countermeasures in Causing Terrorism and What Need to be Done," in *Terrorism Studies: A Reader*, ed., J. Horgan and K. Braddock, London and New York: Routledge 2012), 330.

deceiving. Terrorist can endure military strikes. If past experiences is anything to go by. Considering military campaign cases such South Africa Apartheid rule against African National Congress (ANC), the British against Irish Republican Army (IRA) show that terrorism may not be defeated by aggression but through engagement.[34] The study will assess how state aggression in eradicating terrorism ignores the psychology of the enemy and of observes such religious leaders, Nongovernmental organization involved in countering violent extremis.

To allay fears that negotiation with the "enemy" may set a bad precedence and lead to mushrooming of such groups, governments should pursue both stick and carrot measures in dealing with internal disputes. Since military intervention plays a significant role in bringing about peace, there is need to enhance its performances to avoid widespread criticism. By re-imaging and re-modelling it. This can be done through reorientation of the military strategy to address the impact of its operations. For instance, there is need to change the isolationist and responsive short sightedness of the military that tends to ignore the impact of their activities on the people. This can be implemented through adoption of the international surrogate security institution[35]. This adjustment however might be done with little disruption to the operational routines in the military. It is therefore very possible though with challenges for the military intervention to bring sustainable peace without compromising their security role.

6.4 Recommendation of the Study

Based on this the study recommends as follows. First there is the need for domestic legislation to regulate the operations of the military during internal operation. Second, the rules of military engagement in Kenya should be given a legal status and cease to operate as a mere guidelines for troops. Third, there should be re-orientation of the soldiers involved in internal security operations and the populace as well. The Kenya Defence Forces should procure modern days equipment in order to withstand the challenges of modern threats as well as avoid inflicting more harm during military operation. Last and not list, the national Security Council should embrace the theory of change approach in defining counter-terrorism strategies a means of achieving national security interest because military strategies are

[34] Silke, "Fire of Iolaus" 335.
[35] John. P. Lederach, "Addressing Terrorism: A Theory of Change Approach" *Somalia: Creating Space for fresh Approaches to Peace building*, p. 12.

sufficient but not enough in dealing with emerging threats to national security such as terrorism, transnational organized crime and cyber-crime.

6.5 Suggestion for Future Researcher

Given the scope and limitation of this study, the researcher recommend the following as areas for further studies.

a) A study in post-2013 KDF engagement in the Somalian conflict especially with the impending withdrawal of the AMISOM forces in the coming years.
b) A study on pollicisation of the military and militarization of the police.
c) The KDF and the attempted coup d tat in Kenya.
d) Historical analysis of *Operation Nyundo* and cattle rustling in Kenya.
e) The Hydra effect of Somalia based extremist groups since 1945.

6.6 Summary

In a nutshell, this chapter has summarized the normative principles of internal interventions, the national security threats warranting military intervention in Kenya since 1963, the justification of such interventions and also debated on the success of the KDF military intervention. In concluding the chapter, the study argues that the role of the military in internal security operations cannot be over-emphasized. The military is one of the most important agents of national security. It is charged with the complex task of protecting the nation from external and internal aggression. For this reason the military fall and remain an integral part of the nation's internal security structure given the magnitude of current national security threats in Kenya. However, military interventions worldwide continue to receive sharp criticism from humanitarian organization because of the difference in strategies of operation. Military institutions on one hand place a high value on command and control, top-down hierarchical organizational structures and clear lines of authority, discipline and while humanitarian organizations on the other hand are less hierarchical and more participatory in their style of decision making and operations. They also attach more importance to long-term impacts. The military's approach is informed by security rather than long-term development considerations. These criticisms notwithstanding, it is important to underscore that deployment of the military in internal operations has its own advantages.

SOURCES

List 2: List of Informants

S/No	Name of Informants	Strata (Category)	Place of Interview	Date of Interview
1	Focused Group Discussion	Military	Nairobi	12/12/2018
2	Focused Group Discussion	Civilian	Cheptais	16/1/2019
3	Focused Group Discussion	Civilian	Cheptais	31/10/2018
4	Focused Group Discussion	Military	Langata Barrack	10/10/2018
5	Focused Group Discussion	Military	Lanet Barracks	29/11/2018
6	Focused Group Discussion	Civilian	Cheptais,	24/10/2018
7	Focused Group Discussion	Civilian	Chemondi,	21/10/2018
8	Focused Group Discussion	Civilian	Cheptais,	23/10/2018
9	Focused Group Discussion	Civilian	Cheptais	8/10/2018
10	Focused Group Discussion	Civilian	Kapsokwony	31/10/2018
11	Focused Group Discussion	Military	Lanet Barracks	4/2/2019.
12	Focused Group Discussion	Civilian	Cheskaki	18/1/ 2019
13	Ali Mukhtar	Civilian	Estleigh	9/9/2018
14	Major Babuya*	Military	Nairobi	14/1/2019
15	Lt. Col. Joseph*	Military	KA Hqs.	15/9/2018
16	Jonh Wekesa	Civilian	Cheptais,	23/10/2018
17	Hon. Wilberfoce Kisiero	Politician	Kapsokwony	31/5/2018
18	Major (Rtd) Osundwa	Consultant	Nairobi	24/11/2018
19	Major Wako Wario	Military	Nairobi	25/10/2018
20	Sub-County Commander	NPS	Kapsokwony	9/2/2019
21	Army spokesperson	Military	Nairobi,	22/11/2018
22	Lt. Gen. Kasoan,	Military	KMA	6/6/2012
23	Captain (Rtd) Werunga	Security Consultant	Nairobi	15/1/2019
24	Colonel Cyrus Oguna	Military	DOD	28/9/2012

25	Jacklyne Temko,	Civil Society	Cheptais	21/10/ 2018
26	Jackeline Takko	Civil Society	Cheptais	23/10/2018
27	MajorBoit*,	Military	Lanet Barracks	4/2/2019
28	Major Chacha*,	Military	Lanet Barracks	4/2/2019
29	Major Koech*	Military	Lanet Barracks	10/9/2018
30	Major Otieno*	Military	Lanet Barracks	4/2/ 2019
31	County Security Committee	NPS	Garissa	20/10/2018
32	Peter Kirwa	Church Minister	Cheptais	23/10/208
33	Mr. Wekesa	Civilian	Kapkota	24/10/2018.
34	Reverend Stephen Kirwa	Religious Groups	Kapsokwony	29/10/2018
35	Rosemary Cheminiwa	Civilian	Chemondi	23/10/ 2012
36	Pastor Wycliffe Matasero	Civilian	Cheskaki	23/10/2012
37	Hon Wilberforce Kisiero	Politician	Kapskwony	26/5/ 2011
38	General (Rtd) Mohamed	Military	Nairobi	20/12/2018
39	Kenya Army Officer	Military	Nairobi	22/11/ 2011.
40	Tom Ekisa	Researcher	Bungoma	8/2/2019

NB: The asterisks mean not his/her real name

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APPENDICES

APPENDIX I: INTERVIEW CONSENT FORM

Dear Sir/ Madam,

I am Mr. Xavier Francis Ichani, PhD student at Egerton University. This interview guide was designed to gather information on the research topic "Kenya Defence Forces and Militarization Intra-state Disputes Since 1963 to 2013". Research for a PhD Thesis submitted to Faculty of Arts and Social Science in partial fulfilment of the requirements for the award of the Doctor of Philosophy in History Degree of Egerton University. You are requested to kindly provide information that may facilitate the carrying out of the study. The information provided will be treated with the highest level of confidentiality and will only be used for the purpose of this study and not any other.

I will highly appreciate if you consent to this request to allow me pursue this noble course.

Thanks in advance

APPENDIX II: INTERVIEW SCHEDULE FOR GENERALS/SENIOR OFFICERS

SECTION A: NORMATIVE PRINCIPLES OF MILITARY INTERVENTION

1. Comment on the primary and secondary role of KDF especially in the management of internal disputes in Kenya.
2. What kind of operations does the KDF undertake during aid to civil power?
3. Which principles guide the rules of engagement of military intervention in non-international armed conflicts?
4. How and which international law regulate the conduct of non-international armed conflicts?
5. What are the challenges of the KDF internal operations?

SECTION B: NATIONAL SECURITY THREATS THAT WARRANT INCREASED MILITARY INTERVENTION IN INTRASTATE DISPUTES

6. In which internal disputes has the military been involved in resolving the conflict?
7. What circumstances warranted the military intervention in these conflicts?
8. Do you think the military intervention was necessitated by inability of the police handle the situation? If so. Why?
9. Did the military intervene for humanitarian purpose or because of certain national and geopolitical interests? What was the nature of the humanitarian needs or which interests?
10. What are some of the reasons given for continued militarization of intra-state conflicts in Kenya?

SECTION B: JUSTIFICATION OF MILITARY INTERVENTION IN INTRASTAE CONFLICTS

11. Do you think the Kenya military intervention in the *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi* was justified and why?

12. What are the moral and ethical grounds for justifying use of state military in pacifying intrastate conflicts?

13. Previous military intervention in Kenya have out rightly been criticized by section of the public, what are some of the criticism levelled against the Kenya military intervention in the *Shifta Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi*?

14. Do you think the civil society was justified in criticizing the military operations in the *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi* and why?

15. To what extend were these claims of human rights violation about the military operation true or untrue?

SECTION C: ASSESSING SUCCESS OF MILITARY INTERVENTIONS IN INTRA-STATE CONFLICTS

16. In your own opinion, do you think the military was successful in pacifying these conflicts and why?

17. What are the general grounds for measuring success of military operation in your opinion?

18. When and how should the military intervene in intra-state conflicts?

19. ` In your view, did the Kenya military intervention in the *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi* address the underlying causes of the conflicts?

20. What is your take on the appropriateness of military strategy employed by KDF in pacifying intra-state conflicts?

APPENDIX III: INTERVIEW SCHEDULE FOR FIELD COMMANDERS AND TROOPS

SECTION A: NORMATIVE PRINCIPLES OF MILITARY INTERVENTION IN INTRASTATE DISPUTES

1. What general principles guide internal military intervention in the field?
2. What internal and domestic laws guide the KDF internal Operations?
3. What type and amount of force do you use while in the field?

SECTION B: CIRCUMSTANCE THAT WARRANT INCREASED MILITARY INTERVENTION IN INTRASTATE DISPUTES

4. The Kenyan military has always been called upon to aid civil authority in maintaining peace and security, in which internal conflicts has the Kenya military been deployed?
5. What circumstances warranted the military intervention in these conflicts?
6. What are the moral and ethical grounds for justifying use of state military in pacifying intrastate conflicts?
7. Previous military intervention in Kenya have out rightly been criticized by section of the public, what are some of the criticism labeled against the Kenya military intervention in the *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi*?
8. To what extend were these claims of human rights violation about the military operation true or untrue?

SECTION C: ASSESSING SUCCESS OF MILITARY INTERVENTIONS IN INTRA-STATE CONFLICTS

9. In your own opinion, do you think the military was successful in pacifying these conflicts and why?
10. What are the general grounds for measuring success of military operation in your opinion?
11. When and how should the military intervene in intra-state conflicts?
12. ` What are the operational challenges that affect the KDF in pacifying intrastate conflict?
13. How has the KDF command addressed these challenges?

APPENDIX IV: INTERVIEW SCHEDULE FOR COUNTY SECURITY OFFICERS

1. What were the underlying causes of the *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi*.
2. Comment on the role of provincial administration in intra-state conflict resolution.
3. How well was the County Security Committee prepared to deal with intra-state conflicts?
4. What challenges faced the civil police and earlier operations in taming the conflict?
5. What circumstances warranted the military intervention in these conflicts?
6. Was the military involvement occasioned by failure of the provincial administration?
7. Comment on the nature of the military intervention in terms of strategy and suitability to deal with such conflicts.
8. The military intervention in was heavily criticized by section of the public, what are some of the criticism labeled against the Kenya military intervention in the in *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi*?
9. To what extend were these claims of human rights violation about the military operation true or untrue?
10. In your own opinion, do you think the military was successful in pacifying these conflicts and why?

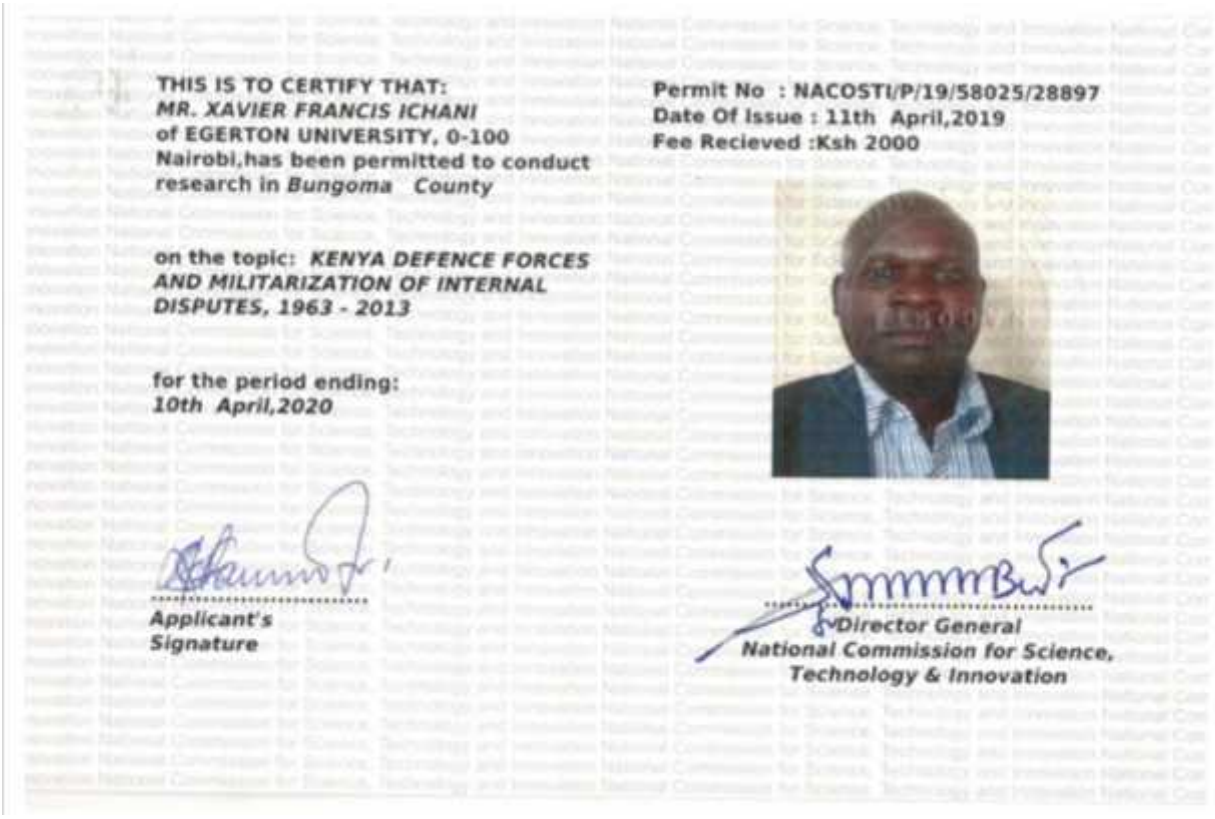
APPENDIX V: INTERVIEW SCHEDULE FOR VICTIMS OF MILITARY INTERVENTION

1. What were the underlying causes of the *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi?*
2. Comment on the role of provincial administration in intra-state conflict resolution.
3. How well was the County Security Committee prepared to deal with intra-state conflicts?
4. Why were the civil police and earlier operations unable to tame the conflict?
5. What circumstances warranted the military intervention in these conflicts?
6. Comment on the nature of the military intervention in terms of strategy and suitability to deal with such conflicts.
7. The military intervention in was heavily criticized by section of the public, what are some of the criticism labeled against the Kenya military intervention in the in *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi*?
8. To what extend were these claims of human rights violation about the military operation true or untrue?
9. In your own opinion, do you think the military was successful in pacifying these conflicts and why?
10. In your opinion, should the military be used in pacifying intra-state disputes?

APPENDIX VI: INTERVIEW SCHEDULE FOR FOCUSSED GROUP DISCUSSION

1. What were the underlying causes of the *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi?*
2. Comment on the role of provincial administration in intra-state conflict resolution.
3. How well was the County Security Committee prepared to deal with intra-state conflicts?
4. Why were the civil police and earlier operations unable to tame the conflict?
5. What circumstances warranted the military intervention in these conflicts?
6. Comment on the nature of the military intervention in terms of strategy and suitability to deal with such conflicts.
7. The military intervention in was heavily criticized by section of the public, what are some of the criticism labeled against the Kenya military intervention in the in *Shifta* war, Operation *Okoa Maisha* and Operation *Linda Nchi*?
8. To what extend were these claims of human rights violation about the military operation true or untrue?
9. In your own opinion, do you think the military was successful in pacifying these conflicts and why?
10. In your opinion, should the military be used in pacifying intra-state disputes?

APPENDIX VII: RESEARCH PERMIT



THIS IS TO CERTIFY THAT:
MR. XAVIER FRANCIS ICHANI
of EGERTON UNIVERSITY, 0-100
Nairobi,has been permitted to conduct
research in *Bungoma County*

on the topic: *KENYA DEFENCE FORCES AND MILITARIZATION OF INTERNAL DISPUTES, 1963 - 2013*

for the period ending:
10th April,2020

.....
Applicant's Signature

Permit No : NACOSTI/P/19/58025/28897
Date Of Issue : 11th April,2019
Fee Recieved :Ksh 2000

.....
Director General
National Commission for Science, Technology & Innovation

APPENDIX VIII: RESEARCH PUBLICATION

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BATTLE STRESSORS AND FATIGUE OF MILITARY INTERVENTION IN SOMALIA

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ABSTRACT

Battle fatigue has always been synonymous with military operations. This article examines the sources of battle fatigue referred here as battle stressors among the first contingent of Kenyan troops in Somalia. The article argues that like war, the Operation Linda Nchi forced Kenyan troops to go beyond the paradigms of ordinary life in Somalia, exposing them to battle fatigue. Stress that was never quantified because customarily, nations measure the cost of war in terms of dollars spent on weapons and ammunition and the number of soldiers killed or wounded known in the military jargon as 'ammo and casualty report'. Rarely, do militaries attempt to measure the cost of war in terms troops suffering due to battle stressors. Yet in military operations there is ever a greater probability of becoming a psychiatric casualty than of being killed by an enemy. The article begins with a highlight of historical nightmares of military intervention in Somalia. It also samples selected literature on combat stress and eventually documents the battle stressors in Somalia ranging from adverse weather conditions, concerns over the family, fear of fighting an elusive militia, isolation, poor states of the roads, logistical and administrative challenge, fear of death and injury and finally, separation from loved ones.

KEYWORDS:

Battle Stressors –are traumatic events typical of war zones that confront peacekeepers. These include; witnessing death and dying, clearing of civilian corpses, serious accidents, close proximity to potentially hostile enemy, sudden change in life style and family separation among many more.

Battle fatigue - is the approved Army term for combat-stress symptoms and reactions that feel unpleasant and are likely to interfere with mission performance.

Posttraumatic stress disorder - A psychological disorder that develops in response to severe exposure to battle fatigue.

African Union Mission in Somalia (AMISOM) is regional peacekeeping mission operated by the African Union with the approval of the UN in Somalia. It is mandated to support transitional governmental structures, implement a national security plan, train the Somali security forces, and to assist in creating a secure environment for the delivery of humanitarian aid.

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Debating on Success of the Kenya Counter Insurgency on the Shifta War: Between Double Success and Little Consolation

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Abstract
Military operations are undertaken to attain specific political and military objectives. However, what amounts to success in military operations remains unclear. Traditionally, operation success was narrowly defined in terms of objectives of the intervention. To 'end human suffering', 'regime change,' 'capture a city,' and 'rescue captured troops.' Modern definition of military success is human centric, based on tenets of just war principle of 'do-more-good than harm.' In this regards, operation success is achieved when and if in the intervention some people who would have died if no military assistance was granted, fail to die because the military intervened. Further, the restorative justice approach evaluates success of military operation in terms of state ability to repair harm committed by the military in the course of the war. The assumption is that military operations result in human rights violation. Using critical discourse analysis, this article interrogates the success of Kenya's political and military objectives in the *Shifta* war against the four possible outcomes in war. First diplomatic and military success. Second, diplomatic and military failure. Third, diplomatic failure but military success and fourth, diplomatic success with military failure. The *Shifta* war having been resolved through a ceasefire, we conclude that decisive military victory was untenable for Kenya without diplomatic efforts. Kenya's double victory and Somalia little consolation was majorly a result of Kenya's successful diplomatic manourvoure over Somalia's failed international charm.
Keywords: Counter insurgency, diplomatic manouvoure, military operations, *Shifta* war.
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Introduction

In 1964, a month after independence, the Kenya Armed Forces waged a war against an irredentist movement in the then Northern Frontier District (NFD). This was the *Shifta* war. Kenya first and only irredentist war since independence. Lasting four years with probable over ten thousand deaths. This was one of Kenya's bloodiest war. Over fifty five years later, tales of survivors of the war still attract tremendous scholarly attention, while documentaries on the war make big media headlines. Further, historical accounts and writings of the war speak volumes and illustrate horrors of the military strategy. Some of the most significant writings on the *Shifta* war include works by Hannah Whittaker, Iona M. Lewis, and Nene Mburu among others. There is no doubt that predecessors to this article did commendable work. However, these writings approach the *Shifta* war in terms of causes of the war and military atrocities committed in the course of war as opposed to factors that warranted the military intervention, as well the stated success of the military operation that we attempt to interrogate.

Causes of the *Shifta* War

The historical development and causes of the *Shifta* war is beyond the scope of this article. We mentions, albeit briefly the socio-political agitation between the residents of the Norther Frontier District (NFD), Kenya and Somalia that triggered the war warranting military intervention. The first cause of the *Shifta* war can be deciphered from two opposing perspectives of secession and counter-secession. Throughout history, secessionist's and counter-secessionist's actors have clashed over the internal legitimacy of unilateral declaration of independence. (Muro & Woertz, 2018) The *Shifta* war, was primarily an irredentist's attempts by members of the Somali community living in the NFD, who expressed wish to join their fellow kinsmen in the republic of Somalia. Though Kenyan authorities adopted the term *Shifta* an *Amharic* word for bandits in order to depoliticize the irredentist movement and to conceal violence used to suppress the military campaign. (Whittaker, 2012) By irredentism we mean, a type of secession where members of an ethnic group seek to annex part of a territory of one state to the territory of another state because of common ethnicity or prior historical links. Irredentism is distinguished from secession. Secession refers to a process by which a particular group seeks to separate its self from the state to which it belongs and to create a new state. (Buchan, 2007) In the case of the NFD, the Kenyan Somalis owing to shared culture demanded to annex the NFD as 5th regional state of the republic of Somalia. The *Shifta* war is therefore irredentist claim as opposed to secession as commonly referred to.

Irredentism and secession is a global tendency of state formation. Since 1945, there have been numerous attempts to secession by groups. These include: Tibet (China); Kashmir (India); East Punjab (India); The Karen