

**THE ROLE OF AFRICAN UNION IN DEALING WITH THE
PROBLEMS OF INTERNAL ARMED CONFLICTS IN
DEMOCRATIC REPUBLIC OF CONGO**

By

Calist Salvatory.

**A Dissertation submitted in Partial Fulfillment of the Requirements
for Degree of Master of Laws (LL.M) of Mzumbe University.**

2013

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2013

CERTIFICATION

I, the undersigned certify that I have read and hereby recommend for acceptance by the mzumbe University a dissertation entitled **The role of African Union in dealing with the problems of Internal Armed conflicts. (Democratic Republic of Congo as a Case study)**, in partial/ fulfilment of the requirements for the award of the degree of Masters of laws of Mzumbe University.

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However, any errors of shortcomings that may be found in this dissertation are entirely mine, for which I bear the responsibility.

DEDICATION

To the Almighty God for giving me life, wisdom and intelligence to perform this work and to my beloved parents. Mr. Salvatory Horombo and Perpertia Horombo for sending me to school and give me a good life during the academic career.

LIST OF ABBREVIATIONS

ACRI	: African Crisis Response Initiative.
AFDL	: Alliance of democratic Forces for the Liberation of the Congo. (<i>Alliance des forces démocratiques pour la libération du Congo</i>)
AMIS	: African Mission in Somalia.
ASEAN	: Association of South East Asian Nations.
ARF	: Asian Regional Forum.
ASC	: Asian Security Council.
ASI	: African Solidarity initiative.
AU	: African Union.
CNDP	: National Congress for the Democratic Republic of Congo (<i>Congrès national pour la défense du peuple</i>)
DRC	: Democratic Republic Of Congo.
ECOWAS	: Economic Countries of West African States.
EU	: European Union.
FARDC	: Armed Forces of the Democratic Republic of Congo. (<i>Forces armées de la République démocratique du Congo</i>)
ICRC	: International Committee of the Red Cross.
IHL	: International Humanitarian Law.
LRA	: Lord's Resistance Army.
OAU	: Organisation of African Unity.
PCRD	: Post-Conflict Reconstruction and Development.
PSC	: Peace and Security Council.
SADC	: Southern African Development Community.
SC	: Security Council.
SPLA	: Southern Peoples' Liberation Army.
UN	: United Nations.

LIST OF STATUTES

The African Union Constitutive Act.

Protocol on amendments to the Constitutive Act of the African Union.

Protocol relating to the Establishment of the peace and Security Council of the African Union.

DEFINITIONS OF KEY TERMS

An internal armed conflict is a violent dispute, where the violence occurs primarily within the boundaries of a single State.

AU Constitutive Act is the Constitution of the African Union.

Coup d'état a French word which means a particular group of people who overthrow a government of a State particularly through the military means.

Non intervention is the abstention by a nation from interference in the affairs of other nations or in those of its own political subdivisions.

Peacekeeping occurs when an international community supervises the truce between the two hostile parties in order to preserve peace.

Peace building involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development.

Regional organisation is an international community whose memberships are mostly states which are formed to foster their objectives and developments goals.

Sovereignty refers to the possession of sovereign power; supreme political authority; paramount control of the constitution and frame of government and Its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.

ABSTRACT.

This study focuses the efficacy of the African Union in dealing with the Internal Armed Conflicts around the central Africa particularly in the eastern Democratic Republic of Congo (DRC). The African Constitutive Act states that one of the objectives of the Union is the maintenance of peace and security. Despite this premise African countries have continued to experience internal armed conflicts with the massive killings of innocents' civilians. In dealing with these problems of civil wars in African countries, the African Union is the main regional organisation.

The Organisation of African Union (OAU), the African Union's (AU) predecessor has attempted to deal with the challenge of internal armed conflicts. The formation of AU on May 25, 1963 brings hope about the future of Africa in security and maintenance of peace. But inversely Africa under AU still continues to experience massive internal armed conflicts around the region. This argument forms the main theme of the research.

By developing this idea the study will seek to find out why there are continuing internal armed conflicts in central Africa (DRC), the way AU has been dealing with such problems, what are the bottlenecks of the AU in dealing with these problems and what is the position of the law in dealing with these issues.

The study will reveal some factors undermining the African Union in solving the internal armed conflict in the Democratic Republic of Congo include lack of resources in the organisation, externalisation of the conflict, poor financial power of the organisation and absence of standard socio-economic development in DRC. Also continued foreign interference intensify the violent element in DRC and the economy of the DRC has been militarised in the sense that armed conflict has become an ordinary means of making a living for part of the population.

Some of the measures suggested by the respondents were to amend the AU Constitutive Act, to empower the African Union in solving the conflict, solving national issues, including weak economy, weak security and intelligence apparatus.

The conclusion of the study is that the African Constitutive Act does not compel members of the African Union to help each other in the case of the internal armed conflicts. The organisation is a loose type of regional organisation whose emphasis is moral rather than legal obligations on respect for its member's national sovereignty. Therefore solving internal armed conflicts failed to become operational because the Organisation mainly depends on the consent of the members.

The study recommends enactment of the law which will protect States in case of the internal armed conflicts and amendments be made on Article 9 of the Constitutive Act of the African Union so as to include members of the organisation to be obliged to contribute under the new law to help each other in case of internal armed conflicts.

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CHAPTER ONE

INTRODUCTION

1.1 Background to the Study.

After the First World War (1914-1918), Africa was under the colonial rule. Colonialists found a hard task on how to rule Africans, therefore they imposed direct and indirect rule. Direct rule was applied in situations where there was no strong resistance. The whites rule Africans themselves without the support of the local chiefs. Indirect rule was applied where the society were strong and unified. This rule required African people to rule their fellows Africans on behalf of the colonialist. Few sons of chiefs were given chances to study in order to help the colonial administration. Those who got chances to study the Modern education some of them were against the colonial administration. These scholars were important for many reasons; one of reasons was to awaken the majority Africans to claim their independence and the formation of a very important organisation which was later called Organisation of the African Union (OAU).

In the late 1950s Kwame Nkrumah started a movement to unify Africa as one. He imparted the vision of African Union in order to strengthen the continent of Africa and to make less vulnerable to outside influence. Many African countries acted positively to his idea of forming unity among Africans, Emperor Haile sellasie supported the idea to form the unity. African leaders including Nyerere viewed African as a contribution to global stability.

The inspiration of the African leaders was the birth of the Organisation of African Union (OAU). Organisation of African Union was established in Addis Ababa, Ethiopia on May 25, 1963 by the political leaders of 31 African countries. Its main focus was the liberation of the white minority, especially southern Africa.¹ OAU

¹ Okumu ,F.(2008).The African Union Challenges of Globalisation, security and Governance.p. 11

Charter consisted of 33 articles that defined its objectives. One of the objectives of the OAU was the prevention of internal armed conflict around the region.

OAU responded effectively to fratricidal intrastate conflicts. At the same time, it was becoming evident that the west and the United Nations (UN) Security Council were not responding promptly to the African problems, particularly security matters. It was for this reasons that OAU summit of 1990 decided to issue the declaration in the 'political and socio economic situation in Africa and the fundamental changes taking place in the World'. This declaration provided a framework in which African leaders pledged to work together towards peaceful and rapid resolution of conflicts. Their pledge resulted in the Cairo Declaration of 1993 that established the OAU's mechanism for the conflict prevention, management and resolution.

It was through this mechanism that the OAU reacted to various conflicts, including those in Angola, Burundi, Central Republic, the Democratic Republic of Congo (DRC), the Ethiopia-Eritrean war, Liberia, Guinea Bissau, Rwanda, Somalia and Sierra Leone. Although OAU failed in some instances but it has achievements. It succeeds to unite African countries to fight for their own independence. OAU also provided a forum for members states to adopt a unified group in solving conflicts, one of the example was the fighting against apartheid in South Africa. OAU forged the economic and social cooperation's among Member states.

Nevertheless the persisting inadequacy and structural incapacity of the OAU led to a further realisation that Africa needed a new organisation that could take risks and responsibility in promoting development, peace and security. It was against this background that the OAU extraordinary summit in Sirte Libya in September 1999, agreed on the establishment of the African Union (AU). The Constitutive Act to establish the Union was signed at the OAU summit in Lome, Togo in July 2000.

African Union was formed on July 9, 2002 in Durban South Africa by Thabo Mbeki, the President of South Africa. AU was formed to secure Africa's democracy, human right, sustainable economy and more importantly bringing an end the intra-conflict

that has plagued the continent. The AU was formed with the overall mission of speeding up integration in the continent in order to enable Africa to play its rightful role in the global economy while at the same time addressing a myriad of economic, political and social problems currently plaguing its member states. The AU is based on the common vision of a united and strong Africa and on the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion amongst the peoples of Africa. It focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of the development and integration agenda of the Union. Ultimately, the AU is building towards a greater unity and solidarity between the African countries and its people.²

Towards security and the maintenance of peace, AU has achieved something worth mentioning. Most of the achievements can be reflected from the African Constitutive Act of the African Union as a supreme law of the continent. This Act represents the moment of hope for our continents and its peoples, unequivocal commitment to African Unity. The AU established Peace and Security Council (PSC), whose existence has marked a more determined action by the continent to intervene to ensure peace and stability in Africa. The organisation establishes early warning systems under the Peace and Security Council but the power of this system is not well operated because much of the funds come from the western donors with their own unique interests relating to our continent. Success of the AU would be measured on how effectively it is able to respond to myriad of challenges facing the continent and its people. Practical achievements of the AU are the restoration of peace in Burundi under African Mission in Burundi (AMIB). This was done under the supervision of Ethiopia, Mozambique and South Africa.

² <http://eacj.org/component/content/article/36-general-east-africa/185-the-au-mission-goals-organs-and-objectives.html>. visited on 13.12.2012

There was also Sierra Leone civil war which involved civilian populations including murders, rapes, sexual slavery, looting, abductions, forced labour, conscription of child soldiers, amputations and other forms of physical violence and acts of terror. In this conflict, international community fails to act and it was Economic Cooperation of West African States (ECOWAS) which is a sub regional organisation of AU assumed the responsibility of stopping the violence in Sierra Leone.

African Union has stepped ahead of the OAU in terms of its mandate to deal and responds to conflicts. AU has moved in principle from non intervention to non indifference, and now has the right to intervene in case of war crimes, genocide and crimes against humanity and to restore peace and security around the region.³ It also recognises the sub regional organisations as part of the African security architecture and is mandated to continental policies to their regions and to provide states with guidance to implement those policies.

Other instruments are also available to provide for the conflict management and to support peace and good governance on the continent. The Constitutive act of the African Union outlines a set of policies and strategies that contribute to the organisation's mandate to maintain peace and security, including the AU Assembly and the Peace and Security Council. Other initiatives, like the African Peer Review Mechanism, have also been established and are slowly being implemented to strengthen democratic governance.⁴

Although there were many achievements, AU has been observed as an ineffective organisation which tried to deal with internal armed conflicts occurring in the continents. The ongoing rebellion in democratic republic of Congo (DRC) with M23 in Goma, Nigeria internal armed conflicts with Boko Haram, Libyan crisis and Chad

³ Article 4 of the Constitutive Act.

⁴ <http://www.ewi.info/system/files/Preventing%20Violent%20Conflict%20in%20Africa.pdf> visited on 20 Dec 2012

are examples of the long history of the African Conflicts which African Union is supposed to deal with. This forms the basis of the study because internal armed conflicts have contributed to the weakness in the structures of regionalism for the security and prosperity.

1.2 Statement of the Problem.

The African Constitutive Act created and structured the African Union (AU). The AU has tried to fulfil the visions or goals of its Constitution in dealing effectively with the internal armed conflicts around the region. Therefore the aim of this study was to evaluate the efficacy of the AU in dealing with the internal armed conflicts. The continuing problems of internal armed conflicts in the region led to a growing disillusionment about the AU's capacity to bring change.

AU played a central role in bringing about peace, security and stability on the continent. This means that African Union assumed responsibility for the challenges and problems facing the people in the continent. The focus of that ideal was thus not only about violent conflicts but also the underlying factors that precipitated such conflicts. In that context attention was drawn to the poverty, despotism, authoritarianism, human right abuses, corruption, discriminations and related political and socio-economic ills to which people in Africa were subjected.⁵ Those were the underlying reasons for the internal armed conflict to emerge.

Despite the fact that those existing laws and regional organisation (African Union) controlled and supervised the internal armed conflicts in eastern Democratic Republic of Congo (DRC), the conflict in the DRC is a continuing problem, which resulted to human sufferings, rapes, violations of human rights and child soldering. There were weaknesses in supervision and control of the internal armed conflicts in Congo thus endangered the lives of children, woman and other neighbouring states.

⁵ Solomon Dersso (2012) *.The quest for Pax Africana; The case of the African Union's peace and security regime*. African Journal on conflict Resolution Vol.12, N.2 p. 25.

The participation of AU was somehow of low quality in solving the long continuing internal armed conflict in the eastern Congo. In view however the complexity of the conflicts, parties involved, it was important that the agreement must be reached so as to achieve the peace for the Congolese people and security of the State.

The present Constitution of the AU (constitutive Act) did not compel states to join efforts to help a State in problem to solve conflicts. At this kind of situation, organisation (AU) carried no mandatory power to ask States to help each other. Therefore the organisation lacked compelling mechanism to solve the conflicts. Although the Union under the Constitutive Act allowed right of intervention in a member state and upon the request of such intervention in case where there were gross violation of human rights, war crimes, ethnic cleansing, war crimes and genocide, to restore peace and security still, AU did not provide an adequate machinery and military power to solve the conflicts in eastern Congo. About three millions Congolese were affected by the conflicts, including children and women. The internalisation of the conflicts in eastern Congo made neither the AU unable to intervene nor providing necessary and assumable steps to end the conflicts. The AU had and continued to take slow steps in solving the conflict of Eastern Congo.

The establishment of the AU prompted a new round of debate about African problems, the prospects of regional integration, and cooperation and development strategies from all sides of the political spectrum. The need to contain the scourge of conflicts in Africa, the need to consolidate democratic institutions, the need to ensure good governance and the rule of law and the need to respond to the threats and fears of globalisation- all these imperatives constitute the critical dynamics of the moment.⁶

AU capabilities of dealing with internal armed conflicts were measured from its organs to solve those continuing conflicts around the region.

⁶ Biswano M. (2005). Perspectives of African's Integration and Cooperation from the Organisation of African Unity to African Union. p. 110

As it was thought, the AU dealt effectively with internal armed conflicts around the region but it was proved ineffective regional organisation to plague of African continent.

The historical conflict of DRC-Congo proved AU as an ineffectual regional organisation. Since the period of OAU up to the birth of African Union the Congo internal armed conflicts continued to damage the image of the organisation. M23 rebels as they called themselves due to the agreement of March 23, 2009 with the Democratic Republic of Congo government under Joseph Kabila, formed a strong opposition fraction military organised group in the eastern part of the DRC. Although there were about 160000 UN soldiers in the DRC which formed the largest UN peacekeeping force on earth under the United Nations organisation Mission in the Democratic Republic of Congo (Monusco) the conflict continued to expand and rebels gained more control of the eastern part of the DRC Congo.⁷

Members of the African Union could commit money to empower the institutions of the African Union. The AU should therefore strive to take a stronger stand and mobilise the necessary resources where required. To confront its peacekeeping challenges, the AU needed to address issues of financial and logistical weakness and the lack of political consensus among African leaders on collective security norms and practices. Due to the limited availability of resources to implement peace operations the AU should have explored how it can demarcate a division of labour among Africa's security actors and sub regional organisations.⁸

Therefore those arguments formed the basis of the study on how the AU efficacy in dealing with the internal armed conflicts in the eastern DRC.

⁷ There are 17,049 military personnel apart from 693 military observers and 1,412 police. <http://www.un.org/en/peacekeeping/missions/monusco/facts.shtml> visited on 26 dec 2012.

⁸ Tim murithi. The African Union's evolving role in peace operations: the African union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia. <http://www.iss.co.za/uploads/17NO1MURITHI.PDF> visited on 29 march 2013

1.3. Objectives of the Study.

1.3.1 General objective

The main objective of this research study was to assess the efficacy of the African Union in dealing with the problems of the internal armed conflicts.

Secondly, why internal armed conflicts had been persisting and engulfing African continent under the African Union compared to the other regional and strong organisations.

1.3.2 Specific objectives.

To identify causative factors responsible for the increase of internal armed conflicts in the region?

To suggest the modification in the Regional Organisation (AU) in the future prevention of internal armed conflicts.

1.4 Hypotheses.

The hypotheses of this study are;

1. The present African Constitutive Acts leaves members of the African Union only moral obligations to empower the organisation, in dealing with the problems of internal armed conflicts.
2. The control of internal armed conflicts around the region is not well dealt with compared to the rising of immediate and after effects of the internal armed conflicts.

1.5 Significance of the study.

The study was important for a number of reasons. First, it contributed to the general understanding of the nature and development of the Internal Armed conflict and its implications for regional security. The study will contribute to the existing knowledge on the subject.

The research would serve as a guideline to stakeholders in dealing with the internal armed conflicts; these were Foreign ministers, diplomats, military personnel, lawyers

and members of the African Union in terms of the significance of the peace and tranquillity around the region for the development process.

The research would provide useful information to members of the African Union parliament, lawyers, government officials, academicians, students and the entire public on the role of regional organisation in dealing with internal armed conflicts.

The findings of the research draws the attention of policymakers, lawmakers within the African Union and the public and will necessitate the need to reform the existing machineries and organs responsible for dealing with the internal armed conflicts by incorporating the outcome of the research into policies for better supervision and governance. Further, the relevant authorities would be able to introduce new mechanism for dealing with internal armed conflicts more efficiently.

Also, the study would help to understand peace, stability and security were linked with the human security of the regions and whether stable democratic framework in the member states was an important element in having an effective Organisation. The idea would be used for future research on the subject.

1.6 Literature review.

Many authors have attempted to surface the ideas on the armed conflicts in Africa. Other authors have endeavoured to write about the African Union and its role in dealing with conflicts in Africa. There are however, few books, reading materials and other sources that have written in relation to Internal armed conflicts.

The available literature discussed the historical development of the conflicts, the effects of the conflicts, participants, and the sources of those conflicts. The literature went as far as highlighting the problems faced by local residents during the conflicts like; poverty, killings, and child recruiting into military. There were authors who have gone as much as focusing the role of African Union in dealing with the internal armed conflicts and citing some foreign powers are responsible for the conflicts around the region. The reasons for the conflicts in areas around the African continent

as advanced by authors were due to resources of the particular region like Diamonds, Gold, oil and gas, and poor distribution of resources. Other authors had connected human security of the people with the territorial security of the state as an important element in preserving peace of the particular region. Very few writers had attempted to give suggestions on how to improve the African Union to deal with internal armed conflicts.

Hanlon (1996) suggested that Civil wars in Africa have erupted when internal tensions of a country are exacerbated by the intervention of external interests'. The interest of foreign governments and foreign investors in the Sudan's natural oil and mineral resources, especially water and oil. The current internal armed struggle has intensified in complexity the longer it has been fought. Multiple local grievances have created numerous motives for armed confrontation, and shifting alliances within the wider conflict have produced a pattern of interlocking civil wars, now being fought on different levels. After nearly two decades of fighting, the Sudan internal armed conflict is Africa's second-longest continuous conflict, coming just behind Angola for intractability.

Severine Rugumamu (*Conflict Management in Africa Diagnosis of Current Practices and Future Prospects, 2002*) pin pointed that, Africa has continued to experience internal armed conflicts with deep historical roots. International community paid less and less attention to African security affairs, the continent's institutional and organizational capacity to manage its pervasive conflicts was not developing at the same pace as conflict escalations. Against such a backdrop, peace and peacemaking in Africa emerges as one of the critical issues of great importance in global politics. Sources of continent's conflicts are complex and multifaceted, involving many actors and thus, making them impossible to reduce to a single cause or source: local, national, regional and international forces have combined to fuel almost every war on the continent. Africa must have a capacity to deal with the growing internal armed conflict.

Superpower competition to gain resources in Africa accelerates the conflicts. This is done by supporting military troops by giving them advanced military weaponry and intelligence reports. He was of the view that African states failure to respond positively societal needs is one of the causes of internal armed conflicts.

Severine illustrated that, United States of America suggests Africa to have an African Crisis Response Initiative (ACRI) that will respond rapidly to the African conflicts. But (that US proposal) other countries like South Africa, Nigeria and Tanzania observe that ACRI will be as an instrument of the west to increase their influence in the affairs of Africa.

Africa should muster the courage and self-confidence to terminate the paralytic weaknesses of its individual countries' polities and economies by embracing the concept and practice of collective structural transformation because African nations will bear the cost of providing for refugees, sanctuaries for insurrectionist actions, will have to spend more on defense, and will bear the cost of reduced economic growth. It is therefore in the interests of regional organizations to preserve their regional peace, security and stability.

Meredith (2005)⁹ observed that, Africa, so it was sought, once freed from colonial rule, was destined for an era of unprecedented progress. African leaders even spoke of building new societies that might offer inspiration to the world at large. Africa was considered to be too valuable a prize to lose. A sign of Africa's international ambitions came in 1963 when Organisation of African Unity (OAU) was established. Liberation of southern Africa from white minority rule, providing Africa with powerful independent voice in the world Affairs (p.143).OAU was established in Addis Ababa Ethiopia, on May 25, 1963 by the political leaders of 31 African countries. Its main focus was the liberation of white ruled Africa, especially Southern Africa.

⁹ Meredith M. (2005). *The State of Africa*. London. Free Press

Samuel M. Et al (2008)¹⁰ demonstrated that the colonial system of governance went against most of what is promoted under good governance. It was therefore not surprising that the immediate post-independence African leaders saw little value in establishing democratic and accountable system of Government. Moreover, most of the immediate post-independence security problems, including border disputes, ethnic tensions, squalid living conditions and the marginalisation of some groups, emanated from the structures that colonialism had established. OAU responds effectively to fratricidal intrastate conflicts. At the same time, it was becoming evident that the west and the Security Council were not responding promptly to African problems, particularly security matters. It was for this reasons that OAU summit of 1990 decided to issue the declaration in the “Political and social-Economic situation Africa and the Fundamental Changes Taking place in the World”. This declaration provided a framework in which African Leaders pledged to work together towards the peaceful and rapid resolution of conflicts. Their pledge resulted in the Cairo Declaration of 1993 that established the OAU mechanism for Conflict Prevention, Management and resolution.

It was through this mechanism that the OAU reacted to various conflicts, including those in Angola, Burundi, Central Africa Republic, the DRC, the Ethiopian-Eritrean war, Liberia, Guinea-Bissau, Rwanda, Somalia and Sierra Leone. Nevertheless the persisting inadequacy and structural incapacity of the OAU led to a further realisation that Africa needed a new organisation that could take risks and responsibility in promoting development, peace and security. It was against this background that OAU extraordinary summit in Sirte Libya in September 1999, agreed on to establish the AU. The Constitutive act to establish the Union was signed at the OAU summit in Lome, Togo in July 2000.

¹⁰ Makinda, Samuel M, Okumu F, Wafula. (2008). *The african Union: challenges of Globalisation, Security and Governance*. London: Routledge Press.

Samuel M, demonstrated that, the AU inherited from the OAU several unresolved intra-state crises that have tested its credibility. The elusive peace and state reconstruction in Somalia, and the long-festering problems in DRC are some of the examples.

It has become apparent from the experience of Burundi, Darfur and Somalia that the AU cannot deploy a mission without funds from the donor community. For example while pledges for support of AMIS (African Mission in Somalia) were pouring in from the USA, Canada, Australia, EU, Japan and China, pledges from African countries were negligible, with Botswana categorically stating that it was not ready to send even troops. Troops have been faced difficulties in command and control, logistics and re-supply.

Biswaro (2005)¹¹ showed that, The Durban Summit marked the transformation of the OAU into the African Union (AU). This summit encapsulated both the final summit of the OAU Heads of State and Government and the inaugural Assembly of the AU. It marked the culmination of a process that had started in Sirte, Libya on September 9; 1999. The establishment of the AU prompted a new round of debate about African problems, the prospects of regional integration, and cooperation and development strategies from all sides of the political spectrum. The need to contain the scourge of conflicts in Africa, the need to consolidate democratic institutions; the need to ensure good governance and the rule of law; and the need to respond to the threats and fears of globalisation- all these imperatives constitute the critical dynamics of the moment. He opined that there cannot be socio-economic development so long as there is no peace, security and stability. Unfortunately, the African Continent continues to suffer from this phenomenon. As result, a lot of resources are diverted to the management and establishment and resolution of these conflicts instead of directing them to socio-economic development. As a result internal armed conflicts have been increasing in

¹¹ Biswaro M. (2005). Perspectives of African's Integration and Cooperation from the Organisation of African Unity to African Union.

time and space. Somalia, Mali, DRC, Nigeria, Chad cote D'Ivoire have now become hotbeds of trouble. Owing to such widening conflicts in African countries, the number of displaced people and refugees has kept swelling.

African Union (AU) formerly Organisation of African Union was formed on 9.9. 1999 by Sirte Declaration with a view, inter alia, to accelerating the process of integration in the continent to enable it play its rightful role in the global economy while addressing multifaceted social, economic and political problems compounded as they are by certain negative aspects of globalisation. The AU is Africa's premier institution and principal organization for the promotion of accelerated socio-economic integration of the continent, which will lead to greater unity and solidarity between African countries and peoples. As a continental organization it focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of the development and integration agenda of the Union. Peace and Security Council (PSC) is one of the Organs of the AU.

The African Union (AU) has great potential to the conflict management in Africa. AU under Peace and Security Council can intervene in any African state in case there is massive gross of human right like ethnical killing, human atrocities or crimes against humanity. The word "intervene" in Article 4(h) of the AU Constitutive Act implies that the AU Assembly could authorize military force for humanitarian protection purposes without the host government's consent or prior to a UN Security Council (UNSC) resolution.

African Union has a vision to establish conflict free Africa and to sustain the hope and gains that come with the end of violence. The launching took place within the context of the implementation of the AU Policy on Post-Conflict Reconstruction and Development (PCRD), adopted in Banjul, in June 2006, which aims at improving timeliness, effectiveness and coordination of activities in post-conflict countries and to lay the foundation for social justice and sustainable peace. This event is also part of the follow-up to Decision Assembly/AU/Dec.408 (XVIII). This African Solidarity

initiative(ASI) concentrates on pilot countries: Burundi, Central African Republic, Cote d'Ivoire, the Democratic Republic of Congo, Liberia, Sierra Leone, Sudan and South Sudan. The aim is to promote intra-African solutions to the complex challenges of post-conflict Reconstruction.

CONSTITUTIVE ACT OF THE AFRICAN UNION stressed on having a conflict free Africa. Member States were conscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda. Therefore the Peace and security of African continent rested squarely in the African Union (AU).

The *DECLARATION ON A COMMON AFRICAN DEFENCE AND SECURITY POLICY* (2004) which stressed to respect territorial integrity of a State and internal matters of the African State. African Head of States were of the view that African continent must be protected under the umbrella of African Union. This should be in accordance with the Article 4(d) of the Constitutive Act. The adoption of a Common Defence and Security Policy for Africa is premised on a common African perception of what is required to be done collectively by African States to ensure that Africa's common defence and security interests and goals, especially as set out in Articles 3 and 4 of the Constitutive Act of the African Union, are safeguarded in the face of common threats to the continent as a whole. The causes of intra-state conflict necessitate a new emphasis on human security, based not only on political values but on social and economic imperatives as well. The declaration outline the reasons of the Internal Armed Conflict are; Coup d'états and unconstitutional changes of Government, Improper conduct of electoral processes, Improper conduct of electoral processes, Poverty and inequitable distribution of natural resources; and corruption, Political, religious and ethnic extremism, as well as racism.

Hammerstad (2004)¹² noted that Common African Defence and Security Policy were established purposely to flesh out the plans for an African Standby Force. Heads of state have the view that AU must have a capacity to respond militarily to threats to peace and security on the sub regional building blocks. The aim is for each of the five AU defined regions to create a regional standby force, at the disposal of the AU. More realistically, the AU will in the beginning rely on the two sub regions that have come the furthest in their military co-operation; The ECOWAS and SADC. The determination with which the AU security architecture is being transformed from the blue print to functioning institutions is primarily a sign that key African actors such as South Africa and Nigeria have a strong interest in making the AU work.

The idea behind the AU has always been to strengthen continental Cooperation. However, the attempt to simultaneously erect ambitious interstate institutions on both the continental and sub regional levels raises some serious questions about how the continental and sub regional levels rather than duplicate and steal scarce human and financial resources away from each other. The regional building blocks are already leading to some frustration in SADC.

Matto (2006)¹³ observed that as for OAU (now the AU), settlement of dispute is a major institutional objective of the OAU, the organisation is a loose type of regional organisations which the emphasis is moral rather than legal obligations and on respect for its members national sovereignty. That point is underscored by the fact that Commission set to resolve African disputes failed to become operational because it was mainly depending on the consent of the parties. Consent of the parties is not easy to obtain in many conflict situations.

¹² http://www.tandfonline.com/doi/abs/10.1080/10246029.2007.9627414#.Uoh5O4_fr4g visited on 16 nov 2013.

¹³ Matto, P.L (2006).Efficiency of International law in Conflict Situations: A Search for permanent Solution for African peace and security. Published master's dissertation, University of Dar es Salaam.

Responsible sourcing networking (2010)¹⁴ observed that root cause of the DRC conflict is the presence of mineral resources. These mineral resources are the source of financing militant groups in the eastern Congo. The business involves local militias, Congolese and Rwandan rebels .Over the 50% of the mines in the Eastern Congo are controlled by armed groups who demanded taxes, bribes or other payments for the minerals extracted from the mines. These groups differ in their dependency on the mineral trade. It is estimated in 2008 the Forces Democratiques de Liberation du Rwanda (FDLR, a Rwandan Hutu rebel group) obtained up to 75% of its revenue from the taxation of DRC minerals (predominantly Gold). He was of the view that Mineral resources are chief funding of the Conflicts. These mines also contribute to the livelihood of a large number of Congolese and others. As many as one million people in the Great Lakes regions are economically dependent on the minerals trade, while the World Bank estimates 10 million Congolese (16% of the population) in total are in some way dependant on the artisanal mining industry in the country. Eastern DRC is source of tantalum, tungsten and tin as well as gold and diamond. These minerals have helped to fund the continued fighting in the region for years.

Enough projects (2010)¹⁵ illustrated that Congo's vast natural resources have continually attracted violent intervention from abroad and stocked internal armed conflicts. Congo's government has never effectively represented or protected its people, and has all too often simply served as a source of unchecked power and personal enrichment for individuals. The ongoing crisis in eastern Congo is rooted both in this history of predation and corruption, and the continuing aftermath of the 1994 genocide in neighbouring Rwanda. Today, Congo continues to struggle with an explosive combination of conflicts at the local, regional and national level. The current crisis in eastern Congo illustrates the historical patterns at the root of the

¹⁴ Conflicts minerals and the Democratic Republic of Congo .Retrieved from www.bsg.org. Visited on 29 Jan 2013

¹⁵ A project of the Centre for American Progress to end genocide and crimes against Humanity.

conflicts. As long as the Congolese government cannot control its territory, provide basic services or effectively protect its population and as long as armed groups are to prosper from illicit trade in natural resources and complex regional alliances, eastern Congo will remain a battlefield and innocent civilians will pay a tragically high cost. Emmanuel N. (2011)¹⁶ opined that Democratic Republic of Congo (DRC) is an example of perhaps one of the worst humanitarian disasters on the African continent. The DRC has endured a long history of violence and misery stretching back to the horrific Belgian colonial rule of Leopold II and continuing to this day. The conflict and the actors may have changed over time, but the situation in the DRC requires serious and prompt attention. There have been several attempts at peace brokering in the DRC, all of which have been relatively unsuccessful. The Pretoria agreement signed on 17 December 2002 was intended to facilitate the transition of the militaristic country into democracy and end the conflict. Eight years after the signing of the Pretoria agreement the conflict and general instability in the DRC continues. He identified that regional members as well as western power are the chief source of the looting in DRC. Control of these individuals would require a good level of cooperation between AU and the United Nations (UN) as well as various countries involved. It is estimated that countless tonnes of minerals continue to be exported to Europe every month. Goods are illegally channelled through complex rebel group networks to neighbouring states and finally to western or eastern states.¹⁷

Juma L. (2006)¹⁸ was of the view that local or internal armed conflicts are mostly engineered from the vast global arena. In Africa where most states are weak and impoverished, there has emerged a formidable network of actors that operates independently of the government and maintains a close links to the global markets, and other transnational monetary institutions. It is in this context that the civil war in

¹⁶ http://www.rosalux.co.za/wp-content/files_mf/drc3_2011ip.pdf visited on 29 Jan 2013.

¹⁷ The 2008 United Nations report.

¹⁸ The war in Congo; Transnational conflict Networks and the Failure of Internationalism, 10 GONZ.J.INT'L.L.97 www.gonzagajil.org visited on 29 Jan 2013.

Congo can only be understood by examining the array of international factors and actors, their interconnectedness with local agents and their symbiotic modes of operations. Local profiteers, gunrunners and smugglers can only survive if they have a linkage to the international capital. Kathi Austin was quoted in his article saying planes belonging to international organisations such as World Food Program, UN High Commission for Refugees and Oxfam have been known to deliver arms. Occasionally such cargo is labelled as “farm machinery” to evade detection. Austin gives an example of Chinese arms industry exporting their wares among the shipment of beans and tools to the great lakes regions. He suggests that solving African conflicts will require a complete reordering of the international system because the current arrangement is certainly compromised.

Dagne T. (2011)¹⁹ showed that the continuing rebellion in the eastern of Congo are because of the presence of over a dozen militia and extremist groups, both foreign and Congolese and failure to implement peace agreements signed by the parties. Over the past 14 years, the former Rwandese armed forces and interhamwe militia used eastern Congo as a safe haven and carried out many attacks inside Rwanda and against Congolese civilians. A Ugandan rebel group, the Lord’s resistance Army (LRA), is also in Congo, despite an agreement reached between the LRA and the Government of Uganda. LRA has conducted military operations in northern Uganda, DRC, the Central African Republic (CAR), and Southern Uganda. The primary targets of the LRA have been the civilian population, especially children.

Batware B. (2011)²⁰ was of the view that most conflicts worldwide are found in areas where natural resources are present. Multinational Corporation plays a particular significant role in the continuation of these conflicts. Illegal exploitation of minerals

¹⁹ Democratic of Congo; Background and Current Development. Retrieved from <http://www.fas.org/sgp/crs/row/R40108.pdf> on 29 jan.2013.

²⁰ The role of Multinational Corporations in the Democratic Republic of Congo. Retrieved from <http://acuns.org/wp-content/uploads/2012/06/RoleofMultinationalCorporations.pdf> visited on 29 Jan 2013.

and forest resources of the democratic Republic of Congo is taking place at an alarming rate in two phases: massive looting and the systematic and systematic exploitation of natural resources. Corporation from around the world have sought to profit from exploiting the DRC,s natural resources on the cheap-particularly coltan,a mineral used to produce cell phones, laptops and video games consoles. Companies were created by either high rank military officers or international businessmen and most, if not all, of these companies are privately owned by individuals or a group of individuals. Trinity and Victoria are among the companies involved in the illicit acquisition of natural resources in the DRC. Victoria Group is chaired by Mr.Khalil and its headquarter is in Kampala. Mr Khali deals directly with Mrs.Akandwanaho on diamond issues. Mr.Khalil has two collaborators in the democratic Republic of Congo, based in Kisangani and Gladolite. Victoria group is involved in diamond, gold and coffee. The group purchases these mineral and agricultural products in Isiro, Bunia, Bumba, Bondo, Buta and Kisangani. One of the main reasons why the conflicts in DRC have continued is because of the high demand for cell phones and computer chips as well as other electronics that have become a daily lifestyle in western world. This need fuel a bloody civil war in DRC.

Woronoff (1970)²¹ suggested that there is a need of having African Army. Any real coordination of the continent's activities requires a political will. Unfortunately there are serious divergences. The member states do not have always the same aims and priorities and normally reach full agreement only in some points brought up in the OAU.

These are not the only differences that had to be reconciled to preserve Unity. There are amazingly thick walls among the states using English, French or Arabic as official or vernacular language. There is a vague geographical separation between regions like eastern and western and northern and central Africa. Going more deeply,

²¹ Woronoff J. (1970).*Organisation of African Unity*. Metuchen. The Scarecrow Press.

there are tribal and ethnic divisions. There are branches of the Muslim, Christianity and animist religions. And there are broader racial and religious differences between Arab and Black Africa. Within each one of these groupings the links are very strong, often more so than ties with those on the outside. This solidarity if wisely channelled, could be a boom to African Unity, if unchecked, it could give rise to separatism.

Clapham (1998)²² posited that the development of Armed movement, usually originating in the country side and often across state frontiers, which have thought, to context the power of African states, and have frequently established their own forms of rule ,in territories from the control of established States has disappeared. Guerrillas are the most familiar term used to describe such movement.

He suggested that insurgencies derive basically from blocked political aspirations, and in some cases from reactive desperation. In post colonial states is from rural resistance to the exploitative exactions of centralised statehood. Only extreme conditions are likely to induce people to attempt anything as risky and costly as guerrilla warfare.

Clapham was of the view that, virtually all insurgencies depend on an appreciable extent on external support most obviously for the access across the border of a neighbouring State which is prepared at least to turn a blind eye to its activities, but also for weapons, ,diplomatic backing and even food. In exactly the same way, African governments need external support in order to keep themselves going. The linkages established with foreign companies by Charles Taylor in Liberia. Insurgents seek to cut off governments from exportable commodities like Diamond and Ivory.

²² Clapham C. (Ed).(1998).*African Guerrillas*. Bloomington. Indiana University Press.

Francis (2007)²³ observed that poverty and the context of depressing socio-economic conditions and improvised social amenities are certainly pull factors motivating people /civilians to participate in armed Conflicts. Access to AK47 rifles and being part of armed group provides economic opportunities through looting and pillage at the war front. War becomes are source of personal enrichment, and means of empowerment through the barrels of gun.

Frey E. (2006)²⁴ suggested that internal armed conflicts will continue to take place in the developing World for the foreseeable future. Internal armed conflict will therefore continue until substantial social adjustments have been made. It would follow the premise that attempt by foreign power to interfere with the internal change, either by assisting the rebels to overthrow the legitimate government, or by helping the incumbent government to suppress a revolution, is contrary to International law. Continued foreign interference can only delay the process of change, compounding and therefore intensifying the violent elements in that process.

He opines organisation rarely posses the material and personnel resources necessary for the operative involvement in the internal armed conflict situation. Dynamic and effective organisations do not yet exist in the developing world, nor are they likely to be established there in the immediate future. Internal armed conflict is considered to be the matter of domestic concern and thus is often shielded from regional scrutiny.

²³ Francis J. (2007).Paper Protection Mechanisms: Child soldiers and international Protection of Children in Africa's Conflict Zones. *Journal of Modern African Studies*. Vol 45.No.2

²⁴ Frey, E. (2006). *The Relevance of Regional Arrangements to Internal Conflicts in the Developing World*. John Hopkins University Press.

Christina (2011)²⁵ demonstrated that artificial borders resulted in artificial states and today internal armed conflict is in all likelihood, the primary impediment to the political, economic and social development of contemporary Africa. In search for unity, a regional organisation such as the African Union may be Africa's only hope for the ending conflict in the divided African nation-states. He says the problem of sovereignty poses a big problem in the OAU and also European spheres of influence in Africa acts as the genesis of the most internal armed conflicts. Consequently most developing African states rejected collective action and intervention.

He viewed that the first major change incorporated into the philosophy of the African Union was the re interpretation of sovereignty. Massive killings, rapes, and other assaults on African citizens by their own governments began to be viewed as a major security threats that threatened State sovereignty as well. Moreover, the massive human right violations prompted the AU to expand the definition of sovereignty to include threats caused to human security in addition to harm caused to state security. In other words, security began to be seen as not state security but human security- the idea that people had a right to food, shelter and peace.

Karim Hussein, Donata Gnisci and Julia Wanjiru (*security and human security: an overview of concepts and initiatives what implications for West Africa, 2004*) showed that human security is core cause of the most Armed Conflict in Africa particularly West Africa. Human security is a critical component of the global political and development agenda. Two ideas lie at its heart: firstly, the protection of individuals is a strategic concern for national as well as international security; secondly, security conditions for people's development are not bound to traditional matters of national defence, law and order, but rather encompass all political, economic and social issues enabling a life free from risk and fear. Peace and stability of a country relates to

²⁵<http://journals.cambridge.org/action/login;jsessionid=EA67CB063CE77472B3DB4279F389D26B.journals>.

development. Communities which live in poverty are likely to create chaos that may lead to internal armed conflicts.

Internal Armed conflicts are also fuelled by Arms Trade in the areas of conflicts. According to the *Amnesty International report* (2012) most of the arms used in the internal armed conflict have been came or purchased from China, America, United Kingdom, Germany Russia and France. Though international Arms Trade is prohibited by Arms Trade Treaty, countries continue to sell their weapons to armed groups or Governments. International transfers of conventional arms can seriously impair poverty reduction and undermine socio-economic development. As conflict or lawlessness takes hold, countries slide into chaos, causing development to grind to a halt. This can be seen in non conflict situations, but also when easily available arms are used unlawfully in post-conflict peace-building, or when they involve excessive, unaccountable spending or corruption. The report reveals in Africa's Great Lakes region, Goma (DRC) has been a hub for this activity. In many parts of the continent, the illicit arms trade has contributed to violence, corruption and poverty.

Baffour Ankomah (2013)²⁶ was of the view that many Conflicts in Africa are sponsored by the western powers and corporations. In Congo for example, the killing of Patrice Lumumba on 17 January 1961 was organised by the western powers and this mark the beginning of the internal armed conflicts in Congo. Baffour quotes the speech of US Congresswoman, Cynthia McKinney which elucidates the involvement of US in Congo. Rwanda and Burundi being the allies of United States and have been given a carte blanche (a freedom to do) for whatever reason to wreck havoc in Congo. This has been facilitated by the US military and Central Intelligence Agency (CIA).He acknowledges that the all efforts done are because of the DRC-Congo resources.

²⁶ They are at it again! The sponsors of African Wars, *New African Magazine*, January 2013.p 10-11.

1.7 Research methodology.

1.7.1 Introduction.

This part is about the framework in which the study is going to be carried out. This section tells about the research design, study area, methods of collecting the data and data analysis. The researcher conducted his research in different libraries where the analysis of the problem will be through documentary review in text books, reports, cases, international instruments, journals, rules paper presentations and substantive issues relating to the research.

1.7.2. Research design.

This part explains on how the data will be collected and analysed. This is the part which will show the plan of action of the research. The research is covering the area of Eastern Democratic Republic of Congo (DRC), which includes South and North Kivu, Goma, Bukavu, Ituri, Province Orientale, Maniema and Kisangani (see the Appendix II). These areas were chosen because there were more internal armed conflicts in these regions since the period of OAU up the formation of African Union. The study is very useful in examining the efficacy of the African Union in dealing with internal armed conflicts around the regions.

1.7.2.1 Questionnaire.

The researcher will apply questionnaire as one of the methods of data collection. The questionnaire contains unstructured or open ended and closed ended questions. Open ended questions would provide the respondents complete freedom of giving their views and providing the information related to the problem at hand. The open ended questions would permit an individual to respond in his or her own words. The questionnaire was prepared to focus the role of the AU in dealing with the problems of internal armed conflicts in the Eastern Congo. The questions would be linked directly to the diplomats, ambassadors, members of the international organisations like Dar es Salaam African Union Office.

1.7.2.2 Interview.

Interview was one of the methods which were used by the researcher. In interview, the interviewer asked the interviewee who gave answers mostly to the questions, and during the course of this conversation, interviewer gathered facts. The method was employed because the researcher did not travel to battle zone like DRC-Congo in South and North Kivu, province Orientale, Goma, Maniema and Kisangani. The method helped the researcher to meet face to face with ambassadors and diplomats, foreign officers. This method was applied because it was flexible since it allowed the researcher to keep on modifying questions where there was no clarity. Both structured and unstructured interview were conducted. In respect of structured interview, the interview guides were going to be prepared so as to help the researcher to be systematic in the process of interviewing. The real benefit of interviewing was that the researcher faced the interviewees, so that he or she can clear up any misunderstanding immediately as either side can question what they do not understand. So the objectives of the technique were to exchange ideas and experiences, eliciting of information pertaining to a very wide range of data in which the interviewee may wish to rehearse his past, present and canvass his future possibilities.

1.8. Data Collection.

The mode of gathering materials for this study was by the way of documentary review and field work.

1.8.1 Documentary Review.

Both Primary and Secondary data was used to collect materials for the study from libraries of the University of Dar es Salaam, Mzumbe University, Ministry of Defence, Ministry of Foreign Affairs departments of Africa and the Middle East and Centre for Foreign Relation and Diplomacy. In these libraries I read books, journals, official government documents and student research (thesis) papers. Also international reports, newspapers, articles, law reviews were used in this report.

1.8.2 Field Work.

Collection of data through field work would be the paramount importance to my research paper. This would be through questionnaires and interviews with diplomats especially ambassadors, consul, lecturers and military personnel. I also used oral, unscheduled interview and questionnaire with several people in which case I asked them about opinions pertaining to the efficacy of the AU in dealing with the problems of internal armed conflicts and the need to empower the organisation to minimise the Congo conflicts.

1.8.3 Data analysis.

Data analysis refers to the computation of certain measures along with searching for the pattern of relationship that exists among the data. Thus the process of analysis aims to determine whether the observation supported the hypotheses formulated before going to collect information or reject them. In analysing the data qualitative technique will be employed. Qualitative data analysis involves factual and logical interpretation, comparison and explanation of the study findings. The analysis helped much in the coming up with useful conclusions and recommendations.

CHAPTER TWO

CONCEPTUAL STUDY OF REGIONAL ORGANISATION

2.1 INTRODUCTION.

This chapter provides a broad understanding of the views, theories, principles and experiences on the regional organisation law, in relation to internal armed conflicts. This chapter lays down the meaning and the nature of international organisation and its functions in relation to the challenges brought by internal armed conflicts. The chapter also will shed some light on the law regarding internal armed conflicts.

2.2 Regional organisation as a concept.

These are supra national organisations which have the capacity to facilitate the resolution of different matters at national level. It is a particular group of state which can cope with the common problems more effectively. Regional organisation is a concept of an entity created by states doing those things that states cannot do on their own. Things like management of international water ways facilitate smooth industrial relations and management of peace and security in the region. In regional organisation security form one of the top agenda.

2.2.1 International organisation.

In contemporary global politics, international organisations²⁷ play an enormous role. To most of the world they symbolize the hope for international peace and security through global cooperation and mutual economic development. International organisation represents a group of members that operate across regional borders for specific purposes. The idea of regional organisation reflect the cooperative arrangement instituted among states, usually by basic agreement, to perform some mutually advantageous functions implemented through periodic meetings and staff

²⁷ Means an organisation established by a treaty or other instrument governed by international law and possessing its own international legal personality. Article 2(a) of the Draft articles on the responsibility of international organisation (2011).

activities. The purposes of a regional organisation are to foster international cooperation in areas such as security, law, economic, social matters and diplomacy.²⁸ In modern sense, an international organisation, or more formally intergovernmental organisation (IGO) is an organisation such as the United Nations (UN) with sovereign states or other IGOs as members. This type of organisation has legal capacity to bring claims before the court of law and being compensated. The classical case of this point of view is Reparation case. Also they are subjects of international law.

International organisations perform a varied number of useful functions within a state system. Their chief function is to provide the means of cooperation among states in areas in which the cooperation provides advantages for all or large number of nations. They not only work as a platform to take cooperative decisions but also the administrative tool for translating the decisions into action. They also provide multiple channels of communication among governments so that areas of accommodation may be explored and easy access will be available when problem arise.

In conflict situations, if states are willing to explore the possibilities of accommodation and compromise, modern international organisations have made available a new dimension beyond the previously existing channels of diplomacy and peaceful settlement. The United Nations, the specialised Agencies, and regional organisations provide multiple and continuous contact points through which accommodation can be enlarged. When a state enters into conflict it has to find the available venue through agencies of international organisation useful for that end. United Nation has organs whose functions include the resolution of conflicts.

²⁸ Alfoz Alam, Evolution of international organisation.
<http://www.scribd.com/doc/37994331/Evolution-of-International-Organisations>

Modern international organisations involves diplomacy, treaties, conferences, and rules of warfare, the regulation of the use of force, peaceful settlement of disputes, the development of international law, collective security and movement of the world government.

2.3 Kinds of International Organisations.

2.3.1 Intergovernmental organisations.

Intergovernmental organisation (IGOs) has national governments as members. Membership can range from as few as two member nations to virtually all nations. The UN and its various agencies are IGOs. Military alliances, such as the North Atlantic Treaty Organisation (NATO) and the Southeast Asia Treaty Organisation (SEATO), and political groupings, such as the Arab League, and the African Union are also IGOs.

2.3.2 International nongovernmental organisations.

These are private organisations whose memberships and activities are international in scope. International Nongovernmental Organisations (NGOs) do not possess the legal status of national governments. Examples of these NGOs are International committee of the Red Cross (ICRC).

The IGOs can be further categorised on bases of the nature of their functioning, global and regional membership criteria, and cultural or historical links. Membership of some organisations is open to all nations of the World. This category includes the United Nations and its specialized agencies and the World Trade Organisation. Other organisations are only open to members from a particular region or continent of the world, like European Union, African Union, and ASEAN.

Due to the rapid change of the World in various aspects, the States are forced to search the areas of mutual advantages such as trade, communications, economic development and world peace. Since the states must, in so many areas, cooperate, adjust, accommodate, and compromise to promote their common welfare, to solve problems not limited to national boundaries, and to lessen conflict. Since the trend of

world events is towards increased contacts and a growing diversity of problems, the international organisation is increasingly diverting in number and purposes rather than diminishing in significance.

The interdependence of nations in the modern World means that no single nation can dictate the outcome of international conflicts, or can private groups and individuals rely on national governments to solve major world problems. Therefore both governments and individuals will continue to turn to international Organisations as an important way to address these problems and to protect their own interests.²⁹

3.0 Regional organisations.

These are states which form a particular organisation connecting their geopolitical entities for enhancing and solving challenges among themselves. They are usually established by Act. They are designed to reduce trade barriers between a subset of countries regardless of whether those countries are actually contiguous or even close to each other. These are efforts by a group of nations to enhance their economic, political, social or cultural interaction. The potential role of the regional organisations is to help in the maintenance of international peace and security as it is articulated in Chapter VIII of the UN Charter. Also regional organisations provide a forum and an avenue of solving conflicts occurring in the region. Some of the organisations have standby Force to solve any conflicts which are likely to occur. One of the very important regional organisations is the African Union.

African leaders have long envisaged creating a strong regional organisation with the view of minimising armed conflicts and uniting the continent economically and politically. All of these rest and depend on political stability of the African continent. These means peace and security forms the top of the agenda. Political instability has implications for both economic stability and the commitment that countries can make to regional agenda. Countries involved in regional wars like Democratic Republic of

²⁹ Alfoz Alam, Evolution of international organisation.supra.19

Congo (DRC) or those which have internal political conflicts (Sierra Leone) are all having negative impact on regional agenda.

3.1 African Union.

Organisation of African Union (OAU) was formed in 1963 with the aim of eradicating colonialism, settling of inter-African disputes and fighting apartheid in Africa. This vision was also enshrined in the OAU charter. The founders of the OAU were of the view that Colonialism has had a profound impact on the economic and socio-political structures of the African countries. Therefore OAU was seen as a fountain to unite all African states to fight against all these odds.

One of the challenges which the OAU was confronted was the Congo (Zaire) internal armed conflict, where the main concern was the withdrawal of all foreign troops and mercenaries. Although the OAU adopted resolution in 1964 which made clear the withdrawing of foreign troops in Congo, the mercenaries in Congo continued to stay. This reason and the absence of any provision to impose decisions upon its member states are among the reasons behind for the establishment of the African Union (AU) in 1999. Neither did the OAU charter create an organ with disciplinary powers to enforce compliance with its resolution nor provide for expulsion in the case of non-compliance. Persisting inadequacy and structural incapacity of the OAU led to further realisation that Africa needed a new organisation that could take risks and responsibility in promoting development, peace and security. It was against this background that OAU extraordinary summit in Sirte Libya in September 1999, agreed to establish the AU. The Constitutive Act to establish the Union was signed at the OAU summit in Lome, Togo in July 2000.

African Union was formed in 9.9.1999 when the heads of State and Government of the Organisation of African Unity issued a Declaration (the Sirte Declaration) calling for the establishment of an African Union, with the view inter alia, to accelerate the process of integration in the continent to enable it play its rightful role in the global

economy while addressing multifaceted social, economic and political problems compounded as they are by certain negative aspects of globalisation.

The African Union (AU) is Africa's premier institution and principal organisation for the promotion of accelerated socio-economic integration of the continent, which lead to greater unity and solidarity between African countries and peoples. As a continental organisation it focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of development and integration agenda of the Union. Peace and Security Council (PSC) is one of the organs of the AU.

African Union has its Constitution which is called AU Constitutive Acts. Article five of this Constitution establishes the following institutions; Assembly; Executive Council; Pan African Parliament; Court of justice; Financial institutions; Commission; Economic, Social and Cultural Council; Permanent Representatives Committee and the Specialized Committee. The assembly is the most supreme organ of the AU because it is the Institution's highest decision making body. The Assembly is composed of Heads of States and Government or duly appointed representatives.

African Union is centred on finding appropriate and effective responses to the myriad security and developmental dilemmas confronting the newly independent States. The objectives of the AU are located in the article three of the Constitutive Act. One of the goals is to promote unity and solidarity of the African continent. It is also as a confidence-building measure aimed at minimizing the attempts by the superpowers to manipulate African states and avoid debilitating inter-state conflicts as a result of the ideological differences of the African states.

Defence of the sovereignty and territorial integrity of the members' forms one of the top agenda of the formation of the AU. This is because most of the African territories were carved out by the colonial powers and the division of ethnic groups between

African states. Respect for the sovereignty and territorial integrity of one another was designed to prevent territorial boundaries.

3.1.2 African Union roles in the Constitutive Act.

African Union was created to respond to new and specific challenges in the regional, national and international socio-economic and political environments. The AU is a practical expression of the dreams of generations of pan-Africanists in their determination to promote unity, solidarity and cooperation among the peoples of Africa and African States.³⁰

The success or failure of the AU would be measured in terms of how effectively it is able to respond to the myriad of challenges facing the continent and its people. Conflict management, prevention and peace building are among the challenges facing the continent and its people. Therefore AU has put in place the Peace and Security architecture that the continent has ever had. At the centre of the architecture is a new Peace and Security Council (PSC). Its function includes anticipating and preventing conflicts and to make peace-making and peace-building functions for the resolution of conflicts.

Peace and Security Council (PSC) forms another organ of the AU. It's established under Article 5(2) of the Constitutive Act. The PSC is a permanent decision making organ of the AU that aims to prevent, manage and resolve conflicts in Africa. PSC is an integral part of the internal conflicts management machinery within Africa. It is primarily responsible to facilitate deployment of peace keeping and quick intervention Missions and to assist in cases of genocide, war crimes and crimes against humanity.

The African Union (AU) has great potential to the conflict management in Africa. AU under the Peace and Security Council can intervene in any African state in case

³⁰ Preamble of the AU Constitutive Act.

there is massive gross of human right like ethnical killings, human atrocities or crimes against humanity. The word “intervene” in Article 4(h) of the AU Constitutive Act implies that the AU assembly could authorize military force for humanitarian protection purposes without the host government’s consent or prior to a UN Security Council(UNSC) resolution.

3.1.3 Seriousness of the Congo conflict.

Congo became independent in June 1960 with Patrice Lumumba as a prime minister and Joseph Kasavubu president. They became engaged in a power struggle and Kasavubu dismissed Lumumba, who later arrested and assassinated in 1961. Colonel Joseph Desire Mobutu ousted president Kasavubu in 1965 and changed the name of the country to Zaire. Mobutu used Congo’s mineral wealth to consolidate power, co-opt potential rivals and enrich himself and allies. Mobutu was ousted in May 1997 by a rebellion under the leadership of Laurent Kabila, backed by neighbouring Rwanda and Uganda.

The seriousness of the Congo conflict can be observed by longevity of the conflict, the effects of the conflict and the parties involved in the conflict. The absence of peace in the East Democratic Republic of Congo puts a brake on the country’s revival. The Congo conflict constitutes one of the world’s most severe crises. It is estimated that about 5.5 million people have died since August 1998 as a consequence of the conflict and more than 2 million people have been displaced. At the end of 2010, it was estimated that 2.1 million people were displaced, of which 1.4 million are in Kivu provinces.³¹

It was the genocide of Rwanda 1994 which poured in Congo Hutu refugees into eastern provinces, among them remnants of the army and militia that perpetrated the genocide. Rwandan forces accompanying Alliance of Democratic Forces for the

³¹ Human Security Report Project (2009) *Human security report 2008/9*, New York: Oxford University Press.

Liberation of Congo (AFDL) pursued fleeing militia across the border, mostly Hutu. Hutu extremist leaders and commanders who survived the chase later formed the Democratic Forces for the liberation of Rwanda (FDLR).

President Laurent Kabila attempted to curb the influence of Rwanda and Uganda allies in Democratic Republic of Congo. In response, Rwanda threw its support to rebel Congolese Rally for Democracy (RCD) from the Eastern Congo which was fighting to topple Kabila's Government. This led to the internalisation of the conflict, where several countries were involved. Zimbabwe, Angola and Namibia, supported Kabila, while Rwanda and Uganda aided rebel groups seeking to topple Kabila.

The mainstream Rwandan-backed RCD-Goma controlled the two Kivus and parts of Katanga, Maniema and the Eastern Kasai provinces. Ugandan-backed RDC-Kisangani controlled parts of the North Kivu and Oriental Provinces, including the Ituri district. The Congolese government managed to hold on the western half of the country with the support of Angolan, Namibian and Zimbabwean troops.

After the 2006 elections, Nkunda stepped up his attacks against the government, claiming he was acting to protect Congolese Tutsi from the FDLR and others. Nkunda consolidated his armed forces to create his own movement, the National Congress for the Defence of the People (CNDP). His force has engaged in waves of assaults and clashes with the Congolese National Army (FARDC) and even MONUC troops.

There are different rebels fighting against each other and against armed forces of the DRC, the majority fighting for recognition and access to resources and others formed political autonomy like M23. Eastern Congo is marked by weak state structures, absence of services, erratic payment of salaries, poor infrastructure, frequent land conflicts that linked to the war and exploitation of natural resources mainly forests and minerals and rural characteristics of armed group, that operate in isolated regions. These are the factors which endanger instability in the East of DRC.

Since 2007 mining sector has increased in the Eastern Congo. The sector is at the heart of the number of conflicts and represents the principal source of financing to armed group. The presence of Gold, cassiterite, wolframite and coltan in Ituri and Kivu provinces, led rivalry for the control over artisanal mining activities and trading networks. During the war, armed groups increasingly gained control over these resources and introduced new security and taxation structures. Control over mining sites became a crucial part of military strategies, and armed confrontation was often concentrated in the mining areas. The control of mining sites and the trade chains associated with it continues to be denounced as one of the principal drivers to on-going armed group mobilisation in the Eastern Congo.

The presence of uncontrolled armed groups produces persistent insecurity. Some areas of the Kivu provinces remained in the hands of non-armed actors, including the Rwandan Hutu force FDLR. Since 2005, Ugandan rebel Lord's Resistance Army has operated from the DRC, with its military bases in the Garamba national park. Other groups such as the CNDP maintain links with Rwanda. All these led to the privatisation of the security in the Eastern Congo through armed groups and ethnic militia raised to defend group interests, it led furthermore, to a proliferation and trafficking of small arms and light weapons in the Eastern Congo.

3.1.4 How the AU deals with the conflict of Congo (DRC).

Under the umbrella of the African Union (AU), the DRC conflict has attracted many peace efforts. It hosts, for example one of the largest UN peacekeeping force in the world. There was the Lusaka Peace Accord signed in 1999. The Mission's mandate was to enforce the cease fire agreements, monitoring and reporting on the belligerents' disengagement from the frontlines, assisting with the process of disarmament, demobilisation, repatriation, resettlement, reintegration and facilitating the transition to democratic governance.³² There was the Sun City agreement in

³² Fostering Human Security, Peace and Justice (2013). <http://www.peacebuildingdata.org/drc/congo-conflict> visited on 25 may 2013.

2002, which marks the beginning of the evaluation period, set out the main conditions for peace are; democracy, territorial sovereignty, political checks and balance of power and the control of armed groups.

3.1.4.1 Lusaka Peace Accord 1999.

This was an agreement which was signed in July 1999 between the rebels and the government of Congo (OAU period). All parties of the Congo conflict namely Namibia, Angola, Zimbabwe, Burundi, Rwanda and Uganda signed the agreement as witnesses. These rebels were RCD and Mouvement de Liberation du Congo (Movement for the Liberation of Congo). The agreement consisted, in its main part ceasefire, security of the region. The preamble of this agreement emphasises the principle of state sovereignty and territorial integrity of the DRC, making references to the UN and OAU about sovereignty and territorial integrity. The agreement aimed at enabling national reconciliation and establishing a new political dispensation in the country. With regard to ceasefire (Article 1), all parties to the conflict committed to cease, 24 hours after signing the agreement, all hostilities, movements and reinforcements as well as hostile actions, including hostile propaganda against one another. Article two stressed that all involved parties should commit themselves to addressing immediately the security concerns of the DRC and her neighbouring countries. The agreement quickly revealed itself as a stumbling block to its operationalisation because the agreement did not compel hostile foreign armies to an unconditional involvement.

3.1.4.2 Sun City Agreement 2002.

This was the agreement reached in South Africa (Sun City) between the *Mouvement de liberation du Congo* (MLC) and the Kabila Government. The agreement set the division of the ministries between the government of Kabila and the rebels and a timetable for democratic elections. Kabila was allowed to remain as the president during the transitional period of two years with Jean- Pierre Bemba (the leader of MLC) serving as a prime minister. The agreement was of the view that it will unite all warring parties in the Congo conflict. The agreement was witnessed by the South

African President Thabo Mbeki. Due to the rejection of the main rebel group in DRC, which was, RDC-Goma, and the other groups which were not included, the violence again began.

Despite signing of the Sun City agreement, armed conflict continued in the Eastern Congo, notably Ituri district of Oriental province and North Kivu. As the violent continued after the signing of the Sun City agreement, first peacekeeping troops led by French intervened to halt the fighting in Ituri in June 2003, and then MONUC troops deployed and assumed the peacekeeping responsibilities in Ituri in September 2003.

3.1.4.3 Monuc 2003.

There is a mission of the United Nations in the DRC, known by its French acronym MONUC, which was given an enhanced Chapter seven mandate³³ in 2003, under the UN Charter. The mission was seen as a model for the integration of different dimensions of work in conflict environments. It included investigations on human rights allegations, the coordination of humanitarian action and a stabilisation strategy for the Eastern Congo.

After the Ituri crisis in 2003 in the Eastern Congo, the UN passed a resolution 1493 to send military troops in Congo. United Nations granted the United Mission in the DRC (MONUC) the mandate and means to commensurate with the grave humanitarian and security situation on the ground. The Security Council (SC) authorised to use all necessary means to fulfil its mandate, increasing its military strength to 10800 personnel. However the crisis continues.

³³ Mandate that authorises the use of all necessary measures at its disposal to re-establish peace, which gives the right to use force and overrides the need to seek approval outside of the parties in the defined mission.

3.1.4.4 Nairobi Agreement 2007.

Other initiatives seeking to stop Nkunda's violent campaign was the Nairobi Communiqué, signed by the Rwandan and Congolese governments in November 2007 to disarm the FDLR. The agreement followed negotiations between the government, renegade general Laurent Nkunda and Mai Mai militias. However the agreement was quickly violated. Serious clashes between CNDP (Congres National pour la defense du People) and FARDC continued and CNDP launched a new offensive in north Kivu in August 2008. The absence of an enforcement institution to follow up the agreement at the national level led the cease fire in Eastern Congo remain fragile.

All these international agreements made under the umbrella of the AU has contributed to certain level of political stability and ensured the functioning of several transitional institutions. Equally it facilitated the preparation of the 2006 national elections that consolidated international support and allowed for the redefinition of regional relations based on cooperation. Improved security conditions allowed for the implementation of a comprehensive Disarmament, Demobilisation and reintegration (DDR) and Security Sector reform (SSR) program. The national Disarmament, Demobilisation and Reintegration (DDR) plan, launched in 2003, gave the combatants the choice of either returning to civilian life or joining the Armed Forces of the Democratic republic of Congo (FARDC in French acronym).

3.1.4.5 Amani Peace Process 2008.

In the beginning of 2008 in Goma, there was Amani Peace process, aimed at defining the necessary requirement for an inclusive peace, including the demobilisation of Kivu militias. However the difficulties in integrating former rebel commanders into the Congolese Army (FARDC) chain, failed because the rebels wanted to retain their ranks in the government army, an act which resulted in renewed mobilisation of the militias. At the end of 2010, the reintegrating of the militia could not be implemented.

3.1.4.6 Umoja Wetu 2009.

At the beginning of 2009, AU supported by the UN sought new military solutions. There were negotiations between Rwanda and the DRC that launched a joint military offensive against the FDLR, the Rwandan Hutu rebel group established in the Eastern Congo. The operation, called *Umoja Wetu*, was launched at the end of January 2009, but limited to North Kivu.

This joint military operation seeks to root the rebel militia out of its main strongholds. Three columns of the Rwandan army moved through north Kivu and the Congolese army deployed in the villages freed from Front démocratique pour la libération du Rwanda (FDLR) control and set about to integrate combatants from the CNDP and other armed groups into its ranks. The FDLR avoided direct confrontation and dispersed in the Kivu forests. The FDLR was only marginalised and temporarily weakened in the North Kivu but remained strong in South Kivu. Barely a month after the end of the operation, the rebels had regrouped and started to retaliate against civilians they believed had collaborated with '*Umoja Wetu*'.³⁴

3.1.4.7 March 23 agreement 2009.

On March 23, 2009 there was a secret agreement between the Government (Congo) and the CNDP. The agreement components were political and military integration of the Congolese armed groups in the Kivus, military action against militias, notably the Democratic Forces for the Liberation of Rwanda (FDLR), a reconstruction and stabilisation strategy to restore state authority and provide services to the communities living in zones previously controlled by the militias. The challenge posed by the CNDP was political and military integration. On March 23, 2009 agreement was reached and facilitated by Olesugun Obasanjo and Benjamin William Mkapa, the CNDP and Congolese government agreed on agreements for the CNDP's

³⁴ International Crisis group (2009): *Congo: A Comprehensive strategy to Disarm the FDLR*. Africa report N 151.p.1.

integration into the institutions in exchange for the end to the rebellion.³⁵ This agreement was based on the integration of CNDP soldiers into the DRC's armed forces (FARDC) and the conversion of the CNDP into a political party authorised to participate in the country's political life. The agreement failed because the Congolese authorities pretended to integrate the CNDP into a political system, while the CNDP pretended to be integrated into the FARDC. According to M23, the main reason for the mutiny was the government's non-compliance with the 23 March agreement. The CNDP was given apolitical status as a political party but integration of CNDP combatants into the army and police became extremely difficult in three issues; recognition of rank, allocation of posts and location of deployment.

On May 2012, the mutineers announced the creation of a new armed movement, called M23 in reference to the 23 March 2009 agreement, with Colonel Makenga, as coordinator. They demanded full and complete implementation of the 23 March agreement.³⁶

3.1.4.8 Kimia II.

After the completion of Operation *Umoja Wetu*, the Government of Congo, with the support of MONUC forces, launched operation *Kimia II* (2009), composed of FARDC and the combatants from former militia targeted FDLR militia, especially in the mining areas. According to the report,³⁷ *Kimia II* operation involved an estimated 16,000 government forces in North and South Kivu. Government forces in North Kivu reportedly engaged in serious abuses against civilians, while FDLR forces

³⁵ The agreement stated that “the CNDP confirms the irreversible nature of its decision to cease its existence as apolitical-military movement” and “from now on, seeks solutions to its concern strictly through political means and in accordance with the institutional order and law of the Republic” “Peace Agreement between the Government and the National Council for the Defence of the People (CNDP)”, 23 March 2009, Article 1. The full text of the agreement (in French) is available at is available at <http://afrikarabia2.blogs.courrierinternational.com/media/02/01/2360797318.pdf>.

³⁶ Press release no. 11/ANC/CNDP/2012, Congrès national pour la défense du peuple/Armée nationale congolaise, 6 May 2012.

³⁷ Report of the U.N. Secretary General on the United Nations Organisation Mission in the Democratic Republic of Congo, December 4, 2009.

retaliated by attacking civilians as well. *Kimia II* was aimed to protect the population, to put an end to the threat of the FDLR and to re-establish the authority of the Congolese state.

3.1.4.9 Amani Leo 2010.

Kimia II was later replaced by the *Amani Leo* launched in early 2010 with the minimal level of support from MONUC. The Amani talks reintroduced a rationale for the mobilisation in the region by offering rebel leaders compensation in exchange for their disarmament. A compensation mechanism as a disarmament incentive, many of them used that opportunity to create violent armed groups. The Amani compensation was used by armed groups to consolidate smaller fractions into larger ones. In south Kivu alone, since the start of Amani peace talks, roughly 20 new militias had been recorded.³⁸

As during the Goma crisis in 2008, MONUSCO³⁹ was incapable of preventing a new rebellion. It has six battalions permanently stationed in Goma and has received reinforcements to help the DRC government to deal with the M23. However MONUSCO has not stood in the way of M23's advance and has not managed to fulfil the crucial component of its mandate since the start of the crisis.

All these efforts made from regional levels under the Umbrella of AU, and some with the support of the UN have not prevented frequent clashes between the armed groups. Conditions around conflict in Eastern DRC have not considerably improved, with the episodes of recurring violence. Large parts of the Kivu provinces, certain parts of Ituri, and parts of Maniema province, remain in the hands of foreign or local

³⁸ Joint evaluation of the Conflict Prevention and Peace Building in DRC (2011) available at www.diplomatie.belgium.be/en/policy/development_cooperation/evaluation.visited in May 2013.

³⁹ On May 28, 2010, the United Nations Security Council passed Resolution 1925. The Congolese government had asked for the gradual withdrawal of the U.N. peacekeeping force. The resolution converted the name and mission of the current peacekeeping force from the U.N. Organisation Mission in DRC (MONUC) to the United Nations Organisation Stabilization Mission in the DRC (MONUSCO) effective July 1, 2010.

armed groups. From the Sun City negotiations in 2002 until today, the conflict in the Eastern Congo continues. African Union under all these efforts has not been effective because they have proved inadequate to address regional security problems as they relate to the conflict of the Eastern Congo.

Security and peace have remained the scarcest commodities in Africa. The creation of AU raised hopes that African governments and civil society organisations (CSO) would have opportunities to address security issues more promptly and effectively. However the continuing of problems in DRC and Sudan's Darfur region has led to a growing disillusionment about the AU's capacity to bring peace.

4.0 Other regional organisations.

Within Asia there are two important regional organisations which are Association South East Asian Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC). The major powers in the region are Japan, China and India. One of the desires of both organisations was to achieve security through strong cooperation of the South-east Asian region. Aims and purposes of the associations are to promote regional peace and stability through abiding respect for the justice and the rule of law in the relationship among the countries in the region and adherence to the principles of the United Nations Charter.

Asian States have succeeded to establish ASEAN Security Community (ASC) which aims to ensure that countries in the region live in peace with one another and the world in a just, democratic and harmonious environment. The ASC has tremendous achievement in dealing with armed conflicts in Asia. Through political dialogue and confidence building, States or groups are given chances to present their problems before the situation becomes unmanageable.

In Europe there is European Union (EU) which is regarded as strong regional organisation at the time. From its inception the integration process was conceived as a peace project. EU has been operating in different areas to restore peace and

security. EU engaged in the Internal armed conflicts in Libya, where France and the United Kingdom were the leading protagonist of rapid intervention in Libya by adopting different resolutions including no flying zone, visa ban, and freezing assets of the Muamar Gaddafi and other persons of his regime. This series of measures culminated in the adoption of Council Decision 2011/210/CFSP of 1 April 2011.

EU is in Syria helping the rebels to overthrow the Government of Bashar Assad (Syrian president).Members of the EU supplies weapons, military satellite maps to the rebels. This is done under the notion that Syrian citizens have been killed, raped and gross violation of human rights which are the activities of the soldiers of the Government.

CHAPTER THREE

THE ROLE OF AFRICAN UNION IN DEMOCRATIC REPUBLIC OF CONGO

3.1 Introduction.

It is a trite knowledge that regional organisation is an important organisation in solving internal armed conflicts engulfing the African continent. The African Union is charged with the duty of solving the conflicts according to the principles and laws established by the Constitutive Act (AU Charter).

The concept of regional organisation denotes the situation where states are joining together to form a union for a particular purposes either economically, politically or security and defence. Sometimes states join in phases to form regional power (political union).

This chapter covers the discussion on the role of OAU and AU in dealing with the problems of armed conflict in Democratic Republic of Congo (DRC). It will cover the period of Organisation of African Unity in Congo and after the formation of AU.

3.2 Genesis of the Organisation of African Unity.

In the beginning many scholars believed that the main source of the African internal armed conflicts is the Africa's position in the asymmetrical and powerful global system. Uniting Africa would ameliorate the enormous difficulties Africa is facing.

The founding of the Organisation of African Unity (OAU) was a culmination of a long struggle by the Pan-African Movement, which goes back to the 19th century. The movement was essentially born outside the continent, driven by black intellectual of African descent in the Diaspora. At first the movement was essentially a protest of black people against their exploitation, against racism and for the dignity and uplifting of the black people. The leaders were middle class intellectuals such as W.E.B Du Bois (African –American) and Padmore (Caribbean).

The first Pan-African Conference was held in London in 1900, followed by others in Paris and New York. The most significant meeting and the pinnacle of the movement was the fifth Pan-African Congress in 1945 in Manchester, England. It was a different meeting in three fundamental ways. A large number of activists attended, over 200 persons from the United States, Europe and Africa. For the first time, leading African nationalists took active and prominent parts such as Kenyatta and Nkrumah, who was the secretary of the Congress (W.E.B Du Bois was the Chairman). The Congress stressed, for the first time the necessity for a well-organised movement as a primary condition for the success of the national liberation struggle. Pan African movement was becoming a weapon which could fight colonial rule.

Pan African Movement was strengthened when Ghana became the first black African country to gain independence and organised the all African Conference in Accra in 1959. At that time most African countries were still struggling against colonial rule. For the first time, the Accra meeting brought together on African soil nationalists from all over Africa, with the central theme of solidarity and unity in the struggle against colonialism. The Accra meeting provided an important political and practical boost to nationalist movements within the framework of Pan African Unity which Nkrumah strongly advocated. It also became apparent to all nationalist leaders who came to Accra that African states were key to the struggle against colonialism and towards economic development and political unity after independence.

In 1963, four years after the Accra, the Organisation of African Unity (OAU) was formed. The struggle against the remaining colonialism in Southern Africa and for the continental unity, which was a mass movement of people, was taken over by the independent states under the auspices of the OAU. Pan Africanism ceased to be a mass movement and was transformed into an ideology driving a state based continental organisation.

Organisation of African Unity (OAU) was formed in May 25, 1963 in Addis Ababa by the political leaders of 31 African countries. Its main focus was the liberation of

the white ruled Africa, especially Southern Africa and providing Africa with the powerful independent voice in the World affairs. OAU Charter outlined the objectives as to promote the unity and solidarity, defend their sovereignty, territorial integrity and independence of African States. The OAU charter showed two important goals, which were to protect the fragile sovereignty of the African states and to help those still under the colonial rule to achieve sovereign independence. The first concern of the OAU in solving interstate conflict was by the way of mediation and through the use of OAU liberation Committee, which provided political, diplomatic and some financial support.

3.2.1 OAU history in solving internal armed conflict.

At the OAU's founding conference, the participating heads of State showed considerable awareness regarding the various security concerns with which an inclusive African regional organisation would have to concern itself. Consideration was given to such potential problems as internal disruptions, border disputes, allegations of subversion by neighbouring states, threats of extra regional aggression, and the need for collective action against the remaining colonised countries. Article 2 and 3 of the OAU charter defines the OAU's goals as to assist members both in the peaceful settlement of intraregional conflict and in defence against extra regional aggressors.⁴⁰

In the OAU charter there was no provision about the collective security among the member states. OAU was regarded as loose and voluntary association because of the absence of any provision to make its member states who do not implement its decision accountable.⁴¹ The act of aggression or appearing of internal armed conflicts to one member was not considered as an act against all members. In 1967 the OAU was no better prepared to assist its members in defence security against the

⁴⁰ Meyer D (1990) An Analysis of OAU'S Effectiveness at regional Defence.

⁴¹ Shanti Sadiq Ali (1990) The OAU: Political Mediation and Conflict resolution .p.82

capture by mercenaries of the city of Bukavu, Zaire (now Democratic Republic of Congo).

The seizure of the city of Bukavu demonstrated the efficacy of the OAU in dealing with the problems of internal armed conflicts in the Democratic republic of Congo (DRC). When General Mobutu took over the political leadership of the Congo in 1965, he inherited the mercenary soldiers who had served the Moise Tshombe⁴² and Kasavubu. By the spring of 1967, most mercenary units had been disbanded and their members expelled from Congo. On 5 July 1967, the remaining mercenaries, supported by the units of Katangese militia turned against the Mobutu government and seized the city of Bukavu. Mobutu asked the OAU secretariat for support using military forces available from the member states for use against the occupied areas. Although members of the African states sent expressions of support, only Ethiopia sent military assistance. The major reason for this lack of aid was that available military resources were extremely limited. The states immediately bordering Congo had very small armies and extremely limited transportation capabilities. With the exception of Ethiopia, the African states with the necessary logistics capabilities to deliver men or material to Congo did not have such resources to spare at the time of Mobutu's request. Nigeria and Sudan were both involved in civil wars; Egypt, independent Africa's most powerful state, had just suffered great military losses as a result of June 1967 war with Israel.

Mobutu's request was granted by the United States. At the order of President Johnson, American jets were used to transport elements of the Congolese army into Bukavu area. Congo also sought action from the United Nations (UN). On 10 July, the Security Council (SC) asked all states not to allow their territory to train, or transition of mercenaries.

⁴² The Prime Minister of Congo. He was sworn on 10 July 1964. African leaders were shocked. For them Tshombe symbolised everything they abhorred: secession, collaboration with the Belgian colonialists, defiance of the UN and foreign intervention.

When the OAU met in its regularly scheduled session in September, Mobutu again asked for the African aid in ridding Congo of the mercenaries. At his request, the Assembly passed a resolution that guaranteed the mercenaries a safe exit from Africa only if they would leave Congo immediately.

The mercenaries rejected this offer of safe exist and announced they would remain in Bukavu until they had effected Mobutu's ouster. Despite the OAU resolution, no further African assistance was forthcoming.

The prolonged occupation of Bukavu showed that the OAU was not an effective collective defence organisation. When the mercenaries defied the OAU ultimatum, the member states did not send assistance to assure a forceful end to the crisis and maintain their own credibility. Although OAU passed a resolution favourable to Congo, it did not prove useful in ending the mercenaries' Activities for Mobutu's request for African military assistance was answered only by Ethiopia.

The underlying assumption was that States which are close geographically they tend to help each other or providing a training ground for mercenaries. Neighbouring states are better able to help one another because geographical propinquity facilitates the delivery of material assistance. But this proposition may be invalidated by the superpower state like United States readiness to respond to acts anywhere on the globe, unlike the material weaknesses of the African states. African states lack substantial military resources and logistics capabilities to transport men and weapons to neighbours who may be in need. African railroads do not form a continuous network, and air transport capabilities are limited. Technological advancement to the superpowers may outweigh the advantages of proximity. This was clearly evidenced in American assistance to Congo. Though OAU refused to accept the foreign assistance to Congo, and it was stated in Resolution adopted by the Council on 10 September, 1964 in which it made clear:

...that the foreign intervention and the use of mercenaries has unfortunate effects on the neighbouring independent states...and the other territories in the

*region which are still under colonial domination... and constitutes a serious threat to peace in the African continent.*⁴³

Lack of mutual trust and shared interests, the low level of African military resources, and a continued availability of extra regional sources of assistance have all contributed to the extremely limited cooperation manifested among the OAU members on issues related to collective defence. Among the reasons for the lack of military cooperation has been the general shortage of resources available to the most African States.

The structure of the OAU, the assembly of Heads of State and the Government, the council of the Ministers and the General Secretariat was modelled on the United Nations (UN). However, unlike the Charter of the UN, the OAU Charter does not create an organ with disciplinary powers to enforce compliance with its resolutions or provide for explosion in the case of non-compliance. Nkrumah's plan to suggest African High Command was rejected by members of the OAU on the ground that it went beyond each sovereign state's interest and would have posed a potential threat to each leader.⁴⁴

In an overall assessment of the OAU achievement, the organisation, in spite of glaring weakness, deserves some credit. During the Nigerian civil war, it was the OAU's unequivocal stand for the 'a solution that preserved the integrity of Nigeria' which made it impossible for any big power to side effectively with Biafra.

In inter-state disputes there are cases where the OAU has reconciled antagonistic parties-the most dramatic being Presidents Mobutu of Zaire (Congo) and Neto of Angola, who accepted African mediation and signed an agreement to establish friendly relations and stabilize the border.

⁴³ ECM/Res.5 (3)

⁴⁴ Shanti Sadiq Ali ,supra p. 83

However, it must be admitted that the OAU has not succeeded in promoting effective action under its own Charter. Disputes among the OAU members have been settled through direct negotiations between states, good offices offered by a third party, ad hoc committees composed of Heads of States and diplomatic negotiations conducted during the session of the OAU summit meetings.

Over the years, the OAU's role as peace –maker in Africa has been on the decline. In Congo it failed to act decisively against foreign intervention in purely African conflicts and elsewhere, many with similar tribal and ethnic problems. African states remain vulnerable because the concept of an independent nationhood. National leaders saw there was a need to reform the OAU to make it more effective and not as voluntary organisation lacking the teeth to impose its decisions. Thus the AU is considered to be the outgrowth of the OAU.

3.3 African Union.

It was in September 1999 when an extraordinary meeting was convened in Sirte Libya at the request of the Libyan Leader Colonel Muamar Gaddafi, in order to promote African Unity and to demonstrate African solidarity with Libya. The meeting determined to establish an African Union based on the principles and objectives of the OAU. In addition Heads of state declared their commitment to accelerating the establishment of regional institutions, including an African parliament, court of Justice and a central bank, as well as the implementation of an economic and monetary union. Therefore, on September 9, 1999, the heads of State and Government of the organisation Unity issued a Declaration (the Sirte declaration) calling for the establishment of the African Union to replace the OAU.

The AU project was born in Sirte in 1999 with the decision to draft an act of Constitution. The AU's Constitutive Act was subsequently signed in Lome, Togo on 11 July 2000. The official inauguration of the AU took place in July 2002 in Durban, South Africa and represented the next level in the evolution of the ideal of Pan-Africanism.

There are only two requirements for becoming a member of the AU. First, members must be an African State and second, an African state that wishes to become a member of the AU must sign and ratify the AU Constitutive Act (the governing document of the AU). Most of the African States have signed and ratified the AU Constitutive Act.⁴⁵

Learning from the lessons of the OAU, the AU has adopted much more interventionist stance through its legal framework and institutions. The AU's Peace and Security Council (PSC) was established in 2004 through the Protocol relating to the Establishment of the Peace and Security Council of 2002. The AU's 15 members PSC are mandated to conduct peacemaking⁴⁶, peacekeeping⁴⁷ and peace building. Among those members, ten are elected for a term of two years and five for a term of three years. The chairman of the AU is assisted by a commissioner in charge of peace and security to provide operational support to the PSC and to take steps necessary to prevent, manage and resolve conflicts.⁴⁸ The PSC assesses a potential crisis situation, sends fact-finding missions to trouble spots and empowered to authorise and legitimise the AU intervention in internal crisis situations. AU is empowered to intervene in a member state in crisis situations.⁴⁹ Also PSC can recommend to the assembly (Head of State) intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocide and

⁴⁵ African Union: A united Strong Africa, Vision and Mission, <http://www.au.int/en/about/vision>. (visited May 28,2013)

⁴⁶ This process seeks to promote cease fire and to negotiate an agreement.

⁴⁷ Peace keeping proceeds after the outbreak of violence and involves the deployment of soldiers in the field with the consent of all parties concerned, normally involving United nations military and ,or police personnel .

⁴⁸ Tim murithi (2010).The African Union's evolving role in peace operations: the African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia. <http://www.iss.co.za/uploads/17NO1MURITHI.PDF> visited in10 January 2013.

⁴⁹ Article 4 (h) of the AU Constitutive Act.

crime against humanity as defined in relevant international conventions and instruments.⁵⁰ This represents the major difference between the charter of the OAU and the Constitutive Act of the African Union. With the adoption of these legal provisions, AU has the authority to intervene in the internal situations that may lead to atrocities being committed against minority groups or communities at risk within states.

3.3.1 African Union history in solving internal armed conflicts.

The AU has inherited both the assets and liabilities of the OAU. Therefore, the AU has not conducted extensive peace building operations on the continent despite the significant need for Peace building. The AU intervened in Burundi crisis to build peace. Also the AU involved in promoting peace in Darfur region through the African Union mission in Sudan (AMIS).The AU has a mandate to monitor the humanitarian crisis effectively and to coordinate efforts to advance the cause of peace.

The eastern part of the DRC (North-Kivu, South-Kivu and Province Orientale) constitutes the key geographical focus of the most devastating contemporary DRC wars. The attraction of precious natural resources, cultural suspicion, military – strategic needs for the security, and better road connections to the neighbouring countries are combined factors of conflict in the area of Kivu. In the DRC conflicts many violations were also witnessed; massive and systematic rapes, massacre, killings, arbitrary arrests and illegal detention of people, ill-treatment and torture,

⁵⁰ Article 7 (e) of the Protocol Relating to the Establishment of the Peace and Security.

violation of international humanitarian law through indiscriminate attacks on civilians and destruction of property.⁵¹

Due to the seriousness of the conflict, international and regional interventions have also supported the processes of DRC conflict resolution by facilitating peace talks. The peace deal in Sun City signed by all Congolese belligerents and political groups in 2002; the agreement for the progressive integration of militia troops into the regular armed forces ; the Nairobi agreement in 2007; the Goma agreement in 2008 implemented through the “Amani” peace program; the Ntaganda agreement to integrate CNDP troops into the Congolese national army in 2009; the DRC-Rwanda joint military operation against the FDLR launched in 2009 called “Umoja Wetu”, the offensive military operations “Kimia II” (2009) and “Amani Leo” (2010) against FDLR led by FADRC with MONUC.

However, most of these agreements are so far unsuccessful; that is the reason why the process of peace is not well consolidated. In many territories, conflicts and wars are still ongoing and call for more practical actions in order to be deeply analysed, resolved as well as transformed. At the same time, emerging or ongoing conflicts need to be prevented as far as escalation is concerned and potential conflict need to be prevented regarding emergence or re-emergence.

The DRC’s conflict has created significant challenges to the African Union. It emerged as assessment of its aptitude to prevent, control and resolve conflicts in the continent. In this context the ability to respond effectively to conflict problems in DRC might be the most challenging test of its commitment to taking a more proactive role. The major task of the AU is to assist Africa to meet the challenges of

⁵¹ Claudine Tsongo Mbalamy (2012) *Introduction to conflict analysis, Prevention and Resolution*. University for Peace.
<http://www.upeace.org/system/capacity/pdf/2012/Claudine%20Tsongo%20Mbalamy%20-%20Introduction%20to%20Conflict%20Analysis,%20Prevention%20and%20Resolution.pdf>. Visited April 2013.p.10.

the Twenty-first century, by making peace, security, governance, democracy and development.⁵²

Concerning the DRC's dilemma, the OAU then the AU, first appeared in 1996 when it organised a regional summit in Nairobi reacting to the silence of the UN Security Council on the case. Its second intervention occurred in 2003 when it supervised the Sun City Accords under the Mediation of South Africa. In 2004, the AU together with the UN, deployed observers along the borders between Rwanda and DRC in rapport with the joint mechanism agreed upon the two countries.

On 10 January 2005, the AU Peace and Security Council meeting in Libreville recommended to disarm urgently all armed groups and militia operating in DRC. The summit agreed that South Africa, Angola, Algeria, Gabon, Uganda, Senegal and Tanzania, form a committee to evaluate the situation in Congo. Following this summit, the AU requested its member states to contribute 6000 troops at least to be deployed in the eastern Congo to forcibly disarm Rwandan rebels.

3.3.1.2 The African Union Assembly in the conflict period in the DRC.

The Assembly constitutes “the supreme organ of the AU, which consists of heads of State and Government or their representatives.”⁵³ In its quality, it is the highest organ of the Union. The Assembly plays the directing role. In this respect, it “monitors the implementation of policies of the Union as well as ensuring compliance by all member states.”⁵⁴ In addition the Assembly gives directives to the Executive Council

⁵² Mujinga Y. (2011).The role of international Organisation in the post-conflict period in the Democratic of Congo. <http://upetd.up.ac.za/thesis/available/etd-05272011-162931/unrestricted/dissertation.pdf>. Visited in 20 February 2013.p.29.

⁵³ Article 6 (1,2) of Constitutive Act of the African Union.

⁵⁴ Article 9(1, e) of the Constitutive Act of the African Union.

on the management of conflicts, wars and other emergency situations and the restoration of peace.⁵⁵

Generally, the Assembly examines the situation of the continent as a whole. It receives report from the PSC and the Commission on specific cases related to conflict and peace. In this respect, the assembly expressed its preoccupation over the persistence of conflict and crisis situations on the continent despite the many efforts deployed thus far to resolve them.⁵⁶

The Assembly is committed to deal definitively with conflicts and violence in Africa by addressing its root causes and to push forward the agenda of conflict prevention, peacemaking, peacekeeping and post-conflict reconstruction. That is why the assembly requested the Chairperson of the commission to take all steps necessary to strengthen the commission's capacity in addressing the challenges of peace, security and stability on the continent.⁵⁷

Equally, the meeting in Addis Ababa in February 2009, the Heads of state and Government of the AU recalled the decision they made in collaboration with the Secretary General of the UN and the Chairperson of the International Conference of the Great Lake Region (ICGLR) on the Kivus 2008. This decision requested the belligerents to allow humanitarian agents to assist the victims by ceasing fire and engaging in peace negotiations. During the same summit, the AU Heads of state and Government recognised and congratulated the Secretary General of the UN as well

⁵⁵ Article 9 (1g), Ibid.

⁵⁶ Special session of the Assembly, SP/ASSEMBLY/PS/DECL.(1) on the elimination of conflict in Africa and the promotion of sustainable peace, Tripoli 31 august 2009, available at <http://www.africa-union.org.up.za> visited in May 29, 2013.

⁵⁷ SP/ASSEMBLY/PS/ DECL (1) Ibid.

as the Great Lakes Regions (GLR) states' leaders for their efforts during mediations throughout ensuring peace in eastern Congo.⁵⁸

The AU assembly thus, played a supervisory role in the DRC. In this respect, it examined and coordinated the mission of the AU Peace and Security Council (PSC). It also recalled the international community to provide the required support for the conflict in DRC and implementation of the appropriate decisions of the PSC.

3.3.1.3 The AU Peace and Security Council in the conflict in the DRC.

African Union Peace and Security Council was formed in 25 May 2004, the AU entrusted this organ with the following instruments: A panel of the wise, a continental Early Warning System, an African Stand-by Force (ASF), a funding mechanism and Post-conflict Reconstruction and development Policy.

Peace and Security Council formed the most important and active organ of the AU. PSC contributes considerably to the AU's missions in supporting democratic practice, the rule of law, respect for human right and humanitarian law by promoting efforts, which aim to prevent conflicts.⁵⁹

The provisions of article 3(b) and (c) of the AU Protocol relating to the establishment of the PSC entrusts member states with the capacity to resolve their conflict by using peacemaking and peace building functions. In addition, they should promote and implement peace building and post conflict reconstruction activities to consolidate peace and prevent the resurgence of violence.⁶⁰

Referring to the DRC's case, on 10 January 2005, the African Union Peace and Security Council (AUPSC) exposed the armed groups that threatened peace and

⁵⁸ JM Kikwete, statement at the twelfth summit of Heads of state and Government in Addis Ababa, 1 to 3 February 2009. Available at <http://www.africa-union.org.up.za>

⁵⁹ Protocol relating to the establishment of the AU PSC, article 3(f).

⁶⁰ Article 3(b) and (c) in the AU Constitutive Act.

security, as well as the transition process in the DRC at its 23rd meeting concerning the peace and security in the DRC. Hence the AUPSC is committed to disarm and neutralise the armed groups in the Eastern part of Congo in order to keep peace and security in the entire country.⁶¹

At its 138th meeting on June 2008, the PSC urged the governments of the DRC and Rwanda to implement the *Goma Actes d'engagement* (Goma agreement) signed in January in Goma at the Conference on Peace, security and Development in the Kivus. It also argued them to comply with the measures adopted during the summit held in November 2007.⁶² During the same year, the AUPSC held two other meetings concerning the DRC and Burundi, in which the PSC requested the Chairperson of the Commission to respond appropriately to the AU contribution to the post-conflict reconstruction process in the DRC and Burundi.

The first meeting was the PSC/PR/comm. (CLV) of 31 October encouraging MONUC and requesting the Great lake Region's (GLR) countries to continue to support the peace and national reconciliation process in the DRC. It also reiterated vigorously its concerns at the deteriorating security and humanitarian situation in North Kivu caused by the emergence of hostilities between the Congolese Army (FARDC) and the Laurent Nkunda's National Congress for the Defence of the people (CNDP) on 28 August 2008. In this regard, it strongly condemned the CNDP violation of the Goma Agreement.⁶³ In the same perspective, the Secretary General of the UN, the Chairman of the AU and the Chairman of the GLR organised a meeting of regional leaders in November in Nairobi to debate the security and

⁶¹ 23rd meeting of 10 January 2005 on peace and security .available <http://www.african-union.org>

⁶² 138th meeting of the PSC of June 2008 in Sharm EL-sheikh, Egypt PSC/HSG/Communiqué (CXXXVIII)

⁶³ Communiqué PSC/PR/Comm. (CLV) of the 155th meeting of the PSC held on 31 October 2008 in Addis Ababa, concerning the eastern DRC.

conflict situation in Kivu province.⁶⁴ The summit called on both sides to cease fighting and to allow humanitarian assistance to reach the people, and engage in negotiations to find a lasting solution.

The second meeting was the PSC/MIN/Comm.2 (CLXIII) of 22 December condemning the National Congress for the Defence of the People (CDNP) declaration of 1 October. The declaration rejected the *Amani* program.

The African Union Peace and Security Council were fashioned to ensure the execution of the decision of the AU. In this regard it has since the beginning of the conflict been active in the DRC. Its main concern focused on the re-establishment of peace in the Kivus. It condemned vigorously the armed groups and called all belligerent to deposit their arms.

The AU's role in the DRC conflict period has multiples tasks. In the beginning, the AU supervised the debates which were aimed at solving the problems of the DRC. In this respect, the Assembly conducted most of the meetings. As from 2005, the AU perceived the need to proceed to a forceful disarmament of the rebels. At this stage, the PSC stepped forward by assisting the national government to reconstruct the security system in the DRC.

However, the overall situation in the DRC remained unstable because of the increase attacks by rebels, small armed groups against the civilians. It will require a better understanding of the concept by parties involved in the conflict. After a decade of debates, practical propositions are required to accelerate effective implementation of peace.

3.4 Conclusion

In conclusion, this chapter shows that the role of the AU has not been fully explored, but it is equally clear that the AU has a potential to take the lead role in resolving

⁶⁴ JM Kikwete ,in n.49 above.

armed conflict on the African Continent. Also resource challenges undermined the AU's ability to take effective action, and ultimately led to calls for the United Nation intervention. AU is currently unable, effectively to provide for an Africa's peace and security, especially in the context where the UN is unwilling to deploy.

CHAPTER FOUR

INTERNAL ARMED CONFLICT UNDER THE CONSTITUTIVE ACT

4.1 Introduction.

Internal armed conflict like the conflict between two states, intra conflict, and sovereignty is one of the fundamental principles of the Constitutive Act.

One of the main objectives of the African Union (AU) under the Constitutive Act is to maintain peace and security between and within the member states. This principle, of promoting peace, security, and stability of the continent is enumerated herein under Article 30 of the Constitutive Act of the African Union and article 3 of the Protocol to amend the Constitutive Act.

With the view to achieve the above objectives, the Constitutive Act of the African Union and the Protocol for its amendment provides principles in accordance with which the Union shall conduct its functions. Article 4 of the Constitutive Act and article 4 of the Protocol provide the Union shall function in accordance with the following principles:

- i. Sovereign equality and interdependence among member states of the Union;
- ii. Respect of borders on achievement of independence;
- iii. Participation of the African peoples in the activities of the Union;
- iv. Establishment of a common defense policy for the African continent;
- v. Peaceful resolution of conflicts among member states of the Union through such appropriate means as may be decided upon by the Assembly;
- vi. Prohibition of use of force or threat to use force among member states of the Union;
- vii. Non- interference by any member state in the internal affairs of another;
- viii. The right of the Union to interfere in a member state pursuant to the decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore

peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council;

ix. Peaceful co-existence of member states and their right to live in peace and security;

x. The right of member states to request intervention from the Union in order to restore peace and security;

xi. Promotion of self-reliance within the frame work of the Union;

xii. Promotion of gender equality;

xiii. Respect for democratic principles, human rights the rule of law and good governance;

xiv. Promotion of social justice to ensure balanced economic development;

xv. Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;

xvi. Condemnation and rejection of unconstitutional changes of governments;

xvii. Restraint by any member state from entering into any treaty or alliance that is incompatible with the principles and objectives of the Union;

xviii. Prohibition of any member state from allowing the use of its territory as a base for subversion against member states.

The seventh, eighth, tenth and sixteenth principles of the union can form one category. That is the AU can intervene in a member state in cases where war crimes, genocide and crimes against humanity as well as serious threat to legitimate order to restore peace and stability are being committed. While in doing so, the Constitutive Act prevents any member state, acting individually, from intervening in the internal affairs of another state.

4.2 The provisions of the Constitutive Act.

The preamble of the Constitutive Act of the African Union provides roles of the AU in dealing with the conflict of the member state. It is also understood that the internal armed conflict constitutes a major impediment to the socio-economic development of the continent and the need to promote peace, security and stability as prerequisite for

the implementation of development. Article 3⁶⁵ further states that, “*the objectives of the Union shall be to promote peace, security, and stability on the continent.*”

It is true that to a great extent the Constitutive Act of the African Union is more concerned with the conflicts between states and gives states the choice of whether helping a state in conflict or abandons a state concerned. The Constitutive Act does not so much cover the issue of internal armed conflict of a particular state.

The provisions of the AU Constitutive act are directly concerned with the conflict between states and the internal armed conflict is only touched where there are massive human right violations, genocide and crimes against humanity. But these interventions must be done pursuant to the decision of the AU Assembly.⁶⁶

The AU Constitutive Act has conferred the interstate conflict as the main conflict between members of the African Union while leaving the most prevailing conflict in the continent (intra conflict), under the umbrella that the sovereignty of a state should be respected.

The internal armed conflict therefore formed part of the conflict. These conflicts are also entitled to be protected fully under the AU constitutive Act. Therefore, I find no reason why the AU Constitutive Act does not guarantee fully the problems of internal armed conflicts of states.

The AU Constitutive Act is in favour of the interstate conflict as regards the establishment of Peace and Security Council (PSC), the principle of sovereignty, non-intervention and condemnation and rejection of unconstitutional changes.

⁶⁵ The Constitutive Act of the African Union.

⁶⁶ Article 4 (h) of the AU Constitutive Act.

4.2.1 The establishment of the Peace and Security Council.

The Peace and Security Council is established under the Article 9 of the Protocol on Amendments to the Constitutive Act of the African Union, which provides that;

There is hereby established, a Peace and Security Council (PSC) of the Union, which shall be the standing decision-making organ for the prevention, management and resolution of conflicts.

The PSC is the organ which is supposed to deal with the problems of internal armed conflict among the members of the African Union. But the internal armed conflict is not clearly and plainly explained in neither the main Act of the African Union nor the Additional protocol on the Amendments to the Constitutive Act. It also never set any obligations to the member state in case there is internal armed conflict in a particular state.

4.2.2 The principle of Sovereignty.

This is one of the principles which are enshrined in the AU Constitutive Act. Article 4 (a) of the AU Constitutive Act provides that:

The Union shall function in accordance with the following

Principles:

(a) Sovereign equality and interdependence among Member States of the Union;

The principle implies that members of the Union must respect borders of other state and independent of states. States should not involve in the internal affairs of the other states. The principle shows that the AU has to function up on respect of the sovereignty equality and peaceful interdependence of its member states, where it entitles the Union the right to intervene in the internal affairs of the member state.

4.3 Conclusion.

The AU constitutive Act does a little in ensuring the internal armed conflicts of states are minimised. The AU Constitutive Act stressed more on conflict between states and leaves a jar to armed groups and rebellion within a particular state to operate.

Also the framer of the AU Constitutive Act includes the principles of Sovereignty, non-intervention between member states so as states should not engage in the internal affairs of the other. But we have seen in chapter two and three how the states involved in the DRC because of its resources. This interference in the DRC makes the situation worse and it is done without the blessing of the AU Assembly, which is the supreme organ of the African Union.

CHAPTER FIVE

FINDINGS AND ANALYSIS OF THE RESEARCH.

5.1 Geographical location.

The study was carried out in the DRC particularly in the eastern part of the country. This part of the country is accessible by road transport and served by trunk roads and feeder roads. Air transport is served mainly in few areas particularly in the areas where there are minerals like Masisi, Rutshuru and Bunagana.

5.2 Democratic Republic of Congo natural resources.

The eastern part of the DRC is very rich in minerals. Mineral deposits in the eastern Congo are the heart of the conflict and the continued unhindered transports across the region are the key to the continuation of crime and internal armed conflict. There are illegal exploitation of

minerals by actors of the conflict. It has been showed that belligerents partly finance their activities from the sale of gold, wolframite, coltan and cassiterite (mineral needed to manufacture electronics.)⁶⁷ Security problems show the extent of the challenge in the eastern part of the DRC. The existence of an undisciplined and unpaid army, the militarisation of the eastern DRC economy, the size of the informal economy, the extent of corruption among the networks of the elite means that major reform of the army in particular and the administration in general is required.

⁶⁷ Thierry Vircoulon (2011) On the African Peace building Agenda. Behind the problem of conflict Minerals in DR Congo: Governance.p.1

5.3 Solving Mechanisms of conflicts.

5.3.1 under the OAU.

Solving internal armed conflict has been practised even before the formation of African Union (AU). Organisation of the African Union (OAU) also dealt with that type of conflict through mediation.

Mediation has been practised by both OAU and AU. Mediation has stages. First an understanding of the gaining access to the internal armed conflicts contributes to a better understanding of the mediation process. Second, an investigation on entry facilitates examination of the mediation process from the perspectives of both the intermediaries and the parties. And third, an objective comprehension of the entry requires not only an understanding of the motives for such an initiation but also an identification of its underlying problems.⁶⁸

Some of the example of the successful mediation under the OAU was the Rwandan crisis of 1994. It was the October 1990 civil war in Rwanda which continued up to 1994 genocide resulted to untold sufferings to the civilians of Rwanda. The heart of the conflict was based on the struggle for the control of central authority. Other reason of the conflict was based on the government policy that the country did not have enough land to resettle the returnees, and that its high population density made it all the more exigent that refugees remain in the host countries. Against this backdrop, the refugees-the majority of whom, by history of the previous events, happened to be Tutsi-decided to organise to return by force.⁶⁹

The invasion of the Rwanda Patriotic Front (RPF) into Rwanda were quickly recognised by regional organisation particularly OAU. France, Belgium and Zaire (DRC) sent troops. Belgium withdrew its troops by the end of the month (October

⁶⁸ Maundi M. Et al (2006) *Getting In; Mediators' Entry into the settlement of African conflicts.* Institute of Peace Press. Washington Dc.p.175.

⁶⁹ Maundi M.et al (2006) *supra.* p.33.

1990) after a brief stay and called for the formation of an African peacekeeping force. Belgium and France justified their action on the excuse of protecting their nationals. Zaire, Mobutu had long been a patron of Habyarimana (president of Rwanda) and so Zairian troops quickly joined the FAR (national army of Rwanda) in fighting against RPF.

Although there were different mediation process under the OAU like 1991 regional response initiated by Tanzania and Zaire (Dar es Salaam declaration) but all these efforts proved a failure and the conflicts continued due to the lack of commitment of the parties to the conflicts. By September 1991 the conflict had changed from its earlier conventional framework to a potentially protracted guerrilla war.

OAU played an active role in the mediation process and Tanzania was selected as a mediator. The OAU was discussing the relevance of having a new mechanism for conflict and resolution, and its active involvement in the Rwandan conflict was a practical part of the objective and was an expression of Africa's commitment to find its own solutions to its problems. UN involvement was indirect, mostly supporting the efforts of the region and the regional organisation, the OAU. Its direct role was exercised by its agency, the United Nations High Commissioner for refugees.

Tanzania's availability as mediator for the Arusha peace negotiations was achieved through a process of elimination.

5.3.2 Under the African Union.

African Union was established to promote peace, security and stability of the continent. This assumption is enumerated in the article 30 of the Constitutive Act of the African Union and article 3 of the Protocol to amend the Constitutive Act. Generally, African Union was aimed at bringing political, economic and social integration between member African countries and making the continent a better place to for life.

The Constitutive Act of the African Union and the Protocol for its amendments were the governing law of the African Union. Article 4 of the Constitutive Act and article 4 of the Protocol provide, Non-interference by any member state in the internal affairs of another, the right of the AU to interfere in the internal affairs in a member state pursuant to the decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council (PSC). PSC has the power among other things, to authorise peace support missions, to impose sanctions in case of unconstitutional change of government, and to take initiatives and action it deems appropriate in response to potential or actual conflicts.

Solving mechanism under the African Union has practised in different ways compared to the OAU. In Article 6 of the *Protocol relating to the Establishment of the Peace and Security Council of the African Union* states that;
Peace and Security Council shall perform its function through peacemaking, using of Good Offices, mediation and enquiry and intervention pursuant to article 4(h) and (j) of the Constitutive Act.

5.4 Data analysis and Research Findings.

In this chapter the researcher presents the findings of the research. These findings were gathered from the officials of various cadres ranking from retired ambassadors to military personnel as well as lecturers of the Centre for foreign Relation. Data were analysed by looking/grouping the answers obtained from the unscheduled interviews.

As regard library work the researcher managed to utilise both primary and secondary sources such as statutes, textbooks, website, Articles and journals, unpublished materials (mimeo), newspapers, so as to find why writers explained about the efficacy of the African Union and the need for the extending the provisions of the African Union Constitutive Act.

The researcher came up with two categories of findings from the field work and from library research (documentary review). Discussion on the conflict of DRC, efficacy of the AU and the need for the extending the provisions of the African Constitutive Act to cover whole issues of the internal armed conflicts was dealt with in this chapter.

5.5 Finding from the Field work.

The focus of this study in this part is to present the findings discovered in the course of the research and analyse them in the light of questions and objectives. These findings are the results of interview conducted and questionnaire with the Official governments, military personnel, students of faculty of law and lecturers.

5.5.1 The questions posed to the respondents.

Researcher posed the questions to ambassadorial members, members of the Ministry of defence, ministry of Foreign Affairs, lecturers and students of international law in order to know how much they understand the efficacy of the African Union in dealing with the problems of internal armed conflicts; their views on the need for the extending the provisions of the African Constitutive Act to cover effectively the internal armed conflicts. The questions and responses were as follows:

5.5.1.1 Do you think the AU can deal with the DRC conflicts effectively?

The responses to this question were elicited from different categories of respondents as follows:

(i) Military personnel (officers), soldiers and police.

It is difficult to accept that the AU can deal effectively with the Congo conflict due to the fact that the longevity of the conflict, parties involved in the conflict and the presence of the various valuable mineral in the eastern part of the DRC.

Longevity of the conflict.

Since the period of the Organisation of African Union, the conflict of Congo persists. OAU tried to minimise the conflict but there were little hope of achieving peace in the DRC particularly eastern part. The Congo conflict is about 30 years of turmoil and mass violations of human right and abusing of power in some of the Government official of Congo. It is estimated that the Congo conflict has claimed more than 6 million people since the conflicts began. Also the state (DRC) seems too big to control from the capital city of Kinshasa because of having poor communication networks and undisciplined army.

Minerals of the Congo .

Presence of various minerals in the eastern part of the Congo poses a continuous challenge of the AU to solve the Conflict. Africa as elsewhere whenever, the availability of natural resources tempted other states and giant multinational corporation to invest in those areas. In Nigeria, Libya and Sudan there are conflict because of the presence of Oil and gas. The same way applies to the DRC conflicts. There are coltan, the necessary mineral needed to manufacture electronics, there is gold, diamond and uranium, all these are valuable minerals needed everywhere.

Parties involved in the Conflicts.

The conflict of Congo involves many armed groups. First there is M23 which forms a strong base in eastern part particularly in the North Kivu. These are determined armed groups aimed to form a fractional government. They have formed their ministries, collection of taxes and participating in the community affairs of the North Kivu.

There is also Mayimayi groups. These are small but many artisans dealing with mining activities in the eastern Congo. They are operating under the huge forest in the eastern Congo, and they are specialised in ambush and looting from the civilian's populations.

There is also FDLR. These are Hutu descendants that fled from the Rwandan genocide of 1994. They are situated immediate after the international boundary between DRC and Rwanda. They also deal with mining activities in the eastern part.

(ii) Retired ambassadors and lectures.

African Union is the premier regional organisation dealing with many aspects of the member states, and conflicts forms one of the aspects addressed by the AU. African Union is unable to deal effectively with internal armed conflict of Congo due to the following reasons; limited resources of the African Union, will power of the member states and the internalisation of the Congo conflict as well.

Limited resources of the African Union.

Since the period of the Organisation of the African Unity (OAU) up to this current organisation (AU) unavailability of resources like materials and personnel engulfed the AU and make it unable to solve its membership's problems at a time. There is shortage of resources and funds and this makes the AU depending from the outside assistance as source of income to finance the program prepared by the Assembly. This situation made the AU to pass only resolution without any further step to ensure the decisions of the Assembly are implemented fully.

Although the AU establish a Standing Army which will be ready to curb any conflict likely to occur or giving early warning to members of the Assembly of the AU, but states are not compelled in the AU Constitutive Act to contribute soldiers, officers and police to have a permanent army ready to respond.

Will power of the Heads of States in the AU Assembly.

The Assembly of the African Union consists of Heads of States, governments and duly accredited members. In this assembly Heads of states sometimes remain silent or abstain to vote in the session of the Assembly. This is due to the fact that, politics in the Assembly has been the part of the game. States, regional interest has superseded the conflicts engulfing the region. A good example of this interest is the Libyan crisis and the conflict of Darfur in Sudan.

Internalisation of the Congo conflict.

The part of the eastern Congo has been the breeding ground of various military groups in Congo. There has been no industries manufacturing weapons around the area but those groups possess heavy tanks and strong lethal weapons because of the exchange with gold, diamond and Uranium available in the area.

There have been accusations that M23 has received military help form neighbouring states like Rwanda, Burundi and Uganda in exchange with mineral resources of the area.

5.5.1.2 Do you think the citizens of DRC are well protected by the AU Constitutive Act?

The above question was posed to the Military personnel including soldiers and police, the students of international law, ambassadors and lecturers. The responses were as follows:

(i) Military personnel, soldiers and police.

In reply to the question posed to them, they said the provisions of the AU Constitutive Act ensures there is no conflict between the member states (interstate) conflicts but does a little to ensure internal armed conflicts are also minimised in spite of intervention principle enumerated in the Constitutive Act. The factors include the weak Peace and Security Council and enforcement mechanism of the AU.

Peace and Security Council.

This is an important organ established under S.20 of the AU Constitutive Act. The section empowers the Assembly to establish an organ necessary for dealing with the issue of conflicts. It then enacts the Protocol on the Amendments to the Constitutive Act of the African Union which later establishes the Peace and Security Council (PSC) under Article 9 of the same. One of the functions of the PSC is to prevent, management and resolution of conflicts.

Peace and Security Council has been mandated a noble function but it has no power enough to deal with those prevailing conflict around the region. All its decision regarding the conflict engulfing the region like Congo must be determined and allowed to pass by the Assembly. Due to the regional and states interests within the Assembly the decision is unlikely to pass and be implemented by the PSC. Even when the decision passed smoothly in the Assembly the PSC will not have power to enforce its decision due to the shortage of resources.

Enforcement Mechanisms.

An enforcement mechanism of the Constitutive Acts of the African Union does not effectively deal with the problems of internal armed conflicts in Congo. Had the problems clearly addressed and dealt upon the conflict of Congo would have been managed and or minimised.

Much of the conflict appearing in the region are much exercised and tried through the use of diplomacy and the use of Good Offices. In the DRC alone there has been about ten official agreements made under the umbrella of the AU but the conflicts of Congo persisted.

(ii) Lectures and members of the Embassy.

Generally, the provisions of the Constitutive Act protects a little of the internal armed conflict. This is because of the prevalence of internal armed conflicts in the regions. It appears that through the provisions of the Constitutive Act are the basic working tools to enable PSC to perform their functions without interference from the Assembly; it is also obvious from the analysis that the Constitutive Act of the African Union itself sets inescapable provisions for dealing with the conflicts between states and little effort were given to the internal armed conflicts.

Gaspar Zakayo, the lawyer from the Ministry of Defence was of the view that the AU Constitutive Act has very good provisions covering on protection of human and people's rights under objectives provided for under Article 3 (h). Article 4 also provide for intervention in case of genocide or crime against humanity. However all these good provisions which can be invoked to protect DRC citizens have only remained on paper.

(ii) Students of international law.

Constitutive Act of the African Union is in favour of the conflicts between States in the following respects: weak Peace and Security Council, poor enforcement mechanisms of the AU and poor implementation of the Constitutive Act. Therefore, the provisions of the Constitutive Act of the African Union protects states not to

enter into conflict with each other but leaves out the internal armed conflicts which appeared in many African States.

According to the discussion above, it has been shown that the respondents concurred that the provisions of the AU Constitutive Act provided the necessary protection between states but left the internal armed to continue in the region. This finding is the same as the finding from the library research which illustrates that Article 3 (b) of the AU Constitutive Act shows the positions of the AU in dealing with interstate conflicts and leaving the intrastate conflicts.

5.5.1.3. Are the AU decisions in dealing with the problems of internal armed conflict implemented effectively?

(i) Military personnel, soldiers and police.

They said that, the problems of internal armed conflict in the member states are not addressed well compared to the magnitude of the problem itself. This is due to the long concept of the former regional organisation OAU. Much of the constitutional script of the OAU has been transformed to the AU. The OAU has the same problems in addressing the internal armed conflict of the member states. This view was precipitated by the principle of sovereignty in the period of OAU. No member's states were allowed to interfere the internal affairs of the other state, even the OAU. Later the AU incorporates this principle of sovereignty into the AU Constitutive Act but let's through PSC to intervene in case there are crimes against humanity, gross violation of human rights and genocide.

(ii) Lectures and members of the Embassy.

They argued that by saying Au is an unable organisation to deal with such complex internationalised conflict in the great lake regions. The budget of the organisation is so small that it cannot even deal effective with the problem of Darfur in Sudan. Much of the resources are coming from the outside. Although the resolution are

passed to restrain the rebels and other armed groups to stop war, but the organisations lacked necessary resources to implement its decisions.

On this concept, the constitutive Act has to take great concern. Internal armed conflict must firstly be expressed guaranteed in the constitutive Act; secondly member state must surrender some of their soldiers, personnel and funds to the African Union in express term not implied, (as it now); thirdly, penalties should be established for defaulter under the constitutive Act and the special sessions in the AU (PSC) must be allowed to sit to discuss the matter in case of persisting conflict; and lastly PSC decision must not go to the Assembly for the Attestation, the decision of the PSC concerning internal armed conflict must be final to evade the politics in the AU Assembly.

(iii) Students of international law.

In reply to the questions, they said that decision of the AU weak because the organisation is engulfed with many challenges starting from the limited resources, absence of mandatory provisions requiring states to contribute funds and resources to the African Union, regionalisation of the conflict in the great lake region and parties involved in the conflicts.

Generally, it has been shown that the resolutions adopted by the AU through PSC are weak because of the poor enforcement mechanisms. This is similar to the findings of the library illustrated by the AU Peace and Security Council communiqué held 21 June 2012 on the situation in eastern Congo.⁷⁰ But the situation in the eastern Congo has been deteriorating as time goes by.

⁷⁰ Press statement PSC/COMM (CCCXXIV) and Assembly/AU/ Dec.432 (XIX). AU stresses the need for the sustained efforts to eradicate the presence of the negative forces in eastern DRC, effectively restore state authority and promoting lasting peace.

5.5.1.4. Should the other States interfere with the internal armed conflict in Congo?

The question was posed to the respondents who are military personnel, soldiers and police, lectures and members of the embassy as well as students of the international law as to how states should interfere the internal affairs of Congo. The responses were as follows:

(i) Military personnel, soldiers and police.

In reply to the questions posed to them, they argued that the conflict of Congo is one of the longest conflicts in the great lake region. Initially states have been helping each other to either toppling the ruling government or helping the rebels. In the period of the former organisation (OAU) for example Zimbabwe and Angola assisted the Mobutu Government to fight with the rebels.

Recently in the period of African Union, some states still participates in the internal affairs of Congo because of either of security reasons of the great lake regions or for the natural resources of the DRC. There is an accusation to Rwanda that it helping rebels in the eastern Congo by providing military assistance through training and weapons in exchange of mineral resources obtained in the DRC.

Other respondents were of the View that some states have moral and political duty to help their neighbouring states in case of conflicts because of the long historical friendship between themselves.

Others were of the view that unless DRC is safe, other states around should also prepare to receive the immediate effects of the conflicts, so neighbouring states are required to help to minimise the conflict.

(ii) Lectures and members of the Embassy.

The conflict of Congo requires an exhaustive analysis before embarking in the internal affairs of the Congo. We heard through media some countries have plug in the conflict without the acceptance of the AU or its organs (PSC).but intervening

process is against the sovereignty of Congo and it is prohibited in the AU Constitutive Act. The AU constitutive Act stresses states to respect borders and sovereignty of other states. This is obtained in Article 3 of the AU constitutive Act. Engaging in the internal affairs of the state must be accepted by the AU or its other regional organisations. Like the action taken by Tanzania, Malawi and Mozambique sending troops to the DRC in order to violence of the M23. This process of sending soldiers was organised by sub regional organisation SADC with the United Nations. Adolf M, member from the DRC embassy in Dar es Salaam revealed that, there are reasons why Uganda and Rwanda are engaging in the conflict of DRC. Firstly, the long history of helping each other in fetching for power. President Museveni received help from Tutsi to form the current government through guerrilla war. Later Tutsi rebels helped President Kagame to come into power. Those Tutsi entered in the eastern DRC. Secondly, the plundering of DRC resources particularly Gold, Diamonds and precious hardwoods from the DRC forest.

(iii) Students of international law

They argued that there are situation which a particular state can intervene in a particular state. Those circumstances are clearly elaborated in the United Nation charter and AU Constitutive Act. Some of the situations are whether the particular state has violation fundamental rules of international law like committing crimes against humanity to its civilians, genocide and gross violation of human rights.

According to the discussion above it has been shown that the state are not allowed to enter into the affairs of the other states, but there are circumstances which would let some state engaging in the affairs of the other states as explained above.

5.5.1.5. What is the causative nature of the Congo conflict?

All of the respondents agreed that DRC conflicts centres on the availability of the natural resources and argued as follows:

Since independence Congo has been engulfed with many internal armed conflicts and political upheaval. The Congo conflicts has devastated the country and claimed the lives of an estimated 3 million people. In fact, greed for Congo's natural

resources has been a principal driver of atrocities and conflict throughout Congo's tortured history. In eastern Congo today, these mineral resources are financing multiple armed groups, many of whom use mass rape as a deliberate strategy to intimidate and control local populations, thereby securing control of mines, trading routes, and other strategic areas. Due to the minerals available in the country, the problem is complicated and the suffering of the citizens of Congo is immense.

Armed groups earn hundreds of millions of dollars per year by trading four main minerals: the ores that produce tin, tantalum, tungsten, and gold. This money enables the militias to purchase large numbers of weapons and continue their campaign of brutal violence against civilians, with some of the worst abuses occurring in mining areas. The majority of these minerals eventually wind up in electronic devices such as cell phones, portable music players, and computers.

Adolph M, from the Congo embassy in Dar es Salaam argued that areas like North Kivu, Ituri Goma are much affected by the mineral conflict. He also revealed that Sixty-four percent of the world's reserves of coltan are in Democratic Republic of the Congo (DRC), a nation racked by poverty and war and the extraction of it is a process that heavily influences the surrounding environment. Coltan is found in high concentration within the boundaries of Kahuzi Biega National Park, home of a rich tropical forest ecosystem.

Generally, it has been shown that the real genesis of the conflict in DRC is the availability of the natural resources. During the discussion the respondents answered the question and admitted about the resources in Congo as the causative nature of the conflicts. This is similar to the research findings obtained from the library as illustrated by *Responsible sourcing Networking*, that the root cause of the conflict of the DRC is the presence of mineral. These minerals are the source of financing militant group in the eastern Congo.

5.5.1.6 Is there a need for extending the provisions of AU constitutive Act or forming Additional protocol specifically relating to problems of internal armed conflict engulfing in Africa?

The responses to this question were as follows:

(i) Military personnel, soldiers and police.

There is a need to extend the provisions of the AU Constitutive Act to cover effectively the problems of internal armed conflicts. Therefore, internal armed conflict is an important aspect to be enshrined in the AU Constitutive Act expressly. That is AU must equip the African standby Force in order to fulfil the mission of creating free African continent. African Standby force manoeuvring capacity and ability to intervene in case of internal armed conflicts.

(ii) Lectures and members of the Embassy.

It is true to the great extent that the provisions of the AU Constitutive Act, states do not enter into conflicts with other states and leave out the problems of internal armed conflicts to affect states in a pervasive manner. There is a need for extending the AU Constitutive Act by the way of making the amendment by adding separate provisions in the AU Constitutive Act concerning the problems of internal armed conflicts so that the PSC can effectively intervene through the use of Standby Force.

(iii) Students of international law

They argued that, considering the current situation of the continent, presence of abundance of resources, states interest in the AU assembly and many intra conflicts engulfing the member states, there is a need also to amend the AU Constitutive Act to the important aspects of internal armed conflict.

5.5.1.7 What is the way forward of the African Union to deal with the problems of internal armed Conflict in DRC?

The respondents suggested the measures of extending the provisions of the AU Constitutive Act to cover the problems of internal armed conflicts as follows:

Amendment of the Article 4 of the Constitutive Act.

In order to ensure effective control of the internal armed conflicts in the regions, the AU assembly need to amend Article 4 of the AU Constitutive Act. It was said the lack of clear supervision or protocol dealing with the issue of internal armed conflicts around the region are among the growing reasons of intra conflict in the member states. They thus suggested that the AU through the Assembly should make an amendment by adding another independent article in the AU Constitutive Act, which concern the internal armed conflicts; they propose that it should read that,

...in exercising its authority, Peace and Security Council shall impose the standby force to the areas of internal armed conflicts, within the member states, to deploy soldiers to minimise the casualties of civilians in the states concerned...

...the authority of the peace and Security Council shall not be subjected to the power vested to the African Union Assembly....to the issue concerning internal armed conflicts between the member states...

Also...

The member states shall contributes funds to the specialised accounts dealing with the problems of internal armed conflicts within the member states...

..Those funds shall be contributed according to 3 percent of its total annual income of particular states.

Penalties shall be imposed to the defaulters within the members of the African union...and this shall be set in a separate protocol concerning internal armed conflicts...

States engaging in the internal affairs of the other states particularly internal armed conflicts shall be penalised and given disciplinary measures according to the procedure outlined in the additional protocol concerning internal armed conflicts.

Financing the AU.

The AU has the critical conditions financially concerning armed conflicts within the regions without mentioning internal armed conflict. This has been shown in the internal armed conflict in different areas among the member states. In Sudan for example there are internal armed conflicts in Darfur region but the AU was unable to curb the situation in the region, it was when the UN rescued the situation by employing military peacekeeping and observers in the region. This was one of the many examples occurring in the member states which require attention of the AU.

Political will of the heads of states.

Heads of states of the member states are much influenced by politics. These politics comes from the AU Assembly which is the supreme organ of the Union. Presidents who are duly appointed to represent their states in the Assembly are so influenced by the states, personal and regional interests. This can be illustrated in the Darfurian case, where Chad government supporting the Darfurian combatants while the Sudan government supports the Janjaweed. This resulted the death of hundreds civilians in Darfur.

The absence of will power to solve and adjudicate complex issues within the members states are also among the reasons for the continuing internal armed conflicts.

Reducing poverty in the DRC.

These are among the reasons for the continuation of internal armed conflict in DRC. The Congo government must not wait to receive assistance from the outside because much of the aid comes with the package of conditionality, and this blurred the development strategies of a particular state. Human security also formed the centre core of the peace and tranquillity within the DRC state. Human security referred to freedom from fear and freedom from want. Freedom from fear entails protection from violent conflicts. It is also associated with poverty and lack of state capacity to deliver. Freedom from want involves broadening the security agenda to include

hunger, disease and natural disasters. It was argued these kill more people than war, genocide and terrorism combined.⁷¹

5.6 Findings from the Library.

In examining the internal armed conflict in the eastern DR Congo I have observed that there are various armed groups operating in different areas with almost between those groups, concentrating in mining activities.

In essence African constitutive Act does little to protect and minimise those conflicts. Members of the African Union have been engulfed with many internal armed conflicts. In Uganda there is Lord's resistance Army (LRA) which operates in Northern Uganda, in Sudan there is Janjaweed in Darfur, in Somalia there is Al-Shabaab and in DR Congo there are M23, Mayimayi, CNDD and other small fractional groups. There are armed in the eastern of DRC and each of the group has his interests in the region. There is CNDP which controls large part of the Masisi highlands between ngungu and mweso and led by Col Sultan Makenga. They protect Tutsi descendants, local elites and businessmen in the area.

There is also FDLR. These are deployed in the rural areas throughout the rural south and North Kivu Maniema. Gen Sylvestre Mudacumura is the leader of this group. Their main activities are to extract minerals and maintaining their ideology of overthrowing the RPF.

5.6.1 Provisions of the AU Constitutive Act does not guarantee states in internal armed conflict.

Members of the African Union are governed by the AU Constitutive Act. The Act has been signed by all members. Some provision of the Act states that, through Peace and Security Council, the Union can intervene in a member states in case there is genocide, crimes against humanity and gross violation against human right, but in real sense does not effectively deal with the internal armed conflicts.

⁷¹ The UNDP report (1994) on Human Security.

It is true to a great extent that the Constitutive Act is more concerned with the conflict between states which is constituted by the Peace and Security Council but not so much with the internal armed conflict.

The Constitutive Act of the AU has surrendered the duty of protection of internal armed conflict to other protocols which on the other way round the decision must come to the Peace Security Council later approved by the Assembly which has more regional politics than solving the immediate problems.

The assembly forms the superior organ of the AU. This organ consists of Heads of states and Governments or duly accredited representatives. Its decision is carried by two-third of member states of the Union. Being the supreme (Assembly) organ of the AU it means that all decision of the Union must be accepted and passed in the Assembly.

The Constitutive Act of the African Union does not guarantee effectively the problems of internal armed conflicts due to the following reasons:

5.6.2 Absence of Mandatory provisions.

Throughout the Constitutive Act there are no specific provisions for the protection of internal armed conflict. The Act is only in general speaking about the conflict and the way it is going to solve those conflicts if they arise. The Constitutive Act does not compel states either to contribute monetary funds or creation of African army by requiring each state to produce annually about 100 soldiers, officers and civilians specifically for the curbing of internal armed conflicts around the regions.

5.6.3 Divergence of opinions from the Heads of State.

The Assembly of the African Union, which is composed by head of States, are much influenced by geopolitics and states interest either from the member or from the foreign states. A good case was the Libyan crisis which toppled the President Muamar Gaddafi. Some States were in a stalemate of neither to recognise the Libyan Government nor the Benghazi oppositions. This was a diplomatic stance adopted by states to wait to see what will happen in the near future. Tanzania did not recognise

the Benghazi government; this position was shown by the Tanzania Foreign Minister Bernard Membe.

5.6.4 Involvement of Foreign and Regional states in the DRC conflicts.

Another reason which although addressed in the Constitutive Act of the African Union (to respect the sovereignty of another states) not to engage in the internal affairs of another, but some states are engaging in the affairs of other states and increases the internalisation of the conflict in the region. Some of the example of this is the involvement of Rwanda in the affairs of DRC in the eastern part. Rwanda has been named as the highest exporter of coltan in the world which in a true sense those mineral are available in DRC particularly in the eastern part.

US American spokeswoman, Jen Psaki has been quoted accusing Rwandan government helping M23 rebels in the eastern Congo by saying "We call upon Rwanda to immediately end any support for the M23 and withdraw military personnel from eastern DRC," This was after the report of Human Right Watch revealing that M23 had been receiving help from the Rwandan Government

The African Constitutive Act does not illustrate what are the penalties for states involvement in the internal affairs of the member states without the blessing of the premier organisation (AU).

5.6.5 The Role of sub regional organisation

Within the African Union, there are sub regional organisations like East African Community (EAC) and Southern African Development Community, (SADC). Most of these sub regional organisation are incapable of solving the internal armed conflicts occurring within the states, because of either short funds for the dealing with the conflicts or the absence of clear policy to deal with those situations.

5.7 Conclusion

This chapter has dealt with the problem of internal armed conflicts in DRC with the focus on the need for extending the provisions of the African Constitutive Act. The position of the chapter is that the Constitutive Act does not effectively deal with the

problems of internal armed conflicts. There are several factors which hinders the African Union in dealing with the problems of internal armed conflicts. Matters have been discussed in relation to these factors affecting the efficacy of the African Union in dealing with the problems of internal armed conflict in the Democratic Republic of Congo include the absence of mandatory provisions requiring states to contribute special funds and personnel to deal with those problems.

CHAPTER SIX.
GENERAL CONCLUSION AND RECOMMENDATIONS.

6.1 General conclusion.

6.1.1 AU Constitutive Act do not adequately covers the problems of internal armed conflicts.

The conflict of Eastern Congo has claimed four million people dead. Its first phase started in 1996 when Laurent Kabila, leading the *Alliance des Forces Democratiques pour la Liberation du Zaire* (AFDL), came into view, when he overthrew the president Mobutu and proclaimed himself president of the DRC. It was during the 2006 when there was a general election in DRC and the new Government had to focus on the control of the territorial integrity to avoid further conflict. Contrary to the idea that the election would bring peace, Congolese people are witnessing continuous fighting in the Kivus (the eastern part of the DRC, bordering with Rwanda and Burundi).

This situation attracted the attention of different organisations in which the DRC participates as member. Regional organisation like African Union (AU) is established to deal with such situations. DRC is a member of the African Union.

The African Union, previously the organisation of African Unity (OAU), was the first regional organisation to react against the atrocities caused by the conflict in the DRC in 1996. It was in Nairobi where member states met at a regional summit dedicated to the situation in the DRC. In the post-conflict reconstruction and reconciliation process, the AU was supporting the amelioration of the security situation in the DRC.

African Union has a considerable role in dealing with internal armed conflict in Democratic Republic of Congo. There are considerable advantages achieved by the African Union in searching for peace and tranquillity in the Democratic Republic of

Congo. The African Union elevates the life standards of the people through negotiating different agreement with rebels and armed groups. AU takes the lead and oversight role in DRC in solving the DRC conflict. The efforts made by the AU Peace and Security Council were recommendable. This was stressed in the Kampala Summit on the eastern Congo crisis and the AU continued support to the ongoing efforts aimed at finding a lasting solution to the crisis in the North and South Kivu Region of the democratic Republic of Congo.⁷²

In the sub-regional organisations like the Southern African Democratic Community (SADC) came up with suggestions in accordance with its mandate. In this respect, the SADC meeting in Sandton in South Africa at extra –ordinary summit noticed that the security situation in the DRC affected the peace and stability in the SADC’s region and Great lake regions (GLR). In addition, it certified and reinforced the resolutions of the International conference of the Great Lake Regions (ICGLR) summit recommended the immediate ceasefire by all the armed men and militia in north Kivu. “The ICGLR would not stand by and witness incessant and destructive acts of violence by any armed groups against innocent people of DRC; if necessary the ICGLR will send peacemaking forces into Kivu Province of the DRC.”⁷³

We have seen that series of agreements had been done by the African Union and sub regional organisation of the AU to end the Conflict of DRC but the conflict continue to exist in the Eastern part of the democratic Republic Of Congo. Areas of North and South Kivu, Maniema, Goma are still under the conflict.

African Union was established to promote peace, security and stability of the continent. This assumption is enumerated in the article 30 of the Constitutive Act of the African Union and article 3 of the Protocol to amend the Constitutive Act.

⁷² Press Release No. 143/2012. www.au.int.

⁷³ ‘communiqué, extra-ordinary summit of the SADC heads of State and Government; Sandton ,RSA 2008. 2

Generally, African Union is aimed at bringing political, economic and social integration between member African Countries and making the continent a better place to for life.

The Constitutive Act of the African Union and the Protocol for its amendments are the governing law of the African Union. Article 4 of the constitutive Act and article 4 of the Protocol provide, Non-interference by any member state in the internal affairs of another, the right of the AU to interfere in the internal affairs in a member state pursuant to the decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council (PSC). PSC has the power among other things, to authorise peace support missions, to impose sanctions in case of unconstitutional change of government, and to take initiatives and action it deemed appropriate in response to potential or actual conflicts.

While all of the aforementioned principles must be taken according to the rules of procedures of the assembly of the Union, one author was of the view that: the fact that intervention will require a decision by the Union's Assembly Heads of State and Government arguably rises the risk of inaction. Indeed, the history of African leaders' reluctance to involve the OAU in an internal conflict for fear that it would do the same in the event of conflict in their own countries confirms this risk.

We have seen that for the peace and security to exist in the eastern Congo, all objectives and principles of the AU must be abided by. These include defending sovereignty, territorial integrity, peaceful resolution of conflict among member of the African Union and non-interference. Although article 4 of the said Constitution speaks of objectives of the African Union, in reality its means that AU has no mandatory power to solve internal armed conflicts. Therefore there is a need for the clearer provisions on this matter.

The African union is a result of an age-old process that stimulated a sense of solidarity and brotherhood among Africans and other people of African descent. The idea of African Union is not just an unanticipated happening that occurred in the 1980s or 1990s. It is rather the latest incarnation of the Pan-African movement which had its roots in Black Nationalist movements in Europe and America.

The United Nations Charter covers almost every conflict surrounding the globe; it has power under Chapter seven of the Charter to impose military action against any member who violates the rules of the Charter. This is implemented by the Security Council of the UN. Also in North Atlantic Treaty Organisation (NATO), members form military alliances to curb and prevented any military threat which likely to occur either internally or from outside in any member of the organisation. These principles go further than the Constitutive Act of the African Union as they require for prevention and dealing with the problems of internal armed conflict in Africa.

In part three we highlighted on the internal armed conflict in the eastern Democratic Republic of Congo (DRC) both in OAU and AU period. During both periods the conflict in eastern DRC continued to claims lives of the people. Both organisations had instruments to deals with the problems of internal armed conflict, although the AU tried to introduce the Peace and Security Council resembling the role of the UN organ.

The OAU Charter established the OAU in 25 May 1963 and in 1993 it provided (in 29th session of the Assembly of heads of State and Government) the Mechanism for Conflict Prevention, Management and Resolution. However there were no specific provisions regarding the problems of internal armed conflict.

In the effort to solve the problems of internal armed conflict during the time of OAU, little effort was given to minimise the conflict. When they stressed the strategies for solving Congo conflict, other members were neglecting to help because there were no mandatory provisions or additional protocol required them to do so.

Also in the AU Constitutive Act provides for the jurisdiction, powers and functions of the Peace and Security Council and for other related matters. Although there were series of agreement to reduce the internal armed conflict in DRC by the AU, the conflict of Congo continues to exist in the Eastern part. Article 6 of the Protocol relating to the establishment of the Peace and Security Council of the African Union provides the role of the PSC as promotion of peace and security in Africa and early warning and preventive diplomacy, but that part does not extended to require members of the AU to contribute soldiers, logistics and resources to the African Standby Force. This leaves members of the AU to choose either to help members or not.

With the foregoing analysis, it is therefore concluded that the specific provisions or protocol that require states to participate in the internal armed conflict of another state does not exist for it has not been provided for the AU constitutive Act. What we find in the AU Constitutive Act is the PSC can intervene in the member state when there is a threat to peace like genocide or crime against humanity at the request from the member state or from the Assembly. As a result the AU faces major obstacles to meet its peace and security objectives including its commitment to the protection of civilians. One will not be wrong to say that these few things in the Constitution and protocol can deal effectively with the problems of internal armed conflicts.

6.2 Recommendations.

6.2.1 Proposal solutions to the problem of internal armed conflict in Democratic republic of Congo.

We have seen throughout this paper that the AU constitutive Act, Protocol Relating to the establishment of Peace and Security Council do not provide a mandatory provisions or additional protocol to require states to do more in case of the internal armed conflict. AU laws leave the states to choose either to help at their own wish and volition. Up to the time this report, the situation in Eastern Congo is still deteriorating. The rebels are still controlling large part of the Eastern Congo.

The experience of African Mission in Burundi (AMIS) and African Mission in Somalia (AMIS) demonstrate that the AU requires extensive additional protocol dealing with the internal armed conflict situations to cover financial, logistical and political support from the international community in order to fulfil its commitments to peace and security, including to the protection of civilians.

This additional protocol will come from the amendment of the Peace and Security Council of the African Union. Among other things the Protocol must state specifically that in case of internal armed conflicts, the members;

Are required to form a complete African Standby Force (ASF) which every member must contribute at least 300 soldiers including 30 military officers;

The ASF must be empowered militarily to have a capacity to deal with the problems of internal armed conflict situations in Africa.

Expulsion of any members, if it is confirmed, interfering internal matters of any states for personal gain, natural resources or any form of financial interests.

The decision of the ASF on whether to intervene militarily on a particular state must be passed in the Peace and Security Council to avoid lobbying in the African Union Assembly.

Those Brigade soldiers must be Permanent.

The protocol must commit each member to share risk and responsibilities as well as benefits of collective security and requires each member country not to enter into the conflict of other.

The Protocol must also state at what time the ASF will withdraw from the battle zone after the removal of rebels.

The protocol should also be affected on the part four of the Peace and Security Council on part four of the Protocol relating to the establishment of Peace and

Security Council to define ‘the internal armed conflict as armed conflicts that are non-international in nature occurring in one of the High contracting parties’,⁷⁴

Does the African Union have competence to deal with the internal armed conflict so that to maintains peace and security in Africa? Africa has a troubled record of internal armed conflict.

⁷⁴ Geneva Convention, common article three, of 1949.

APPENDIX I
QUESTIONNAIRE

I am Calist Salvatory; a Master of Laws (L.L.M) student of the academic year 2011 to 2013 from Mzumbe University.

The purpose of this questionnaire is purely academic. The topic is about the Role of African Union (AU) in dealing with the Problems of Internal armed Conflict in Central Africa, Democratic Republic of Congo (DRC) as a Case study.

My research problem stretches the way back before the formation of AU and after the formation of AU. In the period of OAU the conflict of DRC was not effectively minimised. This conflict went on even after the formation AU in 2002 although the AU made a lot of effort, but still the conflict continues. The AU has continued in the current regime where the internal armed conflict in DRC has claimed lives of thousands persons in the eastern Congo. Therefore it is the theme of this research to measure the efficacy of the AU in dealing with the Problems of Internal armed conflict.

So, by filling in this questionnaire, your views will be of great importance to curb this problem.

Questions

1. Do you think the AU can deal with the DRC conflict effectively? If yes why?

And if no why?

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2. Do you think the citizens of DRC are well protected by the AU Constitutive Act? If yes why? And if no why?

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3. Are the AU decisions in dealing with the problems of internal armed conflict implemented effectively?

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4. Should the other States interfere with the internal armed conflict in Congo? If yes why? And if no why?

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5. Do you think the provisions of our AU Constitutive Act do guarantee the internal armed conflict in Congo?

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6. What is the causative nature of the Congo conflict?

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7. Does the AU Constitutive Act leaves the States to choose whether to assist or not, states that are in the internal conflict?

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8. Is there a need for extending the provisions of AU constitutive Act or forming Additional protocol specifically relating to problems of internal armed conflict engulfing in Africa?

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9. What is the way forward of the African Union to deal with the problems of internal armed Conflict in DRC?

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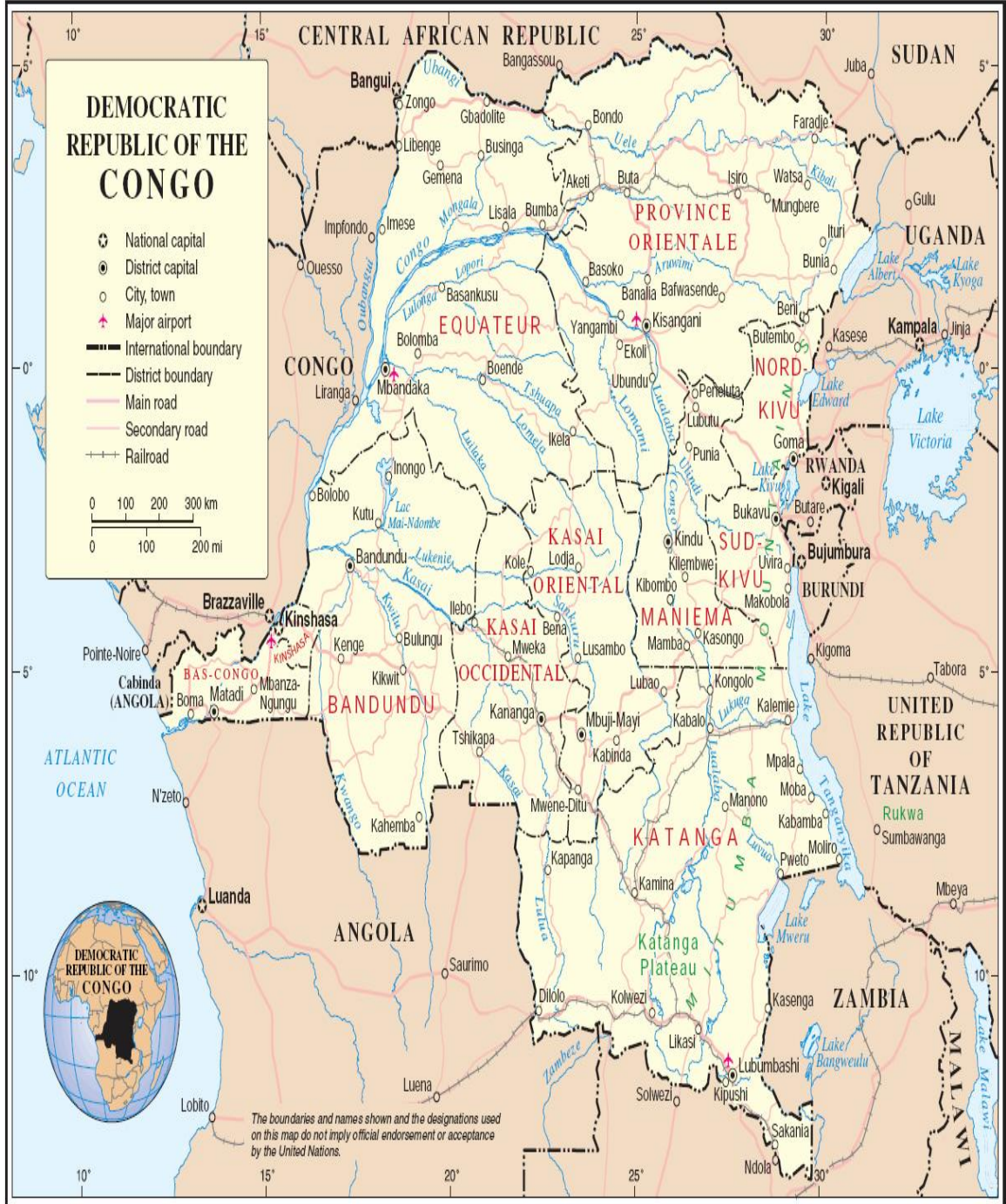
Email: mcalisty@yahoo.com.

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Skype: mbarikiwa.

APPENDIX II

Source: <http://mappery.com/map-of/Democratic-Republic-of-Congo-Map>.



Map No. 4007 Rev. 8 UNITED NATIONS
January 2004

Department of Peacekeeping Operations
Cartographic Section

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